

Legal Regime governing Parliamentary Inquiries

**Law no. 5/93 of 1 March 1993,
as amended by Law no. 126/97 of 10 December 1997 and
by Law no. 15/2007 of 3 April 2007¹**

In accordance with Articles 164(d) and 169(3) of the Constitution the Assembly of the Republic hereby decrees the following:

Article 1 Functions and object

- 1 – The function of parliamentary inquiries is to scrutinise compliance with the Constitution and the laws and to consider the acts of the Government and the Administration.
- 2 – The object of a parliamentary inquiry may be any matter of public interest that is relevant to the exercise of the Assembly of the Republic's competences.
- 3 – Parliamentary inquiries are conducted by ad hoc Assembly committees formed especially for each case, in accordance with the Rules of Procedure.

Article 2 Initiative

- 1 – Parliamentary inquiries take place:
 - a) By express decision of the Plenary, to be taken by the fifteenth day following publication of the respective draft decision in the *Journal of the Assembly of the Republic* or of its distribution in separate copies;
 - b) Upon a motion made by one fifth of all the Members of the Assembly of the Republic in full exercise of their office, up to a limit of one per Member and per legislative session.
- 2 – The following have the competence to initiate the inquiries provided for in paragraph (1)(a):
 - a) Parliamentary groups, and Members of the Assembly of the Republic from parties that do not form a parliamentary group;
 - b) Committees;
 - c) Members of the Assembly of the Republic.

Article 3 Formal requirements

- 1 – Draft decisions seeking the holding of an inquiry shall set out their object and their grounds, failing which the President shall reject them without further ado.
- 2 – A decision not to admit any draft decision that is submitted in accordance with the present Law may always be appealed to the Plenary, in accordance with the Rules of Procedure.

Article 4 Obligatory formation of a committee of inquiry

¹ The current text of Law no. 5/93 of 1 March 1993, including the necessary renumbering of certain paragraphs and other material corrections, was published in annexe to Law no. 15/2007 of 3 April 2007, as per Article 3 of the latter Law.

1 – Parliamentary committees of inquiry whose formation is moved under the terms of Article 2(1)(b) shall obligatorily be formed.

2 – The said motion, which shall be addressed to the President of the Assembly of the Republic, shall set out its object and grounds.

3 – The President shall verify the formal fulfilment of the conditions provided for in the previous paragraph, and the number and identity of the Members of the Assembly of the Republic who have subscribed the motion, and, in cases in which there is any omission or error in the fulfilment of those formalities, or in which the motion's object and grounds are in breach of the Constitution or the principles it enshrines, shall immediately notify the first signatory of the requirement to make good the corresponding failing or failings.

4 – Once he has received the motion or verified that the making good referred to in the previous paragraph has occurred, the President shall take the necessary steps to define the composition of the committee of inquiry by the eighth day following publication of the motion in the *Journal of the Assembly of the Republic*.

5 – After first consulting the Conference of Representatives of Parliamentary Groups, and on condition that he is asked to do so either by the Members of the Assembly of the Republic who moved the formation of the committee or by any parliamentary group, the President of the Assembly of the Republic shall schedule a debate on the subject matter of the inquiry within the period referred to in the previous paragraph.

Article 5 Notification of the Attorney General

1 – The President of the Assembly of the Republic shall communicate the content of the resolution or the part of the provisions of the motion that orders the holding of an inquiry, to the Attorney General.

2 – The Attorney General shall inform the Assembly of the Republic whether any criminal proceedings are underway on the basis of the same facts, and if so, the phase in which those proceedings find themselves.

3 – In cases in which criminal proceedings are underway, the Assembly shall decide whether to suspend the parliamentary inquiry process until the corresponding judicial sentence transits in rem judicatam.

Article 6 Modus operandi of committees

1 – After first consulting the Conference of Representatives of Parliamentary Groups, the President of the Assembly of the Republic shall be responsible for setting the number of committee members within the limit provided for in the previous paragraph, installing them, and establishing the time limit for holding the inquiry if it is of the type provided for in Article 2(1)(b), or, if the respective resolution has not already done so, establishing the time limit for holding the inquiry if it is of the type provided for in Article 2(1)(a).

2 – The maximum limit on the number of members of a committee shall be seventeen Members of the Assembly of the Republic, and the principle of representativity provided for in Article 31(1) of the Rules of Procedure shall be respected.

3 – Committee members may be substituted by substitute Members of the Assembly of the Republic, the appointment of whom shall be subject to a maximum limit of two substitutes for each of the two parliamentary groups with the largest number of Members, and one substitute for each of the remaining parliamentary groups.

4 – The substitution provided for in the previous paragraph shall have effect for the period of each meeting at which it occurs. The substitute members shall participate in that meeting as members in their own right, and may attend the remaining meetings without the right to speak or to vote.

5 – Committee members shall be installed before the President of the Assembly of the Republic by the fifteenth day following publication in the *Journal of the Assembly of the Republic* of the resolution or motion that orders the holding of the inquiry.

6 – Installation of any committee member, including substitute members, shall be conditional on their making a formal declaration of the absence of any conflict of interest in relation to the object of the inquiry.

7 – Committees shall begin work immediately after their members are installed by the President of the Assembly of the Republic and as soon as one of the following conditions is met:

- a) More than half of the committee members have been nominated, and the nominated members represent at least two parliamentary groups, one of which must obligatorily be formed by a party that is not represented in the Government;
- b) The majority of committee members have not been nominated, but only the nominations of the Members of the Assembly of the Republic from a single parliamentary group are lacking.

8 – In parliamentary committees whose formation was moved under the terms of Article 2(1)(b), the committee chairman shall obligatorily be appointed from among the representatives on the committee of the parliamentary groups to which the Members of the Assembly of the Republic who moved the inquiry belong, unless that appointment has already resulted from the division provided for in Article 178(6) of the Constitution.

9 – In the event that under the terms of Article 178(6) of the Constitution the chairmanship falls to a parliamentary group that did not move the inquiry, the chairmanship of a parliamentary committee formed later in the current legislature shall be allocated to the parliamentary group that did move it, on condition that the committee of inquiry in question is not one that was moved under the terms of Article 2(1)(b).

Article 7 Publication

Resolutions, and the part of the provisions of motions made under the terms of Article 2(1)(b) that orders the holding of an inquiry, shall be published in the *Diário da República*.

Article 8 On the object of committees of inquiry

1 – Government or Administration acts that occurred during legislatures prior to that which is currently underway may only be the object of parliamentary inquiries when they concern matters that are still under consideration, new facts, or facts that have since come to light.

2 – During each legislative session it is not permitted to form new committees of inquiry with an object that has given rise to the formation of another committee which is still exercising its functions or which completed them during the legislative session in question, save if new facts appear.

3 – Committees of inquiry whose formation is moved under the terms of Article 2(1)(b) cannot decide to change the object defined by the authors of the motion.

4 – Committees may be guided by an indicative questionnaire defined at the beginning of their proceedings.

Article 9 Committee meetings

1 – Committee meetings may take place on any day of the week and during holidays, without any requirement for prior authorisation by the Plenary.

2 – The committee chairman shall give the President of the Assembly timely advance knowledge so that he can take the steps needed to hold the meetings provided for in the previous paragraph.

Article 10 Designation of rapporteurs and formation of working groups

1 – Committees of inquiry must designate a rapporteur at one of their first five meetings, and may decide to create a working group composed of Members of the Assembly of the Republic representing each of all the parliamentary groups.

- 2 – The rapporteur shall be one of those representatives.
- 3 – Working groups shall be chaired by the committee chairman, or by whoever he designates.
- 4 – The work produced by such groups must be instrumental and accessory to the work of the committee.

Article 11 **Duration of inquiries**

- 1 – The maximum time limit for the conduct of an inquiry is one hundred and eighty days, at the end of which the committee shall be abolished, without prejudice to the provisions of the following paragraphs.
- 2 – At the request of the committee, which shall provide its grounds therefore, the Plenary may also grant an additional period of ninety days.
- 3 – In the case of parliamentary committees of inquiry whose formation is moved under the terms of Article 2(1)(b), the additional period referred to in the previous paragraph shall obligatorily be granted, on condition that it is requested by the Members of the Assembly of the Republic from the parliamentary groups to which those who moved the formation of the committee belong.
- 4 – When a committee does not approve a final report containing conclusions on the investigations it has conducted, the committee chairman shall send the President of the Assembly of the Republic a memorandum containing an account of the steps that have been taken and the reasons why the work was inconclusive.

Article 12 **On Members of the Assembly of the Republic**

- 1 – Without prejudice to the provisions of Article 6(3), Members of the Assembly of the Republic who are committee members may only be substituted because they have lost their seat, their mandate is suspended, or there is a justified reason for doing so.
- 2 – The President of the Assembly shall be notified of committee members' failures to attend, together with information as to whether or not the failures were justified.
- 3 – The President of the Assembly shall announce any unjustified failures to attend at the next plenary sitting.
- 4 – Any Member of the Assembly of the Republic who breaches the duty of secrecy in relation to a committee of inquiry's work, or who fails to attend more than four meetings without justification, shall lose his seat on the committee.
- 5 – In the case of a breach of secrecy, the committee of inquiry must arrange a summary investigation and must decide, by a qualified majority of at least two thirds of its members, whether a breach has occurred and the identity of its author.
- 6 – When the decision provided for in the previous paragraph is that the existence of a breach is recognised and establishes the identity of its author, the President of the Assembly of the Republic must be informed of the content of the decision, so that he may declare the author's loss of his seat on the committee and give an account of the latter decision to the Plenary.

Article 13 **Committee powers**

- 1 – Parliamentary committees of inquiry enjoy those of the judicial authorities' investigative powers which the Constitution does not reserve to those authorities.
- 2 – Committees have the right to the assistance of the judicial authorities, the organs of the criminal police, and the administrative authorities, under the same terms as the courts.

3 – At the duly justified request of their members, committees may submit written requests to the Government, the judicial authorities, the organs of the Administration, and private entities for the information and documents they deem useful to the conduct of the inquiry.

4 – In parliamentary committees of inquiry whose formation is moved under the terms of Article 2(1)(b), the implementation of those fact-finding steps referred to in the previous paragraph which the Members of the Assembly of the Republic who propose them consider indispensable to the good conduct of the inquiry shall be obligatory, and carrying them out shall not require a committee decision.

5 – Provision of the information and documents referred to in paragraph (3) has priority over any other services and shall be made within ten days, failing which the person responsible is guilty of the commission of the crime referred to in Article 19, save in the event that the recipients of the request possess a weighty justification that makes it advisable for the committee to extend the time limit or cancel the step.

6 – Requests of the type referred to in paragraph (3) must mention the present Law and transcribe paragraphs (5) of the present Article and (1) of Article 19

7 – During the course of an inquiry, a refusal to present documents or give testimony shall only be deemed justified under the terms of criminal procedural law.

Article 14 **Place and form of operation**

1 – Parliamentary committees of inquiry shall operate at the Seat of the Assembly of the Republic, albeit whenever necessary they may operate or take steps anywhere in Portuguese territory.

2 – Meetings, steps and question sessions shall always be recorded, save if the committee takes a duly justified decision otherwise.

3 – In the event that the recording provided for in the previous paragraph does not occur, the steps that are undertaken and the testimonies or declarations that are obtained shall be set out in minutes that are specially drawn up in order to reflect the steps in detail, and the said testimonies and declarations shall be attached thereto after being signed by their authors.

Article 15 **Publicising work**

1 – As a rule, the meetings and steps undertaken by parliamentary committees of inquiry are public, save if the committee deems otherwise in a decision that is taken at a public meeting and is duly justified by one of the following reasons:

- a) The object of the meetings and steps was a matter that was subject to state secrecy, the secrecy of judicial proceedings, or secrecy for reasons concerning the protection of people's private life;
- b) The witnesses opposed publicising the meeting on the grounds of the need to safeguard fundamental rights;
- c) The meetings and steps endangered the secrecy of the sources of information, save authorisation by the interested parties.

2 – Committee minutes and all the documents in a committee's possession may be consulted once its final report has been approved, save if they pertain to meetings or steps that were not public under the terms of the previous paragraph.

3 – The transcription of testimonies provided before committees of inquiry at non-public meetings may only be consulted or published with the authorisation of the persons who testified.

Article 16 **Summoning of persons and hiring of experts**

1 – Parliamentary committees of inquiry may summon any citizen to testify about facts concerning the inquiry.

2 – The prerogative of giving testimony in writing, if they so prefer, pertains to the President of the Republic, ex-Presidents of the Republic, the President of the Assembly of the Republic, ex-Presidents of the Assembly of the Republic, the Prime Minister and ex-Prime Ministers, who, within ten days counting from the date of the notification of the facts about which they are to testify, shall send the committee a declaration sworn under honour in which they relate that which they know about the facts in question.

3 – In parliamentary committees of inquiry whose formation is moved under the terms of Article 2(1)(b), those fact-finding steps referred to in the previous paragraphs which the Members of the Assembly of the Republic who propose them consider indispensable to the good conduct of the inquiry shall be obligatory up to a maximum limit of fifteen testimonies requested by the Members from the minority parliamentary groups taken as a whole, either in accordance with their numbers of seats in the Assembly or by agreement between them, and up to a maximum limit of eight testimonies requested by the Members of the majority parliamentary group taken as a whole. Any other testimonies shall be subject to decision by the committee.

4 – Summonses shall be signed by the committee chairman or, at the latter's request, by the President of the Assembly of the Republic, and, without prejudice to the provisions of paragraph (2), must contain the following information:

- a) The object of the inquiry;
- b) The place, day and time of the testimony;
- c) The sanctions applicable to the crime provided for in Article 19 of the present Law.

5 – Summonses may be to any place in Portuguese territory, in any of the forms provided for in the Code of Criminal Procedure, and in the case of staff and agents of the state or any other public entity must be made via the respective hierarchical superior.

6 – The steps provided for in paragraph (1) may be requested up to fifteen days prior to the end of the time limit set for presentation of the report.

7 – Subject to prior authorisation by the President of the Assembly of the Republic, committees may requisition and hire specialists to assist them in their work.

Article 17 Testimonies

1 – Failure to appear or refusal to testify before a parliamentary committee of inquiry shall only be deemed justified under the general terms of criminal procedural law.

2 – The obligation to appear before a committee takes precedence over any official act or proceedings.

3 – In no case whatsoever are staff and agents of the state or any other public entity permitted to refuse to appear. They may, however, ask for the date on which they are summoned to appear to be changed due to a pressing service requirement, on condition that this does not frustrate the conduct of the inquiry.

4 – The form of testimonies shall be governed by the Code of Criminal Procedure rules applicable to testimonial evidence.

Article 18 Costs

1 – No one may be prejudiced in their work or employment due to the obligation to testify before a parliamentary committee of inquiry, and all failures to attend that result from fulfilment of that obligation are deemed justified.

2 – Travel expenses, together with any compensation which, at the request of the summoned person, is set by the committee chairman, shall be paid from the budget of the Assembly of the Republic.

Article 19 Qualified disobedience

1 – Outside the cases provided for in Article 17, failure to appear, refusal to testify or non-compliance with legitimate orders given by a parliamentary committee of inquiry in the exercise of its functions constitute the crime of qualified disobedience for the purposes provided for in the Penal Code.

2 – In the event that any of the facts provided for in the previous paragraph are verified, and after first consulting the committee, the latter's chairman shall communicate it to the President of the Assembly, together with those elements that are indispensable to the preparation of a case file, for the purpose of reporting the case to the Public Prosecutors' Office.

Article 20 Report

1 – Final reports shall obligatorily mention:

- a) The questionnaire, if there was one;
- b) The steps taken by the committee;
- c) The conclusions of the inquiry and the grounds for them;
- d) The vote of each committee member, together with any written explanations of vote.

2 – If it believes that the object of the inquiry can be investigated in separate parts, a committee may propose to the Plenary or the Standing Committee that separate reports be drawn up, whereupon the latter must be taken into consideration in the final report.

3 – The report and any explanations of vote shall be published in the *Journal of the Assembly of the Republic*.

Article 21 Debate and resolution

1 – The President of the Assembly of the Republic shall include consideration of the report and any explanations of vote on the order of business at most thirty days after their publication.

2 – Together with the report, parliamentary committees of inquiry may submit a draft resolution.

3 – Once the report has been submitted to the Plenary, a debate shall be opened.

4 – The debate shall be introduced by a brief exposé by the committee chairman and the designated rapporteur, and shall conform to a specific table of times which the President of the Assembly of the Republic shall set after first consulting the Conference of Parliamentary Group Representatives.

5 – Without prejudice to the overall times available for discussion, each parliamentary group shall dispose of three minutes in which to present its explanations of vote.

6 – The Plenary may decide to publish committee minutes in full or in part, subject to the provisions of Article 15

7 – Together with the report, the Plenary shall consider any draft resolutions that are submitted to it.

8 – The report shall not be the object of a Plenary vote.

Article 22 Revocatory rule

Law no. 43/77 of 18 June 1977 is hereby repealed.