COMMITTEES OF INQUIRY IN ITALY: A LIMITED INSTRUMENT OF CONTROL BETWEEN NECESSARY COLLABORATION AND POTENTIAL CONFLICT

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1. INTRODUCTION

Fourteen committees of inquiry have been set up in the current legislature, the 19th of the Italian Republic, on subjects ranging from security in the suburbs, feminicide and the mafia, to specific events and facts that have attracted public attention.[2] This number is in line with established practice,[3] which sees parliamentary inquiries as a tool firmly embedded in the functioning of assemblies, supporting Parliament's broader missions, thus sitting at the crossroads between its informational, legislative and Government-oversight functions.[4]

Committees of inquiry in Italy are temporary parliamentary bodies (either single-chamber or joint) established to conduct investigations into matters of public interest. In line with the tradition of parliamentary systems, their task is to perform fact-finding and investigative activities aimed at informing Parliament and, where appropriate, to stimulate political action or normative production.

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[2] There are six committees within the Chamber of Deputies, two in the Senate and six bicameral committees: see the full list at https://www.camera.it/leg19/48 and https://www.senato.it/1095.

[3] Dickmann, Renzo (2009), "Tratti comuni e profili originali della funzione parlamentare d"inchiesta nel diritto comparato", *in* Dickmann Renzo (ed.), *L'inchiesta parlamentare nel diritto comparato*, Naples, Jovene, p. 177.

[4] Pace, Alessandro (1973), *Il potere di inchiesta delle assemblee legislative,* Milan, Giuffré, 1973.

They first appeared in Italy in the parliamentary practice of the two chambers of the Kingdom of Italy.[5] After the fascist interlude, during which the instrument was abandoned,[6] they were reinstated in 1948 by the Constituent Assembly, which recognised their constitutional basis by enshrining them in Article 82 of the Constitution. Under this article, "Each of the Assemblies may conduct inquiries into matters of public interest. For this purpose, it shall appoint from among its own members a Committee formed in such a way to represent the proportionality of existing Parliamentary Groups. The committee of inquiry may conduct investigations and examination with the same powers and limitations as the judiciary".[7] In addition to the committee that may be created in each chamber, expressly referred to in this constitutional provision, practice has allowed the legislature to establish bicameral committees of inquiry (as they exist also in Romania and Spain[8]). This practice "*praeter constitutionem*" would seem to confirm the thesis that the constitutional enshrinement of the power of inquiry has no constitutive value but rather recognises and regulates an implicit and consubstantial power specific to the assemblies; however, as we will see, this thesis is still highly controversial.[9]

Although, in the tradition of parliamentarianism,[10] parliamentary inquiries initially appeared as an instrument of information, later evolving into a means of monitoring government action (and at the same time capable of fulfilling other purposes, notably by stimulating the legislative activity),[11] in the Italian republican experience, parliamentary inquiry has been conceived from the beginning less as a tool for controlling the government than as an instrument serving all parliamentary

[5] Isoni, Alessandro (2011), "Indagini sulle commissioni d'inchiesta nel Parlamento statutario", *in* Nieddu, Annamari, Soddu, Francesco (eds.), *Assemblee rappresentative, autonomie territoriali, culture politiche,* Sassari, EDES, pp. 329–340. See also Malvagna, Vittorio, Nardi Carla, eds. (1994), *Commissioni parlamentari d'inchiesta della Camera regia: 1862-1874,* Rome, Ed. Camera dei deputati.

[6] The last committee established under the Kingdom of Italy was the one on war expenditure, created by Law No. 999/1920.

[7] Art. 82 Italian Constitution our translation (as are all subsequent translations, unless otherwise indicated).

[8] Pavy, Eeva (2020), *Committees of Inquiry in National Parliaments: Comparative Survey,* Brussels, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, p. 11.

[9] See Mortati, Costantino (1976), *Istituzioni di diritto pubblico,* II, 9th ed., Padova, CEDAM, p. 693. *Contra*: Esposito, Carlo and Crisafulli, Vezio (1959), "Dibattito sulle inchieste parlamentari", *Giurisprudenza costituzionale,* No. 1, p. 606. The question, which is purely theoretical and abstract, takes on very concrete dimensions when it comes to determining the limits of the powers of the committees. In fact, the thesis of recognition, rather than the constitutive nature of the constitutional provision, made it possible to consider that bicameral committees created by law were not subject to the limits provided for in this article and could therefore be given broader powers, notably allowing them to override defence secrecy. See *infra.*

[10] Committees of inquiry also exist in the United States, but they are of a different nature: see Righetti, Camille (2024), *Les commissions d'enquête parlementaire. Étude comparée des expériences américaine, française et italienne,* thesis defended at the University of Toulon, 16 December 2024.

[11] Gicquel, Jean-Éric (2022), "Commissions d'enquête", *in* Kerléo, Jean-François, editor, *Règlement de l'Assemblée nationale commenté,* Paris, LGDJ, p. 273.

functions, starting with the legislative one.[12] Several structural reasons explain this configuration.

While in other democracies this tool is one of the most powerful means of controlling government action,[13] in Italy this function is tempered by the fact that parliamentary minorities do not have the power to initiate investigations.[14] This issue has been debated since the beginning and has often been the subject of reform proposals. However, none of these eventually brought to the introduction of a "drawing right" — as it exists for example in France[15] — or any procedure reserved for minorities,[16] to the extent that some legal scholars have described committees of inquiry as "instruments of the majority".[17] During the debates in the Constituent Assembly, two camps were opposed: while some advocated the establishment of committees of inquiry as an instrument available to parliamentary minorities,[18] others defended the requirement that their creation be subject to the agreement

[12] According to Alessandro Pace, "Given that the acquisition of information aims to improve the exercise of the legislative and supervisory functions of Parliament, the power of inquiry [...] is an 'instrumental' power and is never an end in itself": Pace, Alessandro (2014), "Attualità delle inchieste di minoranza", *Osservatorio costituzionale della Rivista AIC*, p. 1; the ancillary nature of committees of inquiry is also emphasised by Borrello, Roberto (2003), *Segreti pubblici e poteri giudiziari delle Commissioni d'inchiesta: profili costituzionalistici,* Giuffré, p. 46. See *contra* Manzella, Andrea (2003), *Il Parlamento,* Milan, Giuffré, p. 176, who, on the other hand, supports the thesis of the investigative function as an autonomous function.

[13] In France, in particular, legal scholars observe that parliamentary inquiry "is now one of the most effective means of controlling the actions of the Government": Jensel-Monge, Priscilla and de Montis, Audrey (2024) "Les commissions d'enquête: des juges parlementaires?", *Questions constitutionnelles, Dossier: Juger les ministres,* 24 June 2024. Also in Latvia, parliamentary investigations are most often started by the opposition since they are conceived as an essential tool of parliamentary control, which belongs to the rights of the opposition: Pavy, Eeva (2020), *Committees of Inquiry in National Parliaments: Comparative Survey,* Brussels, Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, p. 12.

[14] Contrary to what happens in the French system after the constitutional amendment of 2008 which created a new article 51-1 of the French Constitution, allowing the rules of the assembly to establish a "right of initiative" for groups once in a session: see Art. 141 al. 2 of the rules of the National Assembly (reserving this right to opposition of minority groups) and Art. 6-bis of the rules of the Senate (which applies to each group).

[15] In France, Art.141 of the Rules of the National Assembly and articles 6 *bis* et 6 *ter* of the Rules of the Senate enable any opposition group to obtain the creation of a committee once per parliamentary session.

[16] In Germany, according to the basic law the creation of a committee can be decided by one quarter of the members of the Parliament. This provision was meant to grant a prerogative to the opposition, even if this threshold can be difficult to achieve by a sole group.

[17] See Pace, Alessandro (1973), *Il potere d'inchiesta delle assemblee legislative, op. cit.,* p. 103.

[18] This was the position of Costantino Mortati: Borrello, Roberto (2007), "Razionalizzazione del potere d'inchiesta parlamentare e forma di governo nel pensiero di Costantino Mortati", *in* Galizia, Mario (ed.), *Forme di stato e forme di governo: nuovi studi sul pensiero di Costantino Mortati*, Milan, Giuffré, p. 205 ff. and 313 ff.

of the government, in order to avoid undermining the relationship of trust.[19] The result was a procedure whereby the creation of a committee of inquiry was subject to a majority vote, thus removing it from the sole power of action of minorities or opposition parties. This has encouraged a practice based on collaboration between political forces, which cannot, however, hide the logic of political strategy and confrontation between the majority and the opposition, particularly since the emergence of a certain bipolarism, albeit imperfect, since 1994.

Whether they are in the hands of the majority, whether they respond to cross-party information needs, or whether they allow for a certain degree of oversight on the actions of public authorities, the fact remains that committees of inquiry are a powerful instrument due to the material and temporal scope of their powers. There are similarities here, but also notable differences compared to their counterparts in other countries.[20] As in other systems, committees of inquiry have investigative powers comparable to those of the judiciary, which they exercise for purposes that are very different from those of the latter. The existence of legal proceedings does not prevent their creation, as is the case in most European systems, but unlike some of them, notably France.[21] Consequently, a parliamentary inquiry and a judicial inquiry into the same subject can proceed in parallel, and they should be coordinated according to the principle of "loyal collaboration". The duration of parliamentary inquiries is not strictly regulated in Italy, but is left to be determined by the constituent act of each committee, with the result that a committee may conduct its work over several years or even several legislative terms. Finally, the scope of investigation appears to be particularly broad and loosely regulated, as the subject of a parliamentary inquiry may relate to any "matter of public interest". This vague wording can be explained by the fact that the sole objective pursued by the framers of the constitution was to avoid investigations into individuals and relations between individuals.[22] It was later interpreted flexibly in parliamentary practice, sometimes giving rise to conflicts. In this regard, it has been pointed out that inquiries achieve appreciable results when their subject matter is clearly defined, allowing the facts under investigation to be accurately reconstructed, in a manner similar to the investigative activities carried

[19] V. Furlani, Silvio (1954), *Le commissioni parlamentari d'inchiesta,* Milan, Giuffré, cited by Malvicini, Massimiliano and Lauri, Giuseppe (2016), "Le commissioni parlamentari di inchiesta: recenti sviluppi e osservazioni alla luce della prassi", *Osservatorio costituzionale della Rivista AIC,* No 3, pp. 5–6.

[20] For an in-depth comparative analysis, see also Righetti, Camille, *Les commissions d'enquête parlementaire. Étude comparée des expériences américaine, française et italienne, op. cit.*

[21] According to the study conducted by Pavy, Eeva (2020) *Committees of Inquiry in National Parliaments: Comparative Survey, op.cit.*, of the twenty systems examined, thirteen allow for simultaneous parliamentary and judicial inquiries, while seven prohibit the creation of a parliamentary committee of inquiry into matters that are the subject of a judicial inquiry.

[22] Isoni, Alessandro (2011), "Sui limiti del potere d'inchiesta nel Parlamento bipolare", *Rivista AIC,* No 4, and previously, Costanzo, Pasquale and Sorrentino, Federico (1977), "Inchiesta parlamentare e conflitto costituzionale", *Studi parlamentari e politica costituzionale,* No 35, p. 17 ff.

out by the judicial authorities. When this is not the case, the work of committees of inquiry risks producing no useful results, leading, at best, to general descriptions of phenomena and, at worst, to conflicts between the powers.[23] Committees of inquiry in Italy are thus both a tool for collaboration (2) and a potential source of political and inter-institutional conflict (3).

2. PARLIAMENTARY INQUIRIES AS A TOOL FOR COLLABORATION

Firstly, the rules governing the establishment and functioning of committees of inquiry have, in Italian practice, made them an instrument of collaboration between different political forces (2.1). The fact that they can conduct inquiries in parallel with the judicial authorities, with the same powers as the latter, has also made parliamentary inquiries a potential area of competition with the judiciary, which is intended to be resolved according to the principle of "loyal collaboration"[24] (2.1).

2.1. Necessary collaboration between political forces

The procedure for setting up a committee of inquiry requires a simple majority vote. Following debates in the Constituent Assembly, the possibility of granting minorities the right to initiate a parliamentary inquiry was expressly ruled out. The compromise reached by the constituents was to choose not to subject the creation of committees to government approval,[25] while providing for a sufficiently high quorum to avoid "continuous disruption" to the latter's work.[26]

The creation of single-chamber committees — grounded on Article 82 of the Constitution — is decided by voting on a resolution in accordance with the procedures detailed in the parliamentary rules of procedure. In the Chamber of Deputies, Article 140 of the rules of procedure provides that "proposals for parliamentary inquiries shall follow the procedure laid down for bills". In the Senate rules, a similar provision is set out in Article 162,[1] which provides that "proposals for parliamentary inquiries shall follow the provisions relating to bills, insofar as they are applicable". A proposal for an inquiry, submitted by one or more members of parliament, is

[23] See Isoni, Alessandro (2011), "Sui limiti del potere d'inchiesta nel Parlamento bipolare", *op. cit.,* p. 5.

[24] Constitutional Court No. 26/2008. The Court had previously referred to "necessary collaboration" in its decision No. 231/1975, before applying the general principle of loyal collaboration governing relations between the powers of the State to relations between committees of inquiry and the judiciary. On this principle, see *below.*

[25] As envisaged by some: on the debates within the Constituent Assembly, see Malvicini, Massimiliano and Lauri, Giuseppe (2016), "Le commissioni parlamentari di inchiesta", *op. cit.,* p. 5 ff.

[26] The initial proposal to require a quorum of one third of members was ultimately rejected: *ibidem.*

therefore referred to the standing committee identified as competent, which must examine it prior to any examination in plenary. In order for the proposal to be discussed in plenary, it must be included on the agenda determined by the conference of groups chairpersons. Bicameral committees may be established by law, on the initiative of parliament or the government. In both cases, the constitutive act sets out the objectives, composition, powers and limitations, confidentiality rules, internal organisation and operating expenditure ceiling.

Although an actual and effective right of initiative reserved to minorities has never been established, some provisions within parliamentary rules seek, at least, to limit the influence of the government and the majority on the establishment of committees of inquiry. Thus, Article 116(4) of the Rules of Procedure of the Chamber of Deputies excludes proposals for inquiries from the matters on which the government can rely on a vote of confidence. As for the Senate rules, an amendment introduced in 1988 to Article 162 allows proposals submitted by at least one tenth of senators to be placed on the agenda and discussed. In all cases, the creation of a committee is subject to the approval of the resolution — or law — by a simple majority, which therefore requires the approval of the parliamentary majority or, at *the very least,* a compromise between political forces from different sides.

Consequently, in Italian republican practice, the creation of committees of inquiry is most often the result of cross-party initiatives[27] which sometimes bring together, rather than oppose, the majority and the opposition.[28] Most of the committees of inquiry that are actually set up are the result of various proposals initiated by several political groups that have ultimately been brought together around a common denominator.

This consensual nature is also reflected in the subjects of inquiry. As previously indicated, parliamentarians may investigate any matter of "public interest", a very broad and indeterminate field, which in practice has been considered particularly wide and flexible. The subject matter of investigations has thus been able to cover, first and foremost, very broad economic and social issues, with the aim of gathering information to enable Parliament to prepare possible legislative initiatives. This category includes, for example, the first committees of inquiry about unemployment and poverty, established in 1951, the first bicameral committee of inquiry on workers' conditions in 1955, and those dealing respectively with the conditions

[27] With regard to single-chamber committees, after the first inquiries were launched on the initiative of the Socialists or Christian Democrats, the proposal became systematic across the Chamber of Deputies from 1988 and the Senate from 1991.

[28] This was the case with the inquiry committee on the Moro affair in 1979, on the initiative of the Communists and Christian Democrats; or the committee on the conditions of young people in 1988, which resulted from a proposal brought together by members of the Communist Party and the fascist-inspired Italian Social Movement; or, during the era of imperfect bipolarism of the "Second Republic", certain committees set up on the joint initiative of the Democratic Party and the Northern League, such as the committee on audiovisual piracy in 2010 and 2013.

of the elderly and young people, created in 1988. More recently, this category includes the committees on femicide and violence against women, created in 2023, and on the economic and social effects of demographic transition, created in 2025. A second, richer and more varied category of subjects is that relating to major events or phenomena that have attracted public attention, with the aim of gathering information to determine certain political or individual responsibilities. This category includes investigations into public procurement for the construction of Fiumicino airport in 1961; the Vajont disaster in 1964; banditry in Sardinia in 1969; the Seveso ecological disaster in 1976; the Aldo Moro affair in 1979; the P2 Masonic lodge and its relations with public institutions in 1981; the Cermis tragedy in 1999; the Telekom-Serbia and Mitrokhin affairs in 2002; the death of journalist Ilaria Alpi in 2003; and, more recently, the committees investigating the deaths of Giulio Regeni in 2021 and David Rossi in 2024, as well as the various committees set up to investigate the management of the SARS-COV-2 virus pandemic.

Given the variety of subjects and purposes that can be pursued through parliamentary inquiries, legal scholars have proposed various classifications, distinguishing in particular between "legislative" inquiries, which aim to gather information for use in law-making, and "political" inquiries, which essentially aim to hold previous governments or individual politicians accountable for certain decisions they have made.[29]

While these two categories, objects and purposes, have characterised and continue to characterise parliamentary inquiry activity, certain developments can be identified through a diachronic analysis. Initially, until 1966, inquiries focused on fairly general societal issues, such as "poverty" or "unemployment", without calling into question any particular public policy. The year 1966 marked a turning point with the creation of a committee on the functioning of the National Social Security Institute (INPS), which directly questioned the government's responsibilities in its management and which, in fact, had been created against the government's advice. From that point on, more "political" inquiries became more common, partly due to the occurrence of several major events and the persistence of phenomena that attracted public attention.

Without being able to make clear-cut and fixed distinctions, a difference emerged between single-chamber and bicameral committees in determining the subjects of investigation and, ultimately, their purposes.

Single-chamber committees are more often created on the cross-party initiative of minority groups and are more oriented towards the function of monitoring public action. At the stage of the initiative, therefore, no manifest predominance of the majority appears to be exerted in relation to these committees, even though the

[29] On these two main categories and others, see Bardazzi, Elisabetta (2016), "Le commissioni parlamentari di inchiesta dopo la riforma costituzionale", *Forum di QC,* 9/11/2016, p. 4, and Borrello, Roberto, *Segreti pubblici e poteri giudiziari delle Commissioni d'inchiesta, op. cit., p.* 44.

interest of majority groups in establishing an inquiry has long been highlighted by scholars[30] and, in fact, exceptions do exist. Sometimes, committees established within one of the assemblies may subsequently be converted into bicameral ones, as was the case with the Senate committee on waste treatment, which was first created in 1995 and then reconstituted as a bicameral committee from 1997 onwards for several legislative terms. Bicameral committees are set up more to investigate specific current events with a view to informing public opinion or improving government action than to determine responsibilities. They are therefore the result of cross-party initiatives that transcend the divide between the majority and the opposition, thus aiming to offer the public a certain representation of national unity in the face of major events, which has led some authors to place them in the realm of guarantee functions rather than control functions.[31]

Whether for bicameral or unicameral committees, the influence of the majority, which does not exist at the time of the initiative, is very much present in the functioning and organisation of the committee's work, due, of course, to the greater presence of members of the majority and the appointment of chairpersons.

As provided for by the Constitution and parliamentary regulations, committees must be composed in such a way as to reflect the proportional representation of parliamentary groups. However, in a parliament that is often fragmented, such as the Italian parliament, the smallest minority groups may at times have only one or two members, or in some cases none at all, within these committees. The larger size of bicameral committees may slightly enhance opportunities for small groups to be represented, although their presence is rarely decisive in shaping the committee's work.[32]

Furthermore, there are no fixed rules governing the allocation of chairmanships. Article 141 of the Rules of Procedure of the Chamber of Deputies allows, but does not require, this appointment to be delegated to the President of the Assembly. The method of appointment has thus been left to practice and to the free determination of the constituent act of each committee. This has led to fluctuations and varied practices. The chair of the committee of inquiry has sometimes been appointed by the president of the assembly from among the members or sometimes even from outside the members of the committee, which has made it possible to choose the chair from the ranks of the opposition.[33] More often than not, however, it is the members of the committee who elect the chair, which obviously favours the allocation of this chairmanship to the majority.

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[30] Pace, Alessandro (1979), "Commento all'art. 82", *in* Branca, Giuseppe (ed.), *Commentario alla Costituzione,* Bologne, Zanichelli, p. 312.

[31] See Manzella, Andrea, *Il Parlamento, op. cit.,* p. 175 ff.

[32] Malvicini, Massimiliano and Lauri, Giuseppe, "Le commissioni parlamentari di inchiesta", *op. cit.*, p. 11.

[33] Lauri, Giuseppe (2018), "Le commissioni parlamentari d'inchiesta nella XVII legislatura. Appunti e tendenze", Osservatorio sulle fonti, no. 2, p. 8.

The duration of the work is determined by the act establishing each committee (resolution for single-chamber committees and law for bicameral ones). Once this period has elapsed, the committee concludes its investigation and submits a report to the assembly that established it (or to both chambers). The committee has no power to impose sanctions or make decisions, its functions being clearly distinct from those of the judicial authority, with which it may, however, be called upon to collaborate.

2.2. Essential collaboration with the judicial authority

With respect to their investigative powers, parliamentary committees and the judiciary are linked by what has been aptly described as a "parallelism with different purposes".[34] The Italian provision is very explicit in recognising powers comparable to those of the judiciary, since the Constitution establishes that parliamentary committees conduct their investigations "with the same powers and limitations as the judicial authority". However, their purposes differ from those of judicial activity. The aim of parliamentary committees in fact is to collect "information and data relevant to the exercise of parliamentary functions"[35] , in order to submit a report to the assembly.

The reference to the powers of the judicial authority has been interpreted broadly to include any "judicial" authority, i.e. civil, criminal and administrative judges. The committees may therefore carry out searches, seizures, expert assessments, direct summons of witnesses and coercive accompaniment, telephone tapping, etc. They may also initiate international letters rogatory procedures in order to obtain information from abroad. Furthermore, unlike the judicial authority, the committees benefit from the "dual track" rule ("*doppio binario*"), which allows them to choose between formal judicial-type investigation mechanisms and less formal parliamentary-type mechanisms. With regard to hearings in particular, committees may thus conduct "formal hearings" or "testimonies" in the strict sense, — which involve the obligation to appear, testify and tell the truth under penalty of sanction — or "informal hearings", which are less restrictive and based on the cooperation of the person being heard. This flexibility also extends to the obtaining of documents, allowing for either simple requests based on cooperation or the use of coercive powers. The basis for this dual approach was identified and enshrined by the Constitutional Court in its famous ruling No. 231 of 1975, in which it considered that committees are parliamentary bodies that *may* exercise coercive powers but *are not required* to do so. In particular, the Court linked this dual approach to the difference in nature and purpose between parliamentary inquiries and

[34] Pierandrei, Franco (1962), "Inchiesta parlamentare", *in* AA.VV., *Digesto,* VIII, p. 522 cited by dal Canto, Francesco (2021), "Verso una commissione d'inchiesta sui rapporti tra magistratura e politica? Una soluzione illegittima", *Questione Giustizia,* 27/10/2021, p. 4.

[35] Constitutional Court No. 231/1975 cons. 7.

judicial inquiries. Considering that the mission of parliamentary committees is not to "judge" but to gather information useful for political activity, this difference in purpose justifies the use of means "that differ or may differ" from those employed by the judicial authorities.[36] Consequently, committees of inquiry "remain free to choose the most diverse, flexible and least formal means of action, calling on the spontaneity of citizens and public officials as well as the contribution of researchers, resorting to the analysis of newspapers and magazines, etc.".[37]

These powers must nevertheless be exercised exclusively within the scope of the inquiry, i.e. within the limits of the subject matter and purpose determined by the act establishing the committee, which cannot under any circumstances grant parliamentarians broader investigative powers than those of the judiciary. The European Court of Human Rights has also ruled on the limits of the exercise of judicial powers. In a case brought before it by the Grand Orient Masonic Lodge, it ruled in a judgment that is not yet final,[38] that Italy had violated the right to privacy, home and correspondence in connection with a search carried out on the Grand Master in order to obtain a list of approximately 6,000 members of the lodge, which the latter had refused to disclose during his voluntary hearings. The Court considered that this significant infringement of privacy was indeed based on legislative authorisation, but that this interference had not been sufficiently justified by a demonstration of its necessity. In short, while committees of inquiry may exercise powers equivalent to those of judicial authorities, parliamentary inquiries must also be accompanied by guarantees equivalent to those provided by any judicial procedure.[39] It should be noted that the provision granting parliamentary investigators the same instruments of judicial authority was intended more as a limitation than as an empowerment, in order to prevent assemblies from granting their committees powers broader than those of the judicial authority, as had been the case in the practice of the Parliament of the Kingdom.[40]

Furthermore, the reference to the powers of the judicial authority concerns only investigative and preliminary inquiry activities, excluding any decision-making power, as committees have no power to impose sanctions or make decisions, but only to gather information. The difference in nature and purpose is reaffirmed by a ruling of the Court of Cassation, which points out that committees of inquiry cannot under any circumstances be considered as a judicial power. According to the judges of the Court of Cassation, "the reference [to the powers and limitations of the judicial

[36] Constitutional Court No. 231/1975 cons. 7.

[37] *Ibid.*

[38] ECHR, *Grande Oriente d'Italia* v. Italy, application no. 29550/17, currently referred to the GC.

[39] See Fasone, Cristina (2025), *"Grande Oriente d'Italia v. Italy:* European limits on the activities of parliamentary commissions of inquiry", *Quaderni costituzionali,* 2/2025, p. 442.

[40] This formula was voted on after Luigi Einaudi pointed out that, in the absence of explicit limits, the law had sometimes given committees powers greater than those available to the judicial authorities: see Tesauro, Alessandro (1958), "Il potere d'inchiesta delle Camere del Parlamento", *Rass. Dir. Pubbl.*, p. 515, cited by Bardazzi, Elisabetta "Le Commissioni parlamentari d'inchiesta dopo la riforma costituzionale", *op. cit.,* p. 7.

authority] in Article 82 is therefore only useful in relation to [...] the formal regulation of legal mechanisms", but "when [these legal mechanisms] are set up by committees, they have, from a substantive point of view, characteristics, purposes and therefore effects so radically different from those for which they were intended by the Code of Procedure that, in the final analysis, their legal nature is also different".[41]

As previously indicated, the existence of ongoing judicial proceedings does not prevent the creation of a committee of inquiry. When a parliamentary committee finds itself acquiring information on facts that are the subject of a judicial investigation, committees of inquiry are bound by the principle of "loyal cooperation",[42] as defined by the Constitutional Court.

In an initial landmark ruling on the relationship between parliamentary committees of inquiry and the judicial authorities, the Court stated that the former were bound to "indispensable cooperation" with magistrates.[43] In this case, the Court ruled on the conflict of jurisdiction raised by the courts of Turin and Milan against the parliamentary committee of inquiry into the mafia phenomenon, due to the latter's refusal to transmit to the judicial authorities the records and documents acquired during the inquiry. In its decision, the Court called on the parliamentary body to provide the necessary cooperation ("*doverosa collaborazione*"), but also recognised the possibility for the committee of inquiry not to transmit certain information whose secrecy was considered necessary for the fulfilment of its mission.[44] This essential cooperation, subsequently enshrined in the principle of loyal cooperation governing relations between the powers of the State,[45] may take the form not only of the transmission of information, but also, in some cases, of genuine coordination of investigative activities, requiring the joint participation of parliamentarians and magistrates in investigative activities.[46] While the difference between parliamentary and judicial investigative activities is clear in theory, the scope of competence and coordination between the two may be less clear in practice.

The wide margin of discretion available to assemblies in determining their purpose and delimiting their scope of investigation has thus given rise to conflicts, both between political forces and between bodies.

3. PARLIAMENTARY INQUIRY AS A SOURCE OF CONFLICT

The history of parliamentary committees of inquiry in Italy has been punctuated by numerous conflicts with the judiciary (3.1) and between political forces (3.2).

[41] Court of Cassation, Joint Criminal Divisions, judgment of 12 March 1983.
[42] Constitutional Court No. 26/2008.
[43] Constitutional Court No. 231/1975.
[44] Constitutional Court No. 231/1975.
[45] Constitutional Court No. 26/2008.
[46] Constitutional Court No. 26/2008.

3.1. Potential and actual conflicts with the judiciary

This issue deserves to be analysed from two perspectives: on the one hand, conflicts may arise when parliamentary and judicial investigations are conducted concurrently and, on the other hand, parliamentary investigations may call into question the work of the judicial authorities, thereby generating conflicts. Both types of conflict can arise during the same investigation, since a parliamentary inquiry into the same facts that are or have been the subject of legal proceedings often calls into question the quality and validity of the work of the judiciary.

As for the former, it has often happened that parliamentary committees and the judicial authorities have investigated the same facts in parallel, albeit with different objectives. This has given rise to a rich constitutional case law on the powers of the two bodies and the coordination of their activities. Firstly, conflicts have arisen when committees of inquiry have refused to pass on to the judicial authorities information obtained in the exercise of their investigative powers. In the landmark ruling already mentioned, No. 231/1975, the Constitutional Court ruled on the conflict of jurisdiction raised by the courts of Turin and Milan against the parliamentary committee of inquiry into the mafia phenomenon, due to the latter's refusal to transmit to the judicial authorities the files and documents in its possession, even though these documents were, according to the public prosecutors concerned, essential to establishing the judicial truth. The committee had refused, arguing that it was its responsibility to keep the information it had acquired confidential. Although the Court called for "necessary cooperation" between the committees of inquiry and the judicial authorities, it also recognised in this case that the committee of inquiry was entitled not to transmit certain information whose secrecy was considered necessary for the fulfilment of the parliamentary inquiry's mission.[47] It thus affirmed that the committee was "not required to transmit to the courts [...] the documents and records it [had] drawn up or directly ordered, the anonymous letters and messages initially addressed to it, any documents that the committee itself had deemed necessary to keep secret for the purposes of carrying out its duties, or any documents already available to the judicial authorities". On the other hand, the committee was required "to transmit to the aforementioned courts the other documents and records in its possession which, in accordance with the law, were not originally covered by secrecy or were covered by secrecy that is not enforceable against the criminal judicial authority".[48] The Constitutional Court thus acts as an arbiter, defining on a case-by-case basis the line between "indispensable cooperation" and parliamentary autonomy.

While constitutional case law has partially limited the powers of committees to invoke secrecy before the judicial authorities, it has remained vague on the

[47] Constitutional Court No. 231/1975.
[48] *Ibid.*

possibility of granting committees of inquiry the power to access information that the government has classified as secret.

State secrecy is governed by Law No. 124/2007, which provides that the President of the Council may decide to impose or lift it. However, certain laws establishing bicameral committees of inquiry have expressly provided that state secrecy cannot be invoked against parliamentary committees[49] or have provided for arrangements for access to classified documents.[50] In fact, the argument that Article 82 applies only to single-chamber committees, while the creation of bicameral committees remains possible outside of explicit constitutional authorisation, could led to the view — albeit a minority one — according to which bicameral committees created by law would not be subject to the limitations provided for in that article and could therefore be granted broader powers, notably allowing them to override the secrecy that can be invoked against the judiciary. Although this argument is widely contested in legal doctrine, the Court has never explicitly ruled on the question of whether the "powers and limitations" referred to in Article 82 also apply to bicameral committees. Nevertheless, the considerations and principles underlying its case law seem to implicitly refute this argument.[51] With specific regard to state secrecy, the Constitutional Court has not ruled on a dispute directly challenging the competence of committees of inquiry, but has reiterated the relevant general principles in its case law. In judgment No. 106/2009 — which does not concern a committee of inquiry — it emphasised the central role of the President of the Council in managing state secrecy, affirming that the political assessment of secrecy is a matter for the government, while the judge can assess the legitimacy of opposition to secrecy.

Constitutional case law has also intervened to limit the powers of committees and strengthen collaboration with the judicial authorities in the performance of "non-repeatable" technical expert assessments.[52] In the dispute between the Rome Public Prosecutor's Office and the parliamentary committee of inquiry into the deaths of journalist Ilaria Alpi and cameraman Miran Hrovatin, the Public Prosecutor's Office challenged the committee's refusal to authorise joint technical expertise on the car in which Ilaria Alpi and Miran Hrovatin were killed on 20 March 1994 in Mogadishu. On that occasion, in its ruling No. 26 of 13 February 2008 settling the conflict of jurisdiction between the court and the committee of inquiry, the Constitutional Court affirmed the need to respect the principle of loyal cooperation

[49] For example, the committee established by Law No. 23/2006 to investigate the Moro case, or the committee on Nazi-Fascist crimes established by Law No. 107/2003, explicitly excluded the possibility of invoking state secrecy.

[50] The Committee on the Mitrokhin file, established by Law No. 107/2002, provided for the transmission of secret documents with special guarantees.

[51] Bardazzi, Elisabetta, "Le Commissioni parlamentari d'inchiesta dopo la riforma costituzionale", *op. cit.,* p. 8.

[52] Constitutional Court No. 26/2008. See Buonomo, Giampiero (2008), "Caso Ilaria Alpi: quando la leale collaborazione tra poteri dello Stato è tradita (e non dai magistrati)", *Diritto&Giustizia online,* 23/2/2008.

between the powers of the state. Although in its landmark ruling on the matter — the aforementioned ruling No. 231/1975 — the Court affirmed that "there is no general obligation to jointly exercise investigative powers", since it would ultimately confuse the principle of collaboration "with the interference of one power in the exercise of another", here the Court makes some nuances. The constitutional judge recognised that, in this case, the committee of inquiry should have allowed the joint execution of investigative activities in order to preserve the prerogatives of the requesting judicial authority, "which is also the holder of a parallel, constitutionally recognised power of investigation". Furthermore, the constitutional judges emphasise that "the normal functioning of justice cannot be paralysed at the sole discretion of parliamentary bodies".[53]

Furthermore, one of the objectives of this inquiry was to identify any "institutional shortcomings" in the work of the judiciary, with the result that the parliamentary inquiry focused not only on the same facts as those being investigated by the judicial authorities, but also on the judicial inquiry itself. This circumstance brings us to the second type of potential conflict, one that is more dangerous for maintaining the balance of power between the different branches of government.

Parliamentary inquiries have sometimes been misused to delegitimise the investigative activity carried out by the judiciary or to question its work. For example, the proposed law on the establishment of a bicameral committee of inquiry into the "Tangentopoli" affair, which ultimately was not adopted, appeared to directly encroach on the powers of the judiciary by making it the subject of an investigation. Therefore, during the general discussion, a preliminary question of constitutionality was raised.[54] The idea of a committee of inquiry into the activities of the judiciary returned to the forefront a few years later, during the 14th legislature, targeting even more explicitly the relationship between political life and the judiciary in order to investigate "the political use of justice", the "dysfunctions" of justice and "the possible presence within the judiciary of political and ideological orientations and interdependent relationships with parliamentary or extra-parliamentary political forces; the possible influence of political motivations on the behaviour of judicial authorities; [...] possible attempts by magistrates [...] to interfere in parliamentary and governmental activity, in contradiction with the constitutional principle of the separation of powers".[55] Between 2020 and 2021, several proposals were submitted[56] with the aim of investigating the internal organisation of the judiciary and its links

[53] Constitutional Court No. 26/2008.

[54] See Bardazzi, Elisabetta "Le Commissioni parlamentari d'inchiesta dopo la riforma costituzionale", *op. cit.,* p. 7.

[55] Bill No. 2019 of 22/11/2001 on the "Establishment of a parliamentary committee of inquiry into the political use of the judiciary" online: https://documenti.camera.it/_dati/leg14/lavori/stampati/pdf/14PDL0015780.pdf.

[56] On these proposals, see dal Canto, Francesco, "Verso una commissione d'inchiesta sui rapporti tra magistratura e politica?", *op. cit.,* esp. p. 6 ff.

with politics, particularly in the wake of the scandal caused by a case involving several members of the Supreme Council of Magistracy ("*Consiglio superiore della magistratura*" hereinafter CSM), which had revealed the existence of a system of corruption aimed at influencing the appointment of heads of offices and career progression by the CSM.[57] With respect to that, it should be emphasised that, while conflicts may and have arisen as a result of the parallel exercise of parliamentary and judicial investigative activities, and while solutions have been found within the scope of the powers recognised by the Constitution for the various institutions involved, the possibility of an investigation into the work of the judiciary and the self-governing body that is the CSM falls outside this scope, thereby risking dangerously undermining the principles of separation of powers and independence of the judiciary.[58]

The relationship between parliamentary and judicial investigations has recently been in the news and fuelled political debate when the committee of inquiry into the mafia phenomenon requested the disclosure of judicial information and even summoned prosecutors who had investigated politicians close to the majority or, conversely, who had not brought proceedings against opposition figures. In particular, the committee asked the Genoa Public Prosecutor's Office for the proceedings that led, among other things, to the application of a house arrest measure against the president of the Liguria Regional Council and even summoned the Public Prosecutor at the Genoa Court to report on the facts relating to this judicial investigation. It also heard the public prosecutor at the court of Bari to obtain information on the case potentially calling into question the responsibilities of the President of the Puglia region for failing to warn of threats and risks of mafia infiltration. The parliamentary inquiry therefore focus on the way in which the judicial inquiry is being conducted, which could call into question its quality and conduct. While these interactions in the context of ongoing judicial inquiries have not given rise to conflict, voices have been raised to warn of the need to preserve not only the separation between political power and judicial authority, but also the appearance of this separation and the

[57] This scandal is known in the press as the Palamara affair, named after one of the defendants, a former member of the CSM and president of the National Association of Magistrates. In the wake of this scandal, confidence in the judiciary, already weakened in recent years by the systematic campaign to delegitimise it during the Berlusconi governments and by the delays and dysfunctions of the judicial system, has reached an all-time low. According to a survey, between 2010 and 2019, citizens' confidence in the justice system fell from 68% to 35%: see Pagnoncelli, Nando (2019), "Magistrati, la fiducia è ai minimi: 35%. E per il 61% degli italiani è uno scandalo che avrà delle conseguenze" (which means: "Magistrates, confidence at an all-time low: 35%. And for 61% of Italians, it is a scandal that will have consequences"), *Il Corriere della Sera,* 21 June 2019. This context has led to the reopening of the debate on the reform of the justice system and the CSM, which is still ongoing today with the constitutional revision project led by Giorgia Meloni's government.

[58] See the considerations of Azzariti, Gaetano (2021), "Istituire una commissione d'inchiesta o agire per la giustizia?", *Questione Giustizia,* 24 April 2021; Dal Canto, Francesco, "Verso una commissione d'inchiesta sui rapporti tra magistratura e politica?", *op. cit.*, and, already in relation to the commission on the Ilaria Alpi case, Ludione, Domenica (2008), "Il 'caso Alpi' davanti al giudice dei conflitti ed i suoi inediti profili (procedurale e sostanziali)", *Forum di Quaderni costituzionali,* 4/10/2008.

public's perception of the independence of the judiciary, particularly at a time when a profound constitutional reform of the justice system is being carried out by the majority led by Giorgia Meloni.[59]

3.2. Parliamentary inquiry exacerbating conflicts between the majority and the opposition

The establishment and functioning of parliamentary inquiries have also been a field of tension between political forces. The majority has the necessary numbers to decide on the creation of a committee, on the subjects it will cover and when it will be set up. Even if the composition is proportional to the numbers of the different groups, we have seen that the chairmanship and key roles often go to the majority, which can thus guide the committee's work, select witnesses, decide on the terms of the inquiry and, above all, draft the final report.

This has allowed the majority, according to Alessandro Pace's intuition, to use committees of inquiry as political instruments to legitimise its political line and strengthen public consensus in its favour, rather than as genuine mechanisms for information and control. The committees may thus be able to act as a sounding board for government policies, for example in the areas of security, justice and health, providing a platform for reinforcing the majority's political discourse and influencing public debate on sensitive issues, and sometimes even delegitimising its political opponents or its counterpowers, either institutional (such as the judiciary) or non-institutional (such as the press).

The thesis of committees of inquiry as instruments of the majority,[60] which was rather controversial in doctrine when it was proposed in the 1970s and 1980s during the era of grand coalitions, regained new momentum with the arrival of the majority shift and the advent of an "imperfect bipolarism".[61] During the legislatures of the majority democracy period, there was a double diversion of parliamentary inquiry and parliamentary means of control over government action. On the one hand, the instrument of exploratory inquiry ("*indagine conoscitiva*") — conducted by a standing committee or an *ad hoc* parliamentary committee — was preferred over the creation of a committee of inquiry.[62] On the other hand, particularly during the 14th legisla-

[59] On this reform, see the rich debate and numerous contributions presented in the monographic dossier of the journal *Questione Giustizia,* no. 1-2/2025, available online at https://www.questionegiustizia.it/rivista/la-riforma-costituzionale-della-giustizia.

[60] Pace, Alessandro *Il potere d'inchiesta delle assemblee legislative, op. cit.*, p. 103.

[61] In French-language literature, Céline Vintzel refers to "unfinished majority democracy" in Vintzel Céline (2011), *Les armes du gouvernement dans la procédure législative. Étude comparée : Allemagne, France, Italie, Royaume-Uni*, Paris, Dalloz, p. 12. See also Pasquino, Pasquale (1998), "L'Italie vers la démocratie majoritaire", *Pouvoirs,* no. 85, p. 63.

[62] This was, for example, the route chosen to gather information on police violence and serious human rights violations perpetrated during the G8 summit in Genoa, when the presidents of the Chamber of Deputies and the Senate decided to set up a joint committee composed of 18 senators and 18 deputies, which conducted hearings and gathered information for a month. Subsequently, noting

ture from 2001 to 2006, parliamentary inquiries were used (or even abused) by the parliamentary majorities in power with the clear aim of highlighting the political or criminal responsibilities of representatives of the opposing political camp. Examples include the famous *Telekom Serbia* inquiry, established by Law No. 99 of 21 May 2002 to investigate Telecom Italia's acquisition of a stake in Telekom Serbia on the eve of the outbreak of hostilities between NATO and Serbia led by Milosevic, or the *Mitrokhin* inquiry committee, established by Law No. 90 of 7 May 2002, concerning certain alleged collusion between Italian left-wing politicians and Soviet espionage.

This sparked a wave of indignation among politicians, journalists and constitutional scholars,[63] to the point that these initiatives were often referred to as "villain investigations" ("*inchieste canaglia*").[64] These events, at a time when the political system and the balance between the majority and the opposition were being reconfigured, led to the reopening of the debate on the revaluation of parliamentary inquiries as a means of oversight on the work of the government-majority duo, through procedural changes aimed at favouring opposition initiatives. In particular, it was proposed to lower the quorum for deliberations on the creation of committees of inquiry, or to modify their internal functioning, notably by providing for a higher quorum for internal deliberations and the final report, so as to bring about convergence between the majority and the opposition, or a parity composition.[65] However, no doctrinal or political proposal ultimately led to reform.

Thus, even after the majority shift in 1994 and the partial decline of bipolarism since 2013, it has remained rare for committees to be set up as a means of opposition control over the political actions of the majority and the government. Parliamentary inquiries initiated solely by the opposition — or by combined minorities — have been exceptional, and when they have been instituted, their results have been modest. For example, during the 17th legislature, the Senate inquiry committee on post-earthquake reparation in L'Aquila, created on the initiative of the Five Star Movement group, never actually began its work, due to delays in the appointment of its members by certain parliamentary groups.

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the unsatisfactory results achieved by this committee, several proposals to set up genuine committees of inquiry were put forward, without success.

[63] See Manzella, Andrea, *Il Parlamento, op. cit.,* p. 186, which describes the opposition groups' protest against the misuse of parliamentary inquiries during the 14th legislature and the response of the then President of the Chamber, Casini, who reaffirmed that "parliamentary committees of inquiry should not be used as an instrument of political struggle and controversy, but should rather represent a moment of institutional unity".

[64] Originally proposed by Manzella, Andrea (2003), "Il Parlamento e le inchieste canaglia", *La Repubblica,* 12 August 2003.

[65] Rivosecchi, Guido (2008), "I poteri ispettivi ed il controllo parlamentare a dieci anni dalla riforma del regolamento della Camera dei deputati", in AA.VV., *Il Parlamento del bipolarismo: un decennio di riforma dei regolamenti delle camere*, Il Filangeri, p. 219 ff., esp. 235.

4. CONCLUSIVE REMARKS

Committees of inquiry in Italy are a well-established instrument in the parliamentary practice, useful to serve different Parliament's functions, lying at the crossroad of legislative, informational and oversight role. Although they are deeply rooted in Italian parliamentary life, rules governing their establishment and functioning do not allow them to serve as the powerful tool of government oversight that they could potentially represent. At a time when reforms that could promote the advent of a majority democracy based on a genuine majority are being discussed, it is more necessary than ever to reopen the debate on the revaluation of parliamentary inquiry as a possible instrument available to minorities for controlling government action, as Mortati had imagined.

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Título

Comisiones de Investigación en Italia: un instrumento limitado de control entre la colaboración necesaria y el posible conflicto.

Sumario

Resumen

El artículo pretende analizar la esencia y la eficacia de las comisiones de investigación en Italia a la luz de su marco normativo y su práctica. Tras presentar el origen y el fundamento normativo de este instrumento, el análisis pone de relieve cómo, en la experiencia italiana, representan un instrumento de colaboración entre fuerzas políticas y poderes, pero también son un terreno de conflicto entre la mayoría y la oposición y, sobre todo, con la autoridad judicial. Sin embargo, el balance de la experiencia republicana muestra que, aunque están profundamente arraigadas en la vida parlamentaria italiana, en la encrucijada entre las funciones legislativas, informativas y de supervisión, las normas que rigen su creación y funcionamiento no les permiten actuar como la poderosa herramienta de supervisión gubernamental que podrían representar.

Abstract

This article aims to analyze the essence and effectiveness of investigative committees in Italy in light of their regulatory framework and practice. After presenting the origin and regulatory basis of this instrument, the analysis highlights how, in the Italian experience, they represent an instrument of collaboration between political forces and powers but are also a source of conflict between the majority and the opposition and, above all, with the judicial authority. However, the balance of the republican experience shows that, although they are deeply rooted in Italian parliamentary life, at the crossroads between legislative, informational, and supervisory functions, the rules governing their creation and operation do not allow them to act as the powerful tool of government oversight that they could represent.

Keywords

parliamentary committees of inquiry; single-chamber committees; bicameral committees; minorities; opposition; conflict of jurisdiction; judicial authority; relationship between politics and the judiciary; government oversight

Palabras clave

comisiones parlamentarias de investigación; comisiones unicamerales; comisiones bicamerales; minorías; oposición; conflicto de poderes; autoridad judicial; relación entre la política y el poder judicial; control gubernamental.