Parliamentary Investigations in a Comparative and European Perspective

PROGRAMME

Expert Meeting
15 January 2009
Maastricht University
Faculty of Law, Bouillonstraat 1-3
Room C1.306 (Chambre des Députes)

Introduction

Faced with problems of growing executive dominance and concerns over a lack of accountability, national parliaments in Europe have been exploring new ways of scrutinizing and controlling the executive over the course of the past decades. A similar development is currently taking place at the European level, where the European Parliament has a fairly weak position compared to the European Union's executive institutions, the European Commission and the Council of the European Union. A prominent innovation in many parliamentary systems has been the creation of committees of inquiry to examine the work of the executive through in-depth investigations into such issues as policy matters, administrative affairs and even cases of maladministration. The work of parliamentary committees of investigation has been described as an effective mechanism of strengthening parliament's ability to hold the government to account, but has also raised concerns about issues such as the protection of witnesses. The investigative procedures and practices of national parliaments vary considerably, while the European Parliament's activities in this field appear to be still in their infancy. The meeting brings together international experts to discuss a number of key aspects of the law and practice of parliamentary investigations of several national parliaments in Europe (see below), to explore differences and similarities and to exchange ideas and experiences. On the basis of these discussions the workshop will also focus on the future of the right of inquiry of the European Parliament.

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Morning Chair: Luc Verhey, Professor of Constitutional and Administrative Law, Maastricht University

09.00 – 09.15 Welcome by Luc Verhey

09.15 – 10.30 Session 1: The role of investigative committees in the United Kingdom Parliament

Background: The introduction of a system of permanent, departmentally-oriented parliamentary committee in the British House of Commons in 1979 has been described as the most significant parliamentary reform in modern times. The so-called 'departmental select committees' have changed the balance of power between parliament and government and are now the predominant way in which the British parliament scrutinizes the policy, administration and expenditure of government departments. Recently, calls to strengthen Parliament have led to new proposals intended to further develop the practice of parliamentary inquiry. As a result, select committees are becoming more and more involved in the legislative process through 'pre-legislative scrutiny'. In addition, it has been suggested that parliament should create a mechanism to hold inquiries into matters of public concern, such as the decision to go to war with Iraq. Such issues have generally become the exclusive province of the government, which has appointed public inquiry panels (such as the recent Butler and Hutton inquiries) without parliamentary involvement or approval. Against this background, this session is intended to take a broad look and to assess what the functions of investigative parliamentary committees are (or could be) within the British constitutional order. What are parliamentary inquiries meant for? Which issues should be investigated? And what powers should committees have?

Presentation: Alexandra Kelso, Lecturer of Politics, University of Southampton
Discussant I: Oonagh Gay, Head of the Parliament and Constitution Centre, UK House of Commons
Discussant II: Gijsbert ter Kuile, Research Student, Faculty of Laws, University College London
10.30 – 10.45 Coffee Break

10.45 – 12.00 Session 2: The right of inquiry as a minority right in Germany

Background: The right of inquiry in Germany is designed to safeguard the rights of parliamentary minorities. Under Article 44 of the German Basic Law (‘Grundgesetz’), the Bundestag can set up a committee of inquiry (‘Untersuchungsausschuss’) on a motion supported by one quarter of its members. Committees of inquiry are granted substantial legal powers. Their position is particularly strong with regard to its right to summon witnesses and to require the production of (confidential) papers. The German system contrasts with many other European parliamentary systems, where a motion to set up a committee of inquiry needs the support of a parliamentary majority. It raises questions regarding the tension between the principle of majority decision-taking and the protection of minorities and whether committees can exercise their far-reaching powers against the will of the parliamentary majority. This session is meant to explore the purpose, function and effect of parliamentary investigations initiated by parliamentary minorities and to discuss to what extent such committees enhance parliament’s ability to control and scrutinise the government.

Presentation: Meinhard Schröder, Professor of Public Law, University of Trier
Discussant I: Tilman Hoppe, Secretariat of the Inquiry Committee, German Bundestag
Discussant II: Henk Kummeling, Professor of Constitutional Law, Utrecht University

12.00 – 14.00 Lunch

Afternoon Chair: Joop van den Berg, Professor of Parliamentary Systems, Maastricht University & Professor Emeritus of Parliamentary History, Leyden University

14.00 – 15.15 Session 3: Parliamentary inquiries, judicial proceedings and the protection of witnesses in the Netherlands

Background: The parliamentary power of inquiry has been recognized in the Dutch constitution since 1848. While parliament held a number of inquiries in the 19th century, the instrument was effectively abandoned for most of the 20th century. Since the 1980s, however, calls for more parliamentary scrutiny of the increasingly powerful and expanding executive have led to a renewed focus on parliament’s power of inquiry. Since then, a number of parliamentary inquiry committees have been created, endowed with the far-reaching investigatory powers under the old Parliamentary Inquiries Act of 1850. Unlike their 19th century counterparts, which were created within the context of parliament’s legislative function, modern inquiry committees are typically meant to investigate large-scale policy failures, including alleged personal misconduct of ministers, civil servants and others. The modern practice has led to concerns about the protection of (ordinary) witnesses. In addition, it has raised questions about the way in which parliamentary inquiries can be conducted in concurrence with judicial investigations into the same subject matter. These matters were, in part, the reason for a comprehensive parliamentary review of the power of inquiry, leading to the recent modernisation of the 1850 Act. This session is intended to explore these issues and recent developments regarding the instrument of parliamentary inquiry in the Netherlands in theory and practice.

Presentation: Sandor Loeffen, Junior Researcher, Faculty of Law, Maastricht University
Discussant I: Cees van der Staaij, Member of the Dutch Parliament
Discussant II: Paul Evans, Principle Clerk of Select Committees, UK House of Commons
15.15 – 15.30 Coffee Break

15.30 – 16.45 Session 4: The right of inquiry in the European Parliament: which way forward?

**Background:** Compared to its national counterparts, the European Parliament is often considered to be weak in monitoring the executive branch. Its relatively weak position appears *inter alia* from its right to set up committees of inquiry: although the right of inquiry has been created as an instrument to call EU institutions and Member States to account, the European Parliament has only used this right three times since 1993. This may indicate that the European Parliament, in practice, does not consider this instrument as a suitable manner of effectively holding the EU executive to account. However, taking into account the strength of the instrument in some national parliamentary systems and the frequency with which it has been used by various national parliaments, it could be argued that the right of inquiry of the European Parliament may not have reached its full potential. In the light of the much discussed accountability deficit at the European level, the question that will be explored in this session is whether the right of inquiry of the European Parliament should be further developed in order to strengthen the accountability of the executive bodies of the EU.

**Presentation:** Michael Shackleton, European Parliament Secretariat & Professor of European Institutions, Maastricht University

Discussant I: Felix Arndt, Research Department, German Bundestag

Discussant II: Christian Syrier, Junior Researcher, Faculty of Law, Maastricht University

16.45 End of meeting