

Rules of Procedure for Parliamentary Investigating Committees

Annex to the Federal Law on the Rules of Procedure of the Austrian National Council of 1975

Chapter 1

I. Order to Hear Evidence

§ 1. The Investigating Committee shall obtain the evidence required for executing an order to investigate on the basis of decisions to hear evidence.

§ 2. (1) The decisions to hear evidence shall specify in detail the facts with regard to which evidence is to be obtained and the instruments to be used in obtaining evidence.

(2) The instruments to be used in obtaining evidence may include whatever may help to further the investigation within the limits of the order to investigate, to the exclusion, however, of such evidence as has been obtained by punishable acts or any other circumvention of other legal provisions.

(3) Decisions to hear evidence may be added to or modified by the Investigating Committee in accordance with § 42 (2) of the Rules of Procedure of the National Council (hereinafter referred to as RP).

II. Summonses of Witnesses or Experts

§ 3. (1) Summonses of witnesses or expert witnesses shall be executed, in response to a decision of the Investigating Committee, by the President of the National Council or, on his/her behalf, the Office of the Director of Parliament.

(2) Summonses shall identify the person summoned, the subject of investigation and, within the scope of this subject, the specific issues on which the person will be heard, as well as the time and place of the hearing and shall contain a reference to the legal provisions governing reimbursement of costs (§ 40 (3) RP and para. (4) below) as well as the consequences to be incurred in case of non-compliance with the summons.

(3) If a person summoned fails to comply with said summons without due cause, the Investigating Committee may ask the Court identified in §§ 21f. to impose an administrative fine and issue a second summons warning the person summoned that the Investigating Committee could, in the case of repeated non-compliance, issue a warrant to have him/her brought before the Committee. Should the expert or other witness again fail to comply without due cause, the Investigating Committee may request another

administrative fine to be imposed and order the witness/expert to be brought before the Committee by the competent law-enforcement agency.

(4) Reimbursement of costs shall be governed by § 40 (3) RP. The expert/witness shall also be reimbursed for any loss of earnings for which adequate proof can be obtained.

(5) If the summons is for a civil servant, the individual's superior administrative authority shall be informed of both the summons and the subject on which the individual is to be heard.

(6) Every witness may require that a person in his/her confidence be allowed to be present during the hearing. This shall also hold in cases where the general public is excluded under § 4 (2).

(7) Witnesses and experts may be invited to testify in writing if they cannot be reasonably expected to appear before the Committee or if their appearance would result in costs of prohibitive proportions.

Chapter 2

Sittings and Taking of Evidence

III. Publicity of Sittings

§ 4. (1) When the Committee is hearing experts and other witnesses and expert witnesses, the President shall, subject to the availability of sufficient room, admit representatives of the media; in so doing, the President may take recourse to the Association of Parliamentary Editors and other professional organisations of journalists. Television and sound radio recordings and transmissions as well as the shooting of films and photographs are not permitted.

(2) The general public may, upon decision of the Investigating Committee, be excluded if overwhelming public or individual interests warranting protection or the protection of industrial or business secrets so require or if exclusion of the general public appears to be necessary in the interest of truthful testimony.

(3) The testimony of civil servants heard in accordance with § 6 below shall always be heard in camera.

(4) Deliberations of the Investigating Committee shall not be open to the public.

IV. Evidence obtained by the Questioning of Witnesses

1. Duty to Testify

§ 5. The following persons must not be subjected to a hearing:

1. Persons unable to communicate what they have seen or otherwise learned or who were unable, at the time to which their testimony is supposed to relate, to perceive the fact about which the evidence is to be taken;

2. Members of the clergy in regard to what has been confided to them in the course of confession or under the seal of official secrecy in their capacity as clergymen.

§ 6. Civil servants heard as witnesses cannot plead being bound to official secrecy. If a civil servant's administrative authority which is informed of the summons under § 3 (5) above considers that the testimony of the civil servant in question should be treated as confidential, it shall so inform the Investigating Committee. In such a case the Investigating Committee can decide by a two-thirds majority that, on account of the importance of his testimony, the civil servant in question has to testify irrespective of his being committed to official secrecy.

§ 7. (1) A witness may refuse to testify

1. on matters that concern his/her private life or that of one of his/her relatives (§ 72 Penal Code) or that would expose him/her or said relative to the jeopardy of penal prosecution;

2. regarding questions the reply to which might expose the witness or a person referred to in 1. above to a direct and significant pecuniary disadvantage;

3. on facts about which a witness could not bear testimony without violating a legally recognised obligation to observe secrecy, unless the witness has been validly released from his/her obligation to observe secrecy or s/he has been ordered to testify as a civil servant under § 6 above;

4. regarding information that s/he has obtained in his/her capacity as defence counsel or other legal counsel;

5. regarding questions which the witness could not answer without disclosing a trade or business secret;

6. on the question in what way the witness has exercised his/her right to vote in an election or vote declared by law to be by secret ballot.

(2) In the cases listed in 1. and 2. above, the witness may, with regard to the relative(s) referred to, refuse to testify even if the marital status on which the relationship is grounded is no longer in existence.

§ 8. A witness cannot refuse to testify, on grounds that s/he might suffer a pecuniary disadvantage, about the conclusion and object of a legal transaction regarding the conclusion of which s/he has been a witness.

§ 9. (1) A witness who wishes to refuse to testify shall state the grounds for his/her refusal in the course of the sitting at which s/he is to be heard or in his/her written response to the summons (§ 3 (7)) and, at the request of a member of the Committee, furnish adequate proof of the validity of his/her grounds.

(2) The Committee shall be the judge of the justification of the refusal. Should it conclude that such refusal is not justified, the Committee may petition the court (§§21f.) to impose a penalty for contempt.

2. Questioning and the Duty to Tell the Truth

§ 10. The Investigating Committee shall, with due consideration of the evidence to be obtained under the order to hear evidence, establish a timetable for the hearing of evidence. Departures from said timetable shall only be admitted for compelling reasons.

§ 11. (1) Prior to the hearing of the witnesses or their being invited to testify in writing, witnesses shall be informed of the grounds on which they may refuse to testify (§ 7). They shall also be reminded of their duty to tell the truth and of the consequences of false testimony.

(2) At the witness's request, s/he shall be given an opportunity to give a coherent presentation of the facts that form the object of his/her testimony prior to being questioned.

(3) Witnesses shall be heard individually in the absence of witnesses to be heard later. The order in which witnesses are to be heard shall be determined by the Chairperson of the Investigating Committee with due consideration of the subject on which evidence is to be heard, the timetable for the hearing of witnesses and the time at which the witness in question is to be heard as indicated in the summons served on said witness. If at least one third of the members of the Committee so request, the Chairperson shall put the issue to the Committee for decision.

(4) Witnesses giving contradictory evidence may be confronted with one another. All members of the Committee shall have the right to demonstrate contradictions in the respective testimonies and to ask additional questions for clarification of said contradictions.

§ 12. (1) Expert witnesses and other witnesses shall first be questioned by the Chairperson of the Investigating Committee. Prior to being heard they shall be reminded of their duty to tell the truth and of the penal consequences of false testimony. This reminder shall be noted in the Official Record. The Chairperson shall start by eliciting the witness's personal data. Subsequently, s/he may ask questions of substance. Then s/he shall give the floor to the other members of the Committee in the order in which they have asked for recognition. If several members ask for the floor at the same time, the Chairperson shall recognise them with due consideration the numerical strength of the respective parliamentary groups, and taking turns between them. For important reasons,

and in particular in the interest of saving time, eliciting the truth or clearing up contradictions, the Chairperson may, if requested by a member or, if no objection is raised, of his/her own accord, recognise members out of turn.

(2) If a witness is accompanied by a person in his/her confidence, that person shall also be reminded of the penal consequences that false testimony would have for him/her as an interested party. This reminder shall also be noted in the Official Record.

§ 13. (1) If a question is not germane to the subject indicated in the decision to hear evidence or if the Chairperson's ruling to admit or not to admit a question is contested, the issue shall, upon motion of a member, be decided by the Committee after hearing Procedural Adviser but without further debate.

(2) Witnesses shall not be asked vague, misleading, equivocal, incriminating, offensive or insinuating questions. In particular, all questions shall be deemed inadmissible which suggest that a fact not admitted by witness has already been admitted.

(3) Questions suggesting to the witness circumstances whose existence is to be established by witness's answer may only be put if the information cannot be elicited otherwise.

3. Person in the Witness's Confidence

§ 14. (1) Every witness may be accompanied to the hearing before the Investigating Committee by a person in his/her confidence. That person shall have the right to advise the witness but shall not have the right to make statements before the Committee or to reply instead of the witness.

(2) The following persons may be excluded as persons in the witness's confidence:

(a) any person who is likely to be summoned as a witness in the hearings before the Investigating Committee;

(b) any person who might influence a witness in making a free and complete statement;

(c) any person who violates the provisions of (1) above.

Chapter 2

V. Evidence given by Expert Witnesses

1. Appointment of Expert Witnesses

§ 15. If evidence has to be obtained from experts, the Investigating Committee may appoint one or more such expert witnesses. Unless special circumstances call for a

decision to the contrary, appointments shall be made from among the experts officially appointed to testify on matters of the nature of the subject at issue.

§ 16. (1) Upon motion by a Committee member experts may be challenged if it can be proved to the satisfaction of the Committee that certain circumstances are apt to throw doubt on the expertise or impartiality of said expert.

(2) Such challenges shall only be made before the expert has started to give evidence before the Investigating Committee.

(3) The Investigating Committee shall decide by resolution whether or not to allow the challenge.

§ 17. (1) An appointment as expert shall be accepted by whoever has been officially appointed as expert regarding matters of the nature of the subject at issue or who publicly exercises for profit, or who is publicly employed or authorised to exercise, the profession or trade the expertise of which is a prerequisite for testifying as an expert on the subject at issue.

(2) An expert may ask to be released from his/her appointment for the same reasons as can be cited by witnesses who wish to refuse to testify.

(3) § 9 shall apply mutatis mutandis. (4) The expert witness shall receive adequate remuneration for his/her services.

§ 18. If questions arise an answer to which may be of significance for the expert opinion to be rendered, the expert may request, through the Chairperson, that such questions be clarified and any contradictions resolved, if necessary by obtaining information from witnesses.

Chapter 2

VI. Procedural Adviser

§ 19. (1) In the interest of the protection of witnesses' fundamental and personality rights and of ensuring fair proceedings, the Chairperson shall be assisted by a Procedural Adviser.

(2) Persons eligible to be appointed as Procedural Advisers shall be any person who can be expected, on the basis of his/her professional skills and experience, particularly in the administration of justice, to watch over compliance with the Rules of Procedure independently of the political groups represented in the Investigating Committee and to exercise his/her office in the interest of the protection of fundamental and personality rights.

(3) The Procedural Adviser shall be elected by a two-thirds majority from a list of candidates nominated by the parliamentary groups. If a candidate fails to command a two-thirds majority in the first ballot, there shall be a second ballot to decide between the candidates with the most votes. In the second ballot a simple majority shall be sufficient for appointment.

(4) The Procedural Adviser shall receive adequate remuneration for his/her services.

§ 20. (1) The Procedural Adviser shall warn the Chairperson of any violations of the Rules of Procedure or impairment of a witness's fundamental or personality rights. Witnesses and persons in their confidence may address themselves to the Procedural Adviser to assert such rights.

(2) If the Chairperson fails to comply with the Procedural Adviser's remonstrance under (1) above, every member of the Investigating Committee shall have the right to ask for a decision by the Committee. In the same way, every member of the Committee and the Procedural Adviser shall have the right to demand a consultation to clarify the matter.

VII. Coercive Measures

§ 21. The Investigating Committee shall have at its disposal no coercive measures other than the power to have a witness brought before the Committee under a warrant if s/he fails to comply with a summons (§ 3 (3)) and to impose administrative fines and penalties for contempt if the witness refuses to testify without justification. In particular, the Committee shall not have the power to order searches or seizures.

§ 22. (1) If the Investigating Committee requests that an administrative fine or penalty for contempt be imposed, such request, and the reasons for the request, shall be filed with the Bezirksgericht Innere Stadt Wien (the District Court for Central Vienna).

(2) On the basis of the request made by the Investigating Committee, the Court shall impose the requested administrative fine or penalty for contempt under the provisions of the Code of Criminal Procedure (§§ 159ff.) as applied mutatis mutandis. The provisions of the Code of Criminal Procedure shall also apply with regard to reasonable excuse and grounds for appeal.

VIII. Records

§ 23. (1) Proceedings in the sittings of the Investigating Committee shall be duly recorded.

(2) The hearing of evidence shall be recorded verbatim. Tape recorders or similar apparatus may be used for the purpose of establishing the verbatim records.

(3) The Investigating Committee shall decide on the manner in which its deliberations are recorded.

(4) The transcript of the recording shall, upon request, be made available to the expert or other witness for inspection. Said witness may raise objections against mistakes in the record within three days of inspection. The Committee shall have the right to decide on any objections raised.

IX. Confidentiality

§ 24. (1) The content of deliberations of the Investigating Committee and the content of statements made by witnesses in camera shall be confidential. These are governed, *mutatis mutandis*, by the confidentiality provisions of the Law on the Rules of Procedure of the National Council (§ 37 RP). The President shall swear the members of the Investigating Committee and the Procedural Adviser to secrecy regarding statements made by witnesses in camera. Regarding the attendance at in camera sittings of other persons involved in the proceedings of the Investigating Committee, § 32d (5) RP shall apply; the decision to admit such persons may be taken for the entire duration of the activity of the Investigating Committee.

(2) Records of sittings in camera shall only be accessible to the members of the Investigating Committee. The President of the National Council shall provide for the safekeeping of such records.

(3) Documents made available by public offices (§ 25 below) may not be published. Prior to making such documents available to the members of the Investigating Committee the President may have the individual copies marked in such a way as to ensure that confidentiality of said documents is respected.

X. Judicial Assistance and Production of Documents

§ 25. (1) Courts of justice and all other authorities shall comply with letters of request on the part of Investigating Committees asking them to take evidence within the substantive jurisdiction of the Investigating Committee. In so doing, the foregoing provisions shall be respected.

(2) Upon request, all public offices shall produce their documentation.

Chapter 3

Reporting

§ 26. (1) The Investigating Committee shall report to the National Council on the basis of the evidence taken. The provisions of the Law on the Rules of Procedure of the National Council concerning the reports of Committees shall apply *mutatis mutandis*.

(2) The Investigating Committee's report shall contain a description of the proceedings, state the evidence taken, the facts ascertained and, where possible, an evaluation of the evidence, and present the result of the investigation.

(3) The Investigating Committee's report may also contain recommendations.