

Draft subject to public debate, developed by Sergiu Ostaf, observer

Summary of the Report:

“The analysis of the work performed by the Inquiry Commission of the Parliament and of the information presented to the Commission regarding the elucidation of the actions of public authorities in relation to the incident at Padurea Domneasca”

Introduction

This document is a summary of the report, and it contains a brief presentation of the main issues that have been analyzed in detail in the report itself. The summary contains an extract of the **findings, conclusions and recommendations** regarding: 1) the activity of the Inquiry Commission, 2) the actions of Moldsilva and the policy on hunting, 3) the Prosecution Office and investigation on the case, 4) police institutions and relevant actions, 5) the Superior Council of Magistracy, the Superior Council of Prosecutors, and their actions, 6) health authorities, 7) the Information and Security Service and its actions, 8) events of 23 December 2012, 9) Parliament actions following the presentation of the report of the Inquiry Commission.

The Inquiry Commission is an instrument of parliamentary control over the executive institutions and public authorities. The task of the Commission is to promote the public interest, which derives from the authority conferred to the Parliament. The political interests of the Committee members and their actions should be consistent with the public interest. The aim of the Committee is to facilitate the understanding of: **a) what went wrong? b) why it went wrong? and c) what is to be done to make it work in the future?** The conclusions and recommendations of the Commission shall specifically help to implement concrete measures to remedy the causes that determined: 1) delayed investigation, with gaps in quality and strong perception of distrust in the institutions that were responsible for conducting it; 2) systematic violations of the legislation on hunting, state border, etc.; 3) the existence and perpetuation of the conflict of interest, subsequently the incompatibility with the position of a number of leaders of public institutions.

*The detailed report is being finalized and shall be presented within reasonable time to the Parliament of Moldova and to the public opinion. **The report presents 33 specific recommendations aimed at redressing the current situation.***

Presentation of detailed conclusions and recommendations

1. Regarding the work of the Inquiry Commission

Findings: The Commission was composed exclusively of Members of Parliament (9 MPs assisted by 3 full-time employees). The Commission allowed the limited participation of a single observer representing the civil society only 10 days after the beginning of its work (although the request was received on the day of the establishment of the Commission, the observer was not informed about the schedule of hearings, the final report was not submitted in advance for comments) and granted to him limited rights: to be passively present at hearings, to view the documents received, except those provided by the Information and Security Service, and not being provided with their copies (the Commission received over 40 documents). The observer's written request (submitted to the Parliament) for full access to the copies of documents, possibility to formulate questions, participation in discussions and analysis of the facts presented, and formulation of proposals to the draft report remained without any justified response. The quality requirements and standards set for the activities of the Inquiry Commission are rudimentary regulated in the Law on the Parliament Regulations. Some of the actors neglected the request to appear before the Commission, some Commission members expressed their perception that false testimony or even misleading facts had been presented.

Conclusions: **The activity of the Commission has been necessary to meet an urgent need of the society; Parliament control exercised by means of this Commission has had an overall positive effect. Many of the Commission findings are appropriate; some conclusions are based on direct evidence presented to the Commission** (to secure trust in the work of the Committee, it is necessary to formulate conclusions and recommendations solely on the basis of direct evidence presented to the Commission). However, the work of the Inquiry Commission should be rightfully **criticized in terms of: 1) inadequate transparency (to a certain degree, any initiative of openness in the work of the authorities subjected to the investigation of the Commission was still suspicious); 2) procedures used to conduct hearings; 3) formulation of conclusions that cannot be proven by the materials submitted to the Commission; 4) lack of specific recommendations to remedy the situation** (6 out of 8 recommendations refer to dismissals and sanctions and none to some concrete change). The political dimension was present in the work of the Commission in the form that: 1) the Commission's work was concluded with the presentation of a report and was not followed up by monitoring the implementation of conclusions and recommendations; 2) recommendations refer exclusively to dismissals (of persons representing various parties); 3) a significant portion of conclusions (at least 50%) is not substantiated and justified on the basis of the materials received by the Commission, but represents the dominant opinions of its majority. Main problems: 1) inadequate transparency in the work of the inquiry committees; 2) lack of criteria on the quality and justification of conclusions and recommendations, as well as credible technologies of

investigation; 3) lack of continuity in the implementation of the adopted conclusions and recommendations; 4) lack of a coercive tool for submission of authentic evidence and attendance of the Commission hearings.

Recommendations: **1.** Introduction of qualified experts and representatives of the civil society into the work of the Committee and granting them the right of consultative vote is a positive practice that needs to be resumed without exceptions in the future. **2.** Adoption of minimum standards of operation, including their transparency (the standards of standing committees shall be applied for inquiry committees in full), and consultations in the process of drafting the report are vital to ensure the quality of and trust in the work of the Inquiry Commission. There is no continuity or finality with regard to the Commission conclusions and recommendations. Therefore: **3.** It is necessary to either set up a separate parliamentary mechanism of monitoring the implementation of conclusions and recommendations or transfer the responsibility for monitoring the implementation to standing Parliament committees. The standards of quality and legal, economic and social rationality applied to the products of the standing Parliament committees shall be fully applied in the work of inquiry committees, so that inquiry committees transform from the instrument of parliamentary control into a mechanism of maximizing political interests, where conclusions are voted and not justified by the submitted and administered evidence, thus affecting the image and authority of the Parliament. **4.** Parliament regulations need to be modified to increase the quality standards in the work of inquiry committees, including in terms of transparency. **5.** Introduction of discipline, administrative, and public responsibility for defying the work of the Inquiry Commission and for presentation of erroneous, partial, or false information.

2. Regarding Moldsilva and the policy on hunting

Findings: The legal framework regulating hunting in natural and scientific reserves is incoherent, contradictory, and essentially favoring the illegal practices that have been institutionalized over at least the past 10 years (the Commission did not study the practice and reasons of its institutionalization). The procedure for obtaining licenses and authorizations favors the corrupt behavior both of the Moldsilva management and of the beneficiaries of hunting licenses and authorizations. The practice of granting preferences and benefits for magistrates, representatives of institutions and executive authorities, MPs and other elected officials to hunt due to their status in the society, including free of charge, had been established and is practiced systematically (some Inquiry Commission members are active hunters, who happened to hunt in this location as well). The organization of hunting itself involved neglect of safety rules and of the hunting regime. The persons responsible for the organization of hunting (specialists and managers) failed to alert the police and the medical emergency services about the incident.

Conclusions: The management of Moldsilva continued the previously established practice of favoring irresponsible exploitation of natural resources contrary to European objectives and

practices. The management of Moldsilva completely lacked the concept of reforming the system and changing the identified problematic institutionalized practices. Unprecedented negligence of the personnel responsible for the organization of hunting has been found, accompanied by multiple violations of safety rules by participants. Main problems: 1) perpetuated corruptible manner of granting licenses and authorizations; 2) systematic violations of the norms prohibiting sport hunting in natural and scientific reserves; 3) lack of the obligation to inform the police and medical emergency services about incidents involving weapons.

Recommendations: **1.** Subordination of the Moldsilva agency to the Ministry of the Environment in order to confer a different perspective on the forest natural resources. **2.** Express interdiction of sport hunting in natural and scientific reserves. **3.** Reformation and organization of the process of obtaining licenses and authorizations by means of transparent procedures on the basis of public auctions and ensuring public access to the information regarding the entire process. **4.** Introduction of selective professional hunting system. **5.** Substantial increase of conditions for admission to hunting. **6.** Presentation of information on participants and hunting results via public reports.

3. Regarding the Prosecution Office and the case investigation

Findings: None of the participants in the hunt on 23 December 2012 alerted police authorities, although it is a direct responsibility of every citizen. One of the participants (General Prosecutor at the time) referred the case to the Falesti Prosecution Office. Information about the incident of injuring a person reached the Falesti Police Office on the same day several hours later from the Falesti Regional Hospital. Direct testimony of several persons confirms that the management of the Falesti Police Office knew about the injury suffered by a person during hunting. The criminal investigation had been taken over by the Falesti Prosecution Office due to the hypothesis that a magistrate had been involved. Actions were several days late, and did not engage the police at the stage of securing evidence and expert opinion. The Falesti Prosecution Office and the appointed prosecutor did not examine all the possible hypotheses, but stayed with the one suggested by several participants in the hunt (with the General Prosecutor among them). The Falesti Prosecutor and the responsible prosecutor perceived the information received from the General Prosecutor as an indication to act on the basis of the suggested hypothesis. Thus, criminal investigation was unjustifiably limited to the scenario forwarded by the interested parties involved in the incident and neglected all other possible hypotheses. In this context, de facto there is conflict of interest in action: the private interest of an involved party comes in contradiction with the public interest of conducting an unbiased investigation (the party involved being the General Prosecutor). After the case had been withdrawn in favor of the General Prosecutor's Office and subsequently an interdepartmental group was established, the criminal investigation did not re-examine all the possible hypotheses, but used exhaustively all the procedures to ensure evidence, including seizing of weapons, localization of participants in the incident, hearing witnesses, etc.

Conclusions: The Falesti Prosecutor and the assigned prosecutor de facto acted in this case following hierarchical subordination, accepting the hypothesis suggested by the interested party, the General Prosecutor at that, although the changes introduced into legislation in October 2012 gave a greater degree of procedural independence to prosecutors. The General Prosecutor involved in the incident did not notify about his participation and did not inform the relevant structures of prosecution (the Superior Council of Prosecutors (SCP) and the College of General Prosecution), so as to handle a situation that involves incompatibility with the position of General Prosecutor during the investigation. The Law on Prosecution does not expressly stipulate this situation or the possibility of handing the conflict and of temporary incompatibility. Also, the legal framework, by means of the Law on the National Integrity Commission, provides for a possible procedure to solve this situation. The SCP and the College of Prosecution were not informed or involved in the process of handling the conflict of interests in this case; it did not happen after the decease of the injured person, either. The self-organized institutions of the prosecution (the SCP and the College of Prosecution) are inoperative. Doubt as to the fairness of criminal investigation during the case management by the Falesti Prosecution Office and after the case was taken by the General Prosecutor's Office still has a negative effect on the professional image of prosecution. Main problems: 1) the perception of persons in positions of responsibility that the law on denunciation of the incident to the police does not necessarily need to be observed (all persons in positions of responsibility); 2) lack of concrete legal framework for self-notification of the mechanism and notification of a person accused of being in a situation of conflict (procedural and material) for managing cases of conflict of interest, coupled with the lack of awareness of responsibility in this regard (the entire system of prosecution); 3) persistence of the corporate culture of prosecutors' dependence in hierarchy, coupled with the lack of administrative and logistic independence of prosecutors' activities; 4) lack of an integral system of electronic records of all materials and files within prosecution that would allow knowledge and self-notification within prosecution; 5) inadequate quality of investigative measures by the prosecution and lack of information and cooperation with the police on cases which actually fall within the competence of the police.

Recommendations: **1.** Ensuring thorough procedural, administrative and logistic autonomy in the work of every prosecutor. **2.** Adoption of mandatory procedures for managing cases of conflict of interest and incompatibility inside prosecution. **3.** Ensuring proper functioning of self-organized bodies of prosecution (the SCP and the College of Prosecution), as well as the competence of mandatory examination of similar cases, including in relation to the management of the General Prosecutor's Office. **4.** Ensuring full and functional independent status of the internal security of prosecution. **5.** Ensuring integrity and comprehensive internal control in handling individual cases by creating the system of electronic evidence and procedural and institutional processing of all materials and files handled by prosecution. **6.** Ensuring the procedure of appointing prosecutors by prohibiting direct involvement or effectively

minimalizing the role of politics by replacing it with the role of professional groups and representatives of the guild.

4. Regarding police authorities and relevant actions (Falesti Police Office, border police, Ministry of Internal Affairs)

Findings: The Falesti Police Office and its management facilitated the non-registration of the case of injury during hunting, while these actions are in fact in the competence of the police authorities. Communication between the management of the Falesti Prosecution Office and the management of the Falesti Police Office regarding the case of injury of a person and the implications regarding magistrates and the General Prosecutor had been known since the day of the incident, 23 December 2012, with all consequences of registration and performance of investigative actions and providing evidence. It is indicative of the lack of responsibility and non-compliance with legal requirements. The actions of the internal investigation service regarding the subsequently identified deficiencies were focused exclusively on the human factor of the management and employees of the Falesti Police Office. The specialized service of crimes evidence within the Police Office and within the head office of the Ministry of Internal Affairs, which had had this information via 2 separate registration systems, was not capable to react properly, either. The Commission had no possibility to verify by direct evidence the hypothesis that the management of the Falesti Police Office had been pressurized to not report and not register the incident. Although hunting was conducted in direct vicinity of the State border and the border police knew about this fact, it failed to exercise its statutory obligations of prohibiting the hunt, both in this case and during at least the last 10 years, thus violating the Law on the State Border, not did it prosecute the persons who violated the law during all these years. Facing the Committee, the management of the border police declined its responsibility to exercise its functions under the law, motivating it by insufficiency of personnel (while 50% of positions were vacant).

Conclusions: The case record system and the entire system of processing materials and files do not ensure integrity and trust, thus favoring human decisional discretion and susceptibility to external influences. The border police neglected its competences under the Law on the Border Police and the obligation to prevent hunting within the distance of 500 meters from the State border. At the same time, the border police systematically ignore their responsibilities of investigating and prosecuting violations of the law within the perimeter of the border. Main problems: 1) the system of recording criminal and illicit incidents is corrupt and lacks integrity; 2) the practice of ignoring the legal requirement of preventing hunting at a distance less than 500 meters has been institutionalized; 3) the system of recording and notifying about crimes is inadequate; 4) there is no system of protection of police employees, including by internal reporting of cases of influence on the exercise of responsibilities; 5) the police system has accumulated signs of suppressing rules in favor of indications.

Recommendations: **1.** Implementation of an integral system (including minimization of the human factor) of evidence and monitoring of the information, materials and files that are being processed. **2.** Implementation of a system of compulsory reporting of cases of inadequate influence over police activities. **3.** Ensuring institutional autonomy of criminal investigation within the police. **4.** Applying legal provisions regarding the State border.

5. Regarding the Superior Council of Magistracy and the Superior Council of Prosecutors and their actions

Findings: A magistrate with administrative responsibilities informed the Superior Council of Magistracy (SCM) about the incident and possible implications for 2 magistrates that participated in the event on 23 December 2012. Neither the SCM in corpora nor its members individually reacted immediately or subsequently to examine these 2 situations that are adverse to the image and reputation of magistrates (therefore, the system of justice), including in their role of administrators. Only after direct notification of the Commission, the SCM examined the case of the chairman of the Court of Appeal, but did it superficially, only to verify whether criminal responsibility could occur, and did not consider the issue of possible incompatibility or ethical aspects. It appears that the Superior Council of Prosecutors (SCP) only took notice after declarations of politicians, and then it only made a formal statement. The SCP is not even de facto functional in the absence of a budget and conditions for its operation.

Conclusions: The SCM failed to reconfirm the high ethical standards for magistrates and for magistrates in administrative positions. The SCP evaded its important role of promoting ethical standards. Main problems: 1) the self-administrating bodies of the judicial system (the SCM) perceive European ethical standards for magistrates as inferior and non-enforceable norms in the context of the current legislative framework; 2) the self-administrating bodies of the prosecution system are practically inexistent ó the SCP and the College of Prosecution perceive the European ethical standards for magistrates as inferior and non-enforceable norms in the context of the current legislative framework.

Recommendations: **1.** Adoption and enforcement of a joint code of magistrate (judge and prosecutor, including for the persons holding administrative positions), according to which the SCM and the SCP shall have to interpret in their large sense the concepts of violation of ethical principles, situational incompatibility, the institution of self-suspension and temporary suspension for reasons of promotion of the good name and trust into the system of justice. **2.** Introduction into the SCM and the SCP of representatives outside the professional group, who would represent the interests of the society as well ó representatives of the civil society. **3.** Modification of procedures of admissibility for notification of the SCM ó credible actors.

6. Regarding health authorities (the hospital in Falesti, AVIASAN, managers of the Ministry of Health)

Findings: The involvement of the hospital in Falesti was timely and according to the resources it had, and included informing the Falesti police and the Falesti Prosecution Office. The Ministry of Health facilitated provision of services by engaging specialized professionals. The hospital in Falesti informed and registered its medical interventions in the proper manner.

Conclusions: The medical authorities do not have the obligation to engage in the identity and circumstances of the case. Their reaction was adequate. The involvement of the AVIASAN service specialists was adequate.

Recommendations: 1. Introduction of the online electronic system of registration and notification of cases involving weapon injuries in the system of the Ministry of Health.

7. Regarding the Information and Security Service and its actions

Findings: The Information and Security Service (ISS) has no direct responsibilities regarding the incident of 23 December 2012. Direct evidence supported by the testimonials of several persons interviewed by the Inquiry Committee demonstrates that ISS employees knew about the incident of 23 December 2012.

Recommendations: 1. The ISS shall refrain from pressurizing the employees of public institutions.

8. Regarding the events of 23 December 2012

Findings: The incident that occurred in the Royal Forest reserve on 23 December 2012 was reckless injury to Mr. Sorin Paciu. The vast majority of witnesses (including persons responsible for the organization and supervision of hunting) confirm that the incident occurred due to the violation of hunting safety rules by the person who fired the weapon (there were no witnesses that named some other person than the official suspect). No direct testimony heard by the Commission or sent to it in written form contradicted that the incident occurred in a different location than sector no. 4 of the reserve. The Commission did not hear and did not receive direct evidence that the hunting involved a single group of hunters. All the persons that were heard (gunmen and chasers who participated in the hunt) stated that the hunt was conducted in 2 groups, and the group of hunters where the incident occurred (group no. 1) had 2 consecutive sessions in the same composition in sector no. 4. The other group of hunters (group no. 2), according to the witnesses heard directly, had a single session of hunting in sector no. 7, at a distance of several kilometers from sector no. 4¹. Several direct testimonials (by gunmen and chasers) indicate that group no. 1 during the second session hunted practically at a visible distance from Prut River. There is no testimony that would question this fact. Some Commission members voiced and discussed at Commission sessions the probability that there was a single

¹ According to this hypothesis, the General Prosecutor was in group 2 of hunters, which hunted in sector no. 7, while the incident occurred in group 1, which hunted in sector no. 4.

group of hunters. This hypothesis existed in the Commission since the beginning of its work, and according to these Commission members, it is confirmed by: 1) testimonials of some persons that were not heard by the Commission (their identity was not disclosed to the Commission); 2) contradictions in the testimonials of the witnesses that were heard; 3) suspected modification of registers and signatures; and 4) plausible suppositions of impossibility of hunting in 2 groups, based on the previous practice of organization of hunts (the Commission did not hear experts or experienced persons that would confirm this fact). The invoked contradictions can be summarized as follows: a) movement through the snow at that time was difficult, therefore movement from sector no. 7 (group 2) to sector no. 4 (group 1) does not justify the time mentioned by the witnesses that were heard; b) some witnesses refrained from making statements about the circumstances of the case or were rather evasive. The suspicions of modification of registers are as follows: a) the signature of S. Paciu is suspicious; b) the signatures of some more persons are suspicious.

Conclusions: Conclusion of the Commission that there are reasonable motives to suspect that there were 2 groups needs to be proved by concrete data (according to the template presented in this report), so the conclusion is in conflict with the requirements of plausibility.

Recommendations: **1.** Trust in the Inquiry Commission is fostered by the evidence proving the findings and conclusions of the report; therefore, conclusions and recommendations shall be specific and precise. **2.** In its work, on the basis of good experiences and practices of other Parliaments, the Commission is not limited by classical legal procedures, although positive evidence is a considerable advantage of the report. **3.** The report should avoid unproven opinions and conclusions, alluded statements (the detailed report shall thoroughly discuss every finding, conclusion and recommendation).

9. Regarding the actions of the Parliament following the presentation of the report by the Inquiry Committee

Findings: The report of the Inquiry Commission in its final version was issued on 14 February 2013 and presented on 15 February 2013 at a plenary session of the Parliament. There were no preliminary public consultations. No one outside the Commission, not even the observer, could comment in advance on the contents of the report. The conclusions and recommendations of the Commission were not discussed within parliamentary committees, and the plenum of the Parliament did not have any real possibility to discuss the report in substance. The report contains 2 pages of description of the chronology of the incident. It is followed by the description and assessment of actions of the Ministry of Internal Affairs and Moldsilva ó 1 page for each. The next section, covering 3 pages, analyzes the legality of hunting in the Royal Forest reserve and finds that it is illegal. The next 3.5 pages describe and analyze the actions of the management of Moldsilva and illegal participation of some persons in the hunt. The following section contains a brief assessment of the role of the ISS, without presenting evidence

or arguments. The next 2 pages describe and analyze the actions of the prosecution, presenting evidence in support of conclusions. Finally, there are 4 pages of conclusions (the full report treats every conclusion separately) and 1 page of recommendations (only 8 recommendations!).

Conclusions: Recommendations are the most important part of any report, and they are usually a tool for proposing modifications necessary to achieve the changes that would repair the problems discussed in the report. At the same time, the report can propose concrete actions regarding the managers and persons who failed to properly exercise their functions and responsibilities. The report focuses exclusively on the second aspect, the one concerning managers and responsible persons, and offers a single recommendation to dismiss them. It also contains a general recommendation to modify the legislation regarding the institutions involved in handling the case. The description of relevant events and actions is modestly supported by the testimonials and documents presented to the Commission. The section devoted to the presentation of facts contains references and assessments of the author, and the latter are often unclearly reasoned. The section of analysis of the situation, especially in conclusions, often omits relevant arguments. The causes responsible for some of the identified situations and problems are virtually not discussed. Recommendations fail to cover the problematic situations and do not follow from the identified causes, which are clearly not treated properly.

Recommendations: **1.** The report must pass a period of consultations with the relevant actors and it must be previously presented to a circle of specialists in order to ensure a greater degree of integrity, fairness, and usefulness. **2.** The structure and content of the report needs substantial improvement (especially since it is a document issued by the Parliament), primarily in the part regarding conclusions, by properly supporting them with evidence, similarly to recommendations. **3.** The report must, as much as possible, coherently and accurately answer the following questions: **a) What did not work?; b) Why it did not work?; and c) What must be done for it to work in the future?** There are numerous examples, from the experience of Parliaments in other jurisdictions, of producing inquiry reports that could serve for this Commission as a reference for approaching and applying quality standards in this regard. **4.** The Commission report must contain concrete recommendations regarding the change of the situation in order to prevent similar situations in the future (we tried to suggest some templates in this extract of the report). **5.** The report must also contain the main problems responsible for the situation. The most important matter is that **6.** The report should have recommended creation of a mechanism of monitoring the formulated recommendations.