

On the Peculiarities of Parliamentary Investigation

Karakhodjaeva Okilakhon Rufatovna ¹

¹ Associate Professor of the Tashkent State Law University, Candidate of Legal Sciences

Abstract:

As world practice shows, the need for parliamentary investigations in modern states is steadily growing. The reasons for this trend are primarily such positive principles as the improvement of the state and legal mechanism and further democratization of society, as well as the global experience of implementing parliamentary investigations, but at the same time it should be recognized that the need for this form of parliamentary control is associated with cases of incompetence of officials, abuse of authority, misuse of public funds, etc.

Keywords: Constitution, legislation, human rights, principle of separation of powers, legislative power, system of checks and balances, parliament, parliamentary control, forms of parliamentary control, parliamentary investigation.

One of the common forms of parliamentary control is parliamentary investigation, which is one of the important means of protecting the rights and freedoms of citizens. The first ideas about conducting a parliamentary investigation can be found in the work of Ch. L. Montesquieu "On the Spirit of the Laws", according to which, if a citizen violates the rights of the people in any public matter and commits crimes that the appointed judges cannot and do not want to punish, then, as a rule, the legislative power, which does not have the right to judge and at the same time without replacing the judicial authorities, can nevertheless use this right in that special case when it will represent the interests of the people. That is, the subject of a parliamentary investigation cannot be the establishment of the guilt of specific individuals in committing a crime, when it comes to a parliamentary investigation, mass violations of human and civil rights are implied, which can have negative consequences for both society and the state.

Parliamentary investigations in international practice are sometimes called questionnaires, and the right of investigation itself is called questionnaire law [1,p.354]. In modern scientific literature, the institution of parliamentary investigations is often identified with the institution of parliamentary

control, but most constitutionalists attribute this institution to only one of the forms of the latter. And this is not surprising, since the institution of parliamentary control has a broader legal content than the institution of parliamentary investigations, since it includes other forms of control activities. Therefore, apparently, one should agree with the point of view of those authors who believe that parliamentary investigations are one of the forms of parliamentary control[2].

According to the position of some scientists, parliamentary investigation is an exceptionally effective tool of modern politics, allowing to a significant extent to control the course of both domestic political processes and to influence the state of international affairs[3]. According to the opinion of Professor A.R. Akilov, the institution of parliamentary investigation is an effective tool with the help of which the legislative power, and together with it the public of the country, its citizens, get the opportunity to evaluate the effectiveness of the actions of the executive power, demand that officials who have revealed their professional incompetence or violated the law be held accountable[4]. On the other hand, conducting a parliamentary investigation also serves to ensure the legitimacy of representative bodies of state power, by applying the principles of publicity and openness in this process, when information is provided to the public in the form of a final report on the parliamentary investigation. At the same time, it is worth remembering the restraining factors of the implementation of the principle of openness in a parliamentary investigation in order to comply with ethical standards concerning the observance of human rights or ensuring the interests of national security, preserving state secrets, when some information must be classified (for example, interviewing victims during a parliamentary investigation into situations that led to tragic results due to a terrorist attack, environmental and man-made disasters, etc.). At the same time, this fact should not prevent the parliamentary investigation commission from informing the public about the results of its activities and the specific measures it has taken following the investigation.

According to the new version of the Constitution of the Republic of Uzbekistan, the control powers of the chambers of the Oliy Majlis of the Republic of Uzbekistan have been expanded, including by securing the power to conduct a parliamentary investigation. Thus, in accordance with the new provisions, in order to study the facts and events that pose a threat to human rights and freedoms, the interests of society and the state, capable of having a negative impact on the foundations of security, sustainable development of the country, a parliamentary investigation may be conducted by a joint decision of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan. To conduct a parliamentary investigation, a special commission is created on an equal basis from among the deputies of the Legislative Chamber and members of the Senate, which, when conducting a parliamentary investigation, in accordance with Article 18 of the Law of the Republic of Uzbekistan "On Parliamentary Control", has the right to:

- involve representatives of state bodies, specialists, experts and scientists in its work;
- request the necessary information from state bodies, economic management bodies, other organizations, as well as citizens;
- invite officials of state bodies, economic management bodies, other organizations, as well as citizens to provide explanations.

The Special Commission may also have other rights in accordance with the joint decision of the Legislative Chamber and the Senate. The Special Commission shall inform them of the work performed within the period determined by the joint decision of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan. It should also be noted that in the legal literature devoted to this institution, controversial points of view are expressed regarding the subject of parliamentary investigation, while an appeal to the content of Article 18 of the Law of the Republic of Uzbekistan "On Parliamentary Control" allows us to conclude that in the Republic of Uzbekistan the subject of parliamentary investigation is clearly defined, and according to this norm, the subject of parliamentary investigation may be facts that pose a threat to human rights and

freedoms, the interests of society and the state, capable of having a negative impact on the foundations of security and sustainable development of the country. It is also worth noting that, based on the provisions of the above-mentioned article, it can be concluded that the subject of a parliamentary investigation may in this case also serve as the basis for initiating a parliamentary investigation, since the facts that have become known to the entities authorized to initiate a parliamentary investigation, i.e. the subject of a parliamentary investigation is simultaneously the basis for initiating a parliamentary investigation.

When analyzing the institution of parliamentary investigation, based on the fact that the constitutional status of this form of control has been secured in the Republic of Uzbekistan, the idea of improving the legal basis for its functioning is put forward either by supplementing the current legislation on parliamentary control with norms that determine the specific procedure for its implementation, the procedure for approving and announcing the results of a parliamentary investigation, determining the structure of the final report of the parliamentary investigation commission, etc., or by adopting a separate Law on Parliamentary Investigation.

In almost all parliaments, specialized independent permanent or temporary committees or commissions are created to carry out parliamentary investigations. These bodies are used not only to evaluate the activities of certain bodies, but can also extend their activities to the work of political parties, trade unions and other public organizations. To carry out these tasks, the committees are vested with significant powers. They have the right to request information and documentation from any state bodies, political and public organizations, and to summon officials, experts and individual citizens to testify. The activities of such committees are public in many countries; hearings can be broadcast in the media. The object of investigation can mainly be the activities of state bodies and state enterprises. However, other types of activity can also be investigated if this is provided for by law. German law provides that parliamentary committees or commissions enjoy the same rights as law enforcement agencies during an investigation. In this case, the requirements of criminal proceedings apply to the collection of evidence with all the ensuing consequences: the right to forcibly summon persons to testify, the right to demand any evidence, and so on. In particular, in the German Bundestag, in accordance with the law, at the request of $\frac{1}{4}$ of the Bundestag deputies, commissions of inquiry may be created to investigate events that have a major public resonance. The commission of inquiry carries out its work, guided by the provisions of the Criminal Procedure Code. The commission has the right to interrogate witnesses and demand the submission of the necessary documents. Upon completion of the investigation, the commission prepares a report, which is submitted for consideration by the plenary session of the chamber. Investigations are conducted to study events and facts affecting vital national interests and representing a special public interest. In France, a parliamentary investigation is carried out by a Commission of Inquiry, which is created by adopting a corresponding resolution of a specific chamber by a majority vote.

The procedure for their formation is identical to the procedure for considering a law and consists of the following stages: consideration in one of the standing committees of a proposal to initiate a resolution on conducting an investigation; submission of a report on the results of the commission's investigation to the chamber; inclusion in the agenda of the chamber of the issue of discussing the commission's conclusions reflected in its report; discussion of the results of the investigation at a plenary session of the chamber and voting on this issue.

In the UK, parliamentary inquiries are conducted by parliamentary committees formed for branches and areas of government. The committees are empowered to conduct an investigation into any issue, for which they have the right to request relevant documents and materials, appoint experts, and call witnesses. Any person may be invited as witnesses, including officials of ministries and departments, members of public organizations, and political figures. Ministers are often invited to committee meetings. If a witness refuses to appear, the committee has the right to issue an order to summon the witness to the meeting. The meetings are usually open, but in some cases they can be

held behind closed doors. After a comprehensive study of the issue, the committee prepares a report submitted to the House of Commons. In the United States, the practice of conducting parliamentary inquiries by Congress was confirmed by a Supreme Court ruling, which determined that this was its right enshrined in the Constitution. In pursuance of these powers, Congress may demand the disclosure of documents or require the presence and testimony of witnesses at hearings by issuing subpoenas. In turn, failure to appear in court or making false statements to Congress can result in criminal liability. When the results and reports of investigations are published in the media, they can have a wide resonance and lead to resignations, dismissals, or impeachment proceedings[5,p.275].

The result of a parliamentary investigation may be decisions that, upon possible further investigation by specialized law enforcement agencies, may subsequently lead to a certain type of punishment. In addition, the information obtained as a result of a parliamentary investigation may serve as source material for developing proposals and measures to prevent certain events, as well as improving legislation in a certain area. In international practice, the conclusions of a parliamentary investigation commission are usually formalized in a final report, which should subsequently be made available to the general public through the media. As for the practice of informing about the results of a parliamentary investigation in the Republic of Uzbekistan, according to Article 18 of the Law of the Republic of Uzbekistan "On Parliamentary Control", a special commission for conducting a parliamentary investigation, created on an equal basis from among the deputies of the Legislative Chamber and members of the Senate, informs them about the work performed within a period determined by a joint decision of the Legislative Chamber and the Senate[6].

The final report of the parliamentary commission on the investigation usually contains proposals:

- on the dismissal of persons whose actions or inactions led to the emergence of situations that served as the basis for the parliamentary investigation,
- on the adoption of acts aimed at eliminating the causes of the consequences of the events that served as the basis for the parliamentary investigation,
- on improving the activities of government bodies whose actions or inactions served as the basis for the parliamentary investigation. Regarding the legal regulation of issues on the results of the parliamentary investigation, the general provisions at the present time can be found in Article 21 of the Law of the Republic of Uzbekistan "On Parliamentary Control", according to which, based on the results of parliamentary control, the subjects of parliamentary control, within the limits of their powers, can:
 - send parliamentary control materials to authorized state bodies for consideration in accordance with their powers;
 - contact the relevant state bodies and officials with a demand to take measures to immediately suppress the discovered violations of the rights and legally protected interests of citizens or other violations of the law;
 - submit proposals and recommendations to the relevant government bodies on holding officials accountable or dismissing them from office;
 - initiate the development of a draft new legislative act or the revision of current legislative acts;
 - publish the results of parliamentary control.

In Turkey, the Parliamentary Investigation Committee must submit a report on the results of the investigation to the Assembly within two months. If the study is not completed within the specified time, the committee is given an additional and final deadline of another two months.

In general, it can be noted that despite the existence of various definitions of parliamentary investigation, results of parliamentary investigation in scientific legal literature, the analysis of legal

norms shows that in the vast majority of cases there is no definition of these concepts, while their definition would allow the development of a single legal category in order to eliminate disagreements that may arise during its implementation.

When considering the issue of increasing the effectiveness of parliamentary control, special attention should be paid to the issue of interaction between the chambers of the Oliy Majlis with the judiciary and law enforcement agencies. During control activities based on the results of parliamentary investigations, facts containing signs of serious violations are often revealed. The effectiveness of control in such cases can be ensured only if the materials are timely transferred to the relevant competent authorities and then to the court. It is necessary to develop a mechanism for interaction between the chambers of parliament and law enforcement agencies in the field of financial control and control in the field of human rights. The interaction should be permanent and systemic. It is important to note that formally and substantively, a parliamentary investigation differs significantly from an inquiry, preliminary investigation, and trial conducted by law enforcement agencies. Both the parliamentary investigation commission and the parliament as a whole cannot make decisions that have criminal consequences, but have the right only to state violations of the law and transfer the materials to the competent authorities, who are obliged to consider them and, if necessary, conduct a full-fledged investigation[7].

As international practice shows, detailed legal regulation of the conduct of a parliamentary investigation requires the presence of a separate legislative act in this area, which most often regulates the procedure and grounds for initiating a parliamentary investigation, creating a parliamentary commission, requirements for commission members, issues of ensuring the activities of the commission, the procedure for the work of the commission, the rights of the commission when conducting a parliamentary investigation, the rights and obligations of commission members when conducting a parliamentary investigation, the legal status of the parties and other participants in the parliamentary investigation, the timing of the parliamentary investigation, the procedure for adopting the final report of the commission based on the results of the parliamentary investigation, etc. For example, in the Czech Republic, the legal basis for conducting a parliamentary investigation is the Act "On the Rules of Procedure of the Chamber of Deputies" and Appendix No. 1 to it - the Rules of the Investigative Commission. In accordance with paragraph 48.1 of these Rules, the Chamber commission conducts an investigation of issues of public interest. However, in practice, there is no exhaustive list of subjects of investigation, therefore it depends only on the relevant Chamber of the Parliament of the Czech Republic itself which problem it considers to be of public interest and for what reason it decides to create an investigation commission. In South Korea, issues of parliamentary investigation are regulated by a special Law "Act on the inspection and investigation of public administration", in Russia the Federal Law of December 27, 2005 "On the parliamentary investigation of the Federal Assembly of the Russian Federation" is in force.

A study of foreign experience in the normative consolidation of parliamentary investigation allows us to come to the conclusion that the presence of a law or detailed provisions on parliamentary investigation allows us to avoid vague concepts, prevents duplication of functions of law enforcement and fiscal authorities.

References:

1. Страшун Б.В. Конституционное (государственное) право зарубежных стран. М., 1996. С. 534.
2. Спиридонов А.А. Парламентский контроль в Российской Федерации. Научно-практическое пособие. Издание Государственной Думы. Москва. 2011г.
3. Чурин К. С. Зарубежный опыт осуществления парламентского контроля // Новый юридический вестник. — 2017. — № 1 (1). — С. 121-123. — URL: <https://moluch.ru/th/9/archive/66/2380/> (дата обращения: 30.01.2024).

4. Акилов А.Р. Порядок и процедура проведения парламентских мероприятий. Практическое пособие. Ташкент. 2020 г. С.30.
5. Тимошенко И.Г. Парламентский контроль в Великобритании // Институты конституционного права иностранных государств. М., 2002. С.275.
6. Алисса М. Долан и др., Конг. Исследовательская служба, руководство Конгресса по надзору. 2014г., с.68-69.
<https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB2015102393.xhtml>.
7. Караходжаева О. (2022). Контрольные функции в деятельности парламента. Евразийский журнал академических исследований, 2(12), 160–166. извлечено от <https://in-academy.uz/index.php/ejar/article/view/10101>.