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ACTIVITIES OF THE INTERIM INVESTIGATIVE COMMISSION ESTABLISHED BY THE GEORGIAN DREAM'S PARLIAMENT



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1. THE ESSENCE AND PURPOSE OF THE INVESTIGATIVE COMMISSION

The constitutional principle of separation of powers, which divides state authority into three independent branches cannot exist without the accompanying principle of mutual checks and balances. The realization of the representative function by the Parliament and the expression of its will are constitutionally guaranteed, including through the Parliament's oversight powers, which are an integral component of its activities.¹ The investigative power is one of the essential tools of Parliament, allowing it to independently examine issues of public interest using its own resources. This authority derives from Parliament's constitutional mandate and its legitimacy as the representative body of the people. Investigative procedures serve to enhance parliamentary oversight and awareness, enabling the examination of specific cases and the formulation of relevant conclusions.² Thus, 2 main purposes of the exercise of investigative authority are distinguished: 1. Investigation and study of government activity and/or issues important to society and 2. Self-informing the parliament on these issues and focusing on a specific issue.

Parliament's investigative power, typically exercised through an investigative commission, grants it certain fact-finding authorities and is often described in legal literature as a quasi-judicial body.³ However, it is not a court-like body and its activities are strictly separated from judicial activities as a legal mechanism for the protection of rights.⁴

The activities of the Investigative Commission of Inquiry, as a constitutional political body and an internal temporary organ of Parliament, inherently possess both political and legal dimensions. Accordingly, it is essential to define clear boundaries that will delimit its scope of activity. In Germany, the right of parliamentary investigation is constrained by the constitutional competence of Parliament itself.⁵ In particular, the investigative commission is limited by: 1. federal competence, where the constitutional powers of the federation and federal units (regions and local self-government) are distinguished from

¹ Chighladze N., Constitutional Status of the Temporary Investigative Commission, in the collection: Current Issues of Georgian Law, edited by N. Chighladze and T. Nemtsveridze, Tbilisi, 2014, 40.

² Sachs/Magiera, 9. Aufl. 2021, GG Art. 44, Rn. 1.

³ GG Kommentar, Gröhl, Windthorst, von Coelln, 2. Auflage, 2015, S. 516.

⁴ Ibid.

⁵ Sachs/Magiera, 9. Aufl. 2021, GG Art. 44, Rn. 10.

each other; 2. The principle of separation of powers and the boundaries of general security and public welfare, according to which the parliamentary investigation cannot encroach upon the exclusive domain of the executive branch, nor exceed limits that could jeopardize public order and well-being; and lastly, 3. The protection of fundamental human rights and freedoms, It is evident that the investigative commission's activities must not unduly or unjustifiably infringe upon the sphere protected by any human right.⁶ Due to differences in the state structures of Georgia and Germany, the first point concerning the scope of competence is less applicable to Georgia. However, it is important to note that the other two points present challenges within the Georgian context, both legislatively and in practice.

⁶ Ibid.

2. ESTABLISHMENT OF A TEMPORARY PARLIAMENTARY INVESTIGATIVE COMMISSION

The interest in establishing an investigative commission as a parliamentary oversight mechanism usually belongs to the parliamentary minority, the opposition. However, such a commission may also be formed by the parliamentary majority. While the right to conduct investigations fundamentally belongs to the Parliament as a legislative institution—irrespective of majority or minority status—in practice, this mechanism primarily serves as an instrument for minorities to exercise government oversight and hold the executive accountable.

Although there is no substantial difference in the outcome of a majority/minority investigative committee, German literature nevertheless distinguishes between the two types. A minority inquiry initiative refers to a case where the initiative is put forward by a certain number of deputies and these deputies do not belong to the parliamentary majority.⁷ It is irrelevant whether the initiators come from the same or different parliamentary factions. The definition of a majority initiative varies; however, it is commonly understood to mean an initiative proposed either by the parliamentary majority or by a coalition representing more than half of the deputies.⁸ Although the creation of an investigative commission is unofficially the prerogative of the minority, representatives of the majority can also benefit from it.⁹ Commissions established through either type of initiative are governed by exactly the same rules and restrictions; the distinction between them is merely traditional and semantic.¹⁰ Additionally, for instance in Germany, the decision to establish a commission—issued as a parliamentary decree—must meet the requirement of specificity. This means it must clearly identify the initiators, define the issue under investigation, specify the members of the commission, and other relevant details.¹¹ To this end, it is important to follow procedural rules and provide the necessary information. The Rules of Procedure of the Parliament of Georgia also establish the need to justify the creation of an investigative commission.¹² In practice, this entails the preparation of an explanatory memorandum that fully adheres to the principle of certainty

⁷ BeckOK GG/Brockner, 50. Ed. 15.2.2022, GG Art. 44, Rn. 22-24.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ v. Münch/Kunig/Groh, 7. Aufl. 2021, GG Art. 44, Rn. 46, 47.

¹² Article 62, paragraph 1, of the Rules of Procedure of the Parliament of Georgia.

and meets the standard of justification. It is important to emphasize that the existence of a comprehensive explanatory memorandum is not only a substantive requirement but also a procedural one.

An example of an investigative commission established on the initiative of a parliamentary majority is the 2015 commission formed by the German Federal Parliament (“Bundestag”), which investigated various terrorist crimes committed by the “National Socialist Underground” (NSU) groups.¹³ In this case, the initiators of the commission’s creation included factions within the parliamentary majority. At first glance, this might seem inconsistent with the supervisory nature of the parliamentary right of investigation. However, the rationale for establishing an investigative commission on the majority’s initiative is justified by the nature of the investigation itself, which focused on assessing the crimes committed by terrorist groups rather than directly overseeing the activities of the executive branch. It is also important to note that, unlike Georgian legislation, German law does not restrict the Parliament’s discretion in selecting the subject matter of an investigation.¹⁴

The Chairman of the Parliament, a committee, a faction, or at least one-fifth of the full membership of the Parliament have the right to initiate the creation of an investigative commission in the Georgian Parliament.¹⁵ The establishment of an investigative commission is grounded in the need to uncover information regarding unlawful actions by state bodies or officials, including corruption offenses that threaten Georgia’s state security, sovereignty, territorial integrity, as well as its political, economic, or other vital interests.¹⁶ Accordingly, under Georgian legislation, an investigative commission may be established at the initiative of either the parliamentary majority or the opposition.

¹³ German. „Nationalsozialistischer Untergrund“.

¹⁴ In particular, German legislation does not specify the issues on which an investigative commission should be established.

¹⁵ Article 42 of the Constitution of Georgia and Article 61 of the Rules of Procedure of the Parliament.

¹⁶ Article 61, paragraph 2 of the Rules of Procedure of the Parliament of Georgia.

3. INTERIM INVESTIGATION COMMISSION OF THE PARLIAMENT OF GEORGIA INTO THE ACTIVITIES OF THE 2003-2012 REGIME, ITS POLITICAL OFFICEHOLDERS, AND CURRENT AND FORMER OFFICIALS AFFILIATED WITH POLITICAL PARTIES OF THIS REGIME FROM 2003 TO THE PRESENT

On January 29, 2025, the Georgian Dream faction presented an initiative to establish a “The Interim Fact-Finding Commission on the Activities of the Regime and the High Political Officials of the Regime of 2003-2012.”¹⁷ Although the establishment of an investigative commission is traditionally regarded as a parliamentary minority’s oversight mechanism to control the executive branch,¹⁸ in this instance, the initiative originated from the parliamentary majority. Specifically, the commission was initiated by the Georgian Dream faction within the self-proclaimed Parliament.

According to the Rules of Procedure of the Parliament of Georgia, the establishment of a temporary investigative commission must be based on information regarding unlawful actions committed by a state body or official, or corruption-related offenses that pose a threat to the state’s security, sovereignty, territorial integrity, or its political, economic, or other vital interests.¹⁹ According to the explanatory note, the goal of the investigative commission and, accordingly, the topic of investigation was to assess the crimes committed by the current regime and its political officials in 2003-2012 and to put their decisions into a legal context.²⁰

The vote on the establishment of the investigative commission was held on February 5, 2025, and the Parliament approved the initiative with 83 votes in favor. Although the initiator—Georgian Dream—submitted the required documentation to the Parliament, including the application, draft resolution, and explanatory note, the explanatory note lacked key details. Specifically, it did not clearly define the scope of the investigation, the rationale for selecting the particular issues to be examined, the list of individuals to be interviewed, or the types of documents to be reviewed during the commission’s

¹⁷ Letter N07-3/23 from the Georgian Dream faction to the Bureau of the Parliament of Georgia.

¹⁸ Gonashvili V., Eremadze K., Tevdorashvili G., Kakhiani G., Kverenchkhiladze G., Chigladze N., Introduction to Constitutional Law, Tbilisi, 2016, 314.

¹⁹ Article 61, paragraph 2 of the Rules of Procedure of the Parliament of Georgia.

²⁰ Explanatory note on the draft resolution of the Parliament of Georgia “On the establishment of a temporary investigative commission to investigate the activities of the regime and its political officials in 2003-2012”.

sessions. The explanatory note provided only general information regarding the 2003–2012 regime and outlined the issues to be examined in an overly broad manner. Given that the investigative commission was expected to address matters potentially involving the legal and political responsibility of specific individuals, it was imperative for the initiators to offer a comprehensive and well-substantiated justification. This should have included not only a clear articulation of the purpose and necessity of establishing the commission but also a detailed explanation of its intended scope, methodology, and procedural framework.

In addition, the explanatory note addressed not only past crimes but also referenced current and anticipated political, economic, and other threats to the country. However, the initiators failed to substantiate what specific threats were being referred to, nor did they clarify how these threats were connected to the actions of government officials from the 2003–2012 period. The note also referred vaguely to the “radical opposition” as a collective term, without specifying which political party or actors were intended, thereby further diminishing the clarity and credibility of the commission’s stated objectives.²¹ It was also noted that the “radical opposition” has “openly oppos[ed]es Georgia’s national interests and created a decisive obstacle to the establishment of a healthy political system in Georgia” since 2003.²² However, the information provided fails to specify the immediate threats currently facing the country or to establish a clear link between those threats and the actions of officials during the 2003–2012 period. As a result, the initiative to establish the investigative commission appears to be largely formalistic and populist in nature, raising concerns that it may serve more as a political tool directed against a particular party or its affiliated groups rather than fulfilling a genuine oversight function. Although the investigative commission, as a temporary body of the Parliament, is inherently political in nature and does not operate under the same high standard of legal proof as ordinary investigative agencies, it is nonetheless an independent and impartial body accountable to both the public and the legislature. Therefore, it must adhere to a certain standard of justification—especially considering that its findings may serve as grounds for the legal or political liability of specific individuals or entities. Accordingly, it can be said that one of the important procedural requirements for the establishment of the “Georgian Dream” investigative commission has been violated.

²¹ Ibid.

²² Ibid.

Given the lack of sufficient justification for the establishment of the commission, it appears that the true purpose of its activities may not be to conduct a genuine investigation into crimes committed by state officials. Rather, it raises concerns that the commission is being used as a tool to marginalize specific political parties and to create a legal and political pretext for their potential prohibition. This approach is particularly problematic, as the activities of a parliamentary investigative commission must not be directed against particular political groups or serve as a means to facilitate their banning.²³

Ultimately, after a positive decision was made to establish a self-proclaimed parliamentary exploratory commission, on February 7, 2025, the parliamentary bureau decided to establish proportional representation quotas in the commission. Formally, 5 of the 10 members of the commission are from the majority, 2 each from the “People’s Power” and non-partisan deputies (in particular, from the “Gakharia for Georgia” party, which refused to enter parliament), and 1 member from the “European Socialists.”²⁴ Since the “Gakharia for Georgia” party is not currently represented in Parliament, it has not appointed any members to the commission. In practice, all existing members of the commission represent a single political force, given that both the “People’s Power” faction and the “European Socialists” parliamentary group entered Parliament through the party list of “Georgian Dream.” As a result, the distribution of quotas and the composition of the commission merely create a formal appearance of political diversity, without ensuring genuine pluralism within the body.

Five days after the approval of its composition, the commission held its first meeting on February 13, during which it elected its chairperson and secretary and drafted the commission’s internal regulations.²⁵

²³ v. Münch/Kunig/Groh, 7. Aufl. 2021, GG Art. 44, Rn. 22-28.

²⁴ The members of the commission are: from the Georgian Dream faction: Tea Tsulikiani (chairperson), Aleksandre Tabatadze, Tengiz Sharmanashvili, Aluda Ghudushauri, Paata Salia (later Irakli Kadagishvili), from the People’s Power political group: Sozar Subari (secretary), Guram Macharashvili, from the European Socialists political group: Ilia Injia. See the decision of the Bureau of the Parliament of Georgia “On the approval of the number of members and proportional representation quotas in the Temporary Investigative Commission of the Parliament of Georgia to investigate the activities of the current regime and political officials of the regime in 2003-2012”.

²⁵ Minute N1 of the first organizational meeting of the Temporary Investigative Commission of the Parliament of Georgia, presented by the Temporary Investigative Commission of the Parliament of Georgia, investigating the activities of the regime and political officials of the regime in force in 2003-2012.

4. PROGRESS OF THE INVESTIGATIVE COMMISSION'S ACTIVITIES IN THE GEORGIAN DREAM PARLIAMENT

The activities of the Investigative Commission are guided by key principles that impose boundaries on both the Commission itself and its participants. Specifically, these principles are: the principle of publicity and accountability, the principle of autonomy and democratic majority.²⁶ The Rules of Procedure of the Parliament of Georgia clearly define the powers of the Investigative Commission, thereby equipping it with the necessary legal mechanisms. The Commission is authorized to summon any individual for questioning, and their attendance at the session is obligatory.²⁷ In addition, the Commission is empowered to request various types of information from state agencies, including classified data, and may instruct relevant bodies to prepare conclusions and reports, the execution of which is mandatory.²⁸

Interestingly, according to the German Basic Law, the activities of investigative commissions are based on the norms of the Code of Criminal Procedure, which constitutes the essential basis for their operation.²⁹ The application of this legislation is regarded as a key factor in ensuring the effectiveness and results-oriented nature of German investigative commissions. The adoption of the norms of the Criminal Procedure Code as guiding principles for the activities of investigative commissions has also been a topic of discussion in Georgia, particularly during the 2010 constitutional reform.³⁰ The aforementioned initiative was put forward by German expert Alexander Blanke-nagel,³¹ however, the Georgian legislator did not support it.³²

The current Investigative Commission of the Parliament of Georgia held 25 commission sessions from February 13 to May 19, during which 77 individuals were interviewed.³³ In addition, the Commission collaborated with

²⁶ BeckOK GG/Brocker, 50. Ed. 15.2.2022, GG Art. 44, Rn. 36-42.

²⁷ Chapter 7 of the Rules of Procedure of the Parliament of Georgia.

²⁸ Gegenava D., Papashvili T., Vardosanidze K., Goradze G., Bregadze R., Tevzadze T., Tsanava L., Javakhishvili P., Macharadze Z., Sioridze G., Loladze B., Introduction to the Constitutional Law of Georgia, Tbilisi, 2019, 160.

²⁹ Paragraph 2 of Article 44 of the German Basic Law.

³⁰ Chighladze N., Constitutional Status of the Temporary Investigative Commission, in Collection: Current Issues of Georgian Law, edited by N. Chighladze and T. Nemtsveridze, Tbilisi, 2014, 56.

³¹ Professor at Humboldt University of Berlin

³² Ibid.

³³ "Interim Report on the Activities of the Temporary Investigative Commission of the Parliament of Georgia Investigating the Activities of the Regime in Force in 2003–2012, Political Officials of this Regime, and Current and Former Officials United in Political Parties from 2003 to the

various state agencies, including the Parliamentary Administration and the Prosecutor General's Office of Georgia, as well as with media outlets such as the TV companies Imedi, Rustavi 2, Georgian Public Broadcaster, and the Georgian Patriarchate's television channel Ertsublovneba, to obtain photo and video archives.³⁴

On April 1, Parliament extended the scope of the commission's investigation from 2012 to the present, until 2025.³⁵ Accordingly, the commission's mandate extended beyond examining anti-state actions committed by officials during 2003–2012, to also investigating the activities of current and former political officials affiliated with political parties up to the present day, that is, after 2012.³⁶ It is worth noting that, just as the creation of an investigative commission requires appropriate justification, any changes to its activities, mandate, or powers must also be properly justified—something that the commission failed to provide. Initially, the commission was tasked with investigating crimes and anti-state actions committed by the regime in power from 2003 to 2012. This, of course, implies that the commission was examining alleged illegal actions of state officials, a mandate vested in the Parliament. However, it is important to highlight that these “illegal and anti-state actions” appeared to be directed specifically at one political force — the United National Movement. It is debatable whether the parliamentary commission has the authority to assess the actions of party representatives who no longer held state positions or exercised decision-making power. Notably, out of the 25 sessions held so far, 24 focused on actions taken by state officials during the 2003–2012 period, while only one session addressed various matters related to the tenure of former Prime Minister Giorgi Gakharia.³⁷

Present (February 13, 2025 - April 28, 2025),” Official Website of the Parliament of Georgia, April 28, 2025, See also: <https://www.parliament.ge/parliament/commissions/65528/deputies>.

³⁴ Ibid.

³⁵ “Amendments have been made to the Resolution on the Temporary Investigative Commission of the Parliament”, official website of the Parliament of Georgia, April 1, 2025, available at: https://parliament.ge/media/news/parlamentis-droebiti-sagamodziebo-komisiis-shesakheb-dadgenilebashi-tsvlileba-gankhortsielida?fbclid=IwY2xjawJ_6JZleHRuA2FlbQlXMA-BicmlkETFiCjIlZFhUT05yUkU1VkZ2AR7JvVh5z2AXaU_61zwGSGFLpWnxWwbR0ippb4KAQfgQ--HgCjDfe2hjxc3t3g_aem_6-3FfzSoTTHIVng2V4PLg, updated: 01.05.2025.

³⁶ Ibid.

³⁷ “The Temporary Investigative Commission Interrogated Giorgi Gakharia,” official website of the Parliament of Georgia, April 1, 2025, available at: <https://parliament.ge/media/news/droebitma-sagamodziebo-komisiyam-giorgi-gakharia-gamokitkha>, updated: 01.05.2025.

It remains unclear whether the commission will examine the actions of former officials from the period between 2012 and 2025. Even so, the necessity of extending the commission's mandate to cover this timeframe is debatable, especially considering that the original stated purpose was to assess the conduct of those in power during 2003–2012. This inconsistency is further compounded by the lack of clear justification provided by the commission for broadening its scope. It is important to emphasize that the activities of an investigative commission must not be directed against a political party, nor should its purpose be to impose restrictions on political entities. Therefore, a clear and strict distinction must be made between evaluating the actions of state officials and assessing the political activities of parties. The current process, however, raises serious concerns, as it creates the impression that the true objective of the commission from the outset was to discredit political opponents and label them as criminals. This perception is reinforced by statements from leaders of the Georgian Dream party, who publicly associated the commission's findings with the potential banning of specific political parties.³⁸ According to the leaders of the Georgian Dream, the final conclusion of the investigative commission will create a “solid basis” to appeal to the Constitutional Court to declare the National Movement and its satellite parties unconstitutional.³⁹ It is evident that the activities and final conclusions of the Georgian Dream-led Parliamentary Investigative Commission appear to be aimed at laying the groundwork for the banning of a political party—an objective that is fundamentally unacceptable in a democratic society. The conclusions of such a commission must focus solely on the actions committed by party representatives while holding public office. If evidence of criminal conduct emerges, the commission's role is to refer the matter to the appropriate investigative authorities, not to use the process as a tool for political retaliation. The dissolution or banning of a political party is governed by a separate legal procedure that requires a significantly higher standard of justification.⁴⁰

³⁸ The draft law initiated by the “Georgian Dream” envisages “declaring the successor parties of the National Movement unconstitutional”, information portal “civil.ge”, March 28, 2025, available at: <https://civil.ge/ka/archives/672285>, updated: 06.05.2025.

³⁹ Ibid.

⁴⁰ In particular, it must be substantiated why the party, as an organization, poses a threat to the democratic order and that its goal is to overthrow or violently change the constitutional order of Georgia, encroach on the country's independence, violate its territorial integrity, or is engaged in propaganda for war or violence, incites national, ethnic, religious or social strife, or creates or has created an armed formation. See Article 36 of the Organic Law of Georgia on Political Unions of Citizens.

In addition, the objectivity and impartiality of the investigative commission's activities raise serious concerns. While the work of a parliamentary investigative commission is inherently political, it nonetheless involves examining issues that may potentially lead to the legal liability of specific individuals. Therefore, principles of objectivity and impartiality must be upheld throughout the process. These principles require that all relevant parties be heard, that political bias be avoided, and that the influence of partisan interests be minimized. Only by adhering to these standards can the commission's findings be considered credible and legitimate.

One of the key issues that emerged during the work of the investigative commission was the refusal of certain individuals to appear when summoned. Despite official requests, several summoned persons—including opposition party leaders—failed to attend commission sessions or provide written explanations for their absence. In response, the commission referred these cases to the Prosecutor General's Office, citing their noncompliance with the legal obligation to appear.⁴¹ The Criminal Code of Georgia regulates the failure to comply with the requests of the temporary investigative commission of the Parliament and imposes the appropriate sanction - a fine or imprisonment for a term of up to one year, deprivation of the right to hold a position or engage in activity for a term of up to three years.⁴² It is noteworthy that the Code of Administrative Offenses stipulates a sanction for noncompliance with the investigative commission's request—specifically, a fine equivalent to fifty times the minimum wage.⁴³ In this case, the issue of legal predictability arises regarding the determination of applicable sanctions and the type of liability for noncompliance with the Commission's request.

It is important to note that some Georgian politicians are engaged in a political boycott and do not recognize the legitimacy of the current Parliament.⁴⁴ Consequently, it was anticipated that these political figures would refrain from participating in the sessions of the investigative commission established by the self-proclaimed Parliament—particularly given that the commission's apparent objective is not an impartial investigation, but rather the discrediting of opposition parties and attempts to ban them.

⁴¹ A total of 8 people: Badri Japaridze, Mamuka Khazaradze, Irakli Okruashvili, Nika Gvaramia, Zurab Girchi Japaridze, Giorgi Vashadze, Nikanor Melia, Giorgi (Givi) Targamadze.

⁴² Article 349 of the Criminal Code of Georgia.

⁴³ Article 173 of the Administrative Offenses Code of Georgia³.

⁴⁴ «Opposition Parties Demand New Elections», Information portal Radio Tavisupleba, October 28, 2024, available at: <https://www.radiotavisupleba.ge/a/33176573.html>, updated: 01.05.2025.

5. INSTEAD OF THE CONCLUSION

The investigative commission, as a self-proclaimed oversight instrument of Parliament, is one of the most significant mechanisms available to both Parliament and the political factions within it. While it is often driven by political minorities, it can also be initiated by the parliamentary majority. Regardless of who initiates it, both the minority and the majority have an obligation to clearly justify the purpose and necessity of establishing the commission. The initiators behind the creation of the Georgian Dream investigative commission, currently operating within the illegitimate parliament, neglected this crucial procedural requirement by failing to adequately justify in their explanatory note the reasons for establishing the commission and specifying which particular actions should be subject to review. Furthermore, comprehensive information on the progress of the commission's activities should have been provided. It also needed to be explained why the commission was only now being established to investigate alleged criminal acts that occurred between 2003 and 2012. Additionally, the change in the scope of the commission's activities and the need to investigate processes ongoing not before 2012, but up to the present, was not properly justified. These changes, without justification, create the impression that the activities of the investigative commission are directed against one specific political group, and not towards a genuine investigation of the actions of state officials in 2003-2012.