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DH-DD(2019)281

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Meeting: 1340th meeting (March 2019) (DH)

Communication from the applicant (13/03/2019) in the case of Omegatech Entreprises Ltd. v. Romania (Application No. 24612/07) (judgment S.C. Polyinvest S.R.L. v. Romania (No. 20752/07) (Sacaleanu group (73970/01))).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1340^e réunion (mars 2019) (DH)

Communication du requérant (13/03/2019) relative à l'affaire Omegatech Entreprises Ltd. c. Roumanie (requête No. 24612/07) (arrêt S.C. Polyinvest S.R.L. c. Roumanie (No. 20752/07) (groupe Sacaleanu (73970/01))) (**Anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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13 March 2019

Subject: 1340th (Human Rights) meeting of the Ministers' Deputies
from 12 March 2019 until 14 March 2019 (both dates inclusive) (DH)

Submission by the Applicant in case Omegatech Enterprises Ltd. v. Romania
24612/07 (joined to case no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania)
under Rule 9.1. for the 1340th (Human Rights) meeting (March 2019) (DH)

Communication by the Applicant in case Omegatech Enterprises Ltd. v.
Romania 24612/07 (joined to case no. 20753/07 - S.C. Polyinvest S.R.L. v.
Romania) under Rule 9.1. for the 1340th (Human Rights) meeting (March
2019) (DH)

Status of non-payment / non-execution

w/ ref to **Final judgment of ECHR in case no. 24612/2007
Omegatech Enterprises Ltd. v. Romania (joined to application no.
20752/07 - S.C. Polyinvest S.R.L. v. Romania)
sent by Filtering Section of the European Court of Human Rights
no. ECHR-LE0.2brR on 20 March 2018 IBA/OLT/dcz**

re Information concerning the individual measures in Application no. 24612/07
Omegatech Enterprises Ltd. v. Romania
contained in Communication DH-DD(2019)133 from the authorities (individual measures
in 9 cases) **(05/02/2019)** concerning the Sacaleanu Group v. Romania
(73970/01) for the 1340th (Human Rights) meeting (March 2019)(DH)
and Communication DH-DD(2019)278 from the authorities concerning individual
measures **(13/03/2019)** concerning the case Omegatech Enterprises v.
Romania (application no. 24612/07) (judgment S.C. Polyinvest S.R.L. v.
Romania (20752/07) (Sacaleanu Group)

Honoured Committee of Ministers of the Council of Europe,
Distinguished Excellencies and Ministers' Deputies, dear governmental representatives,

we were so grateful to find that the execution of the judgment of the European Court of
Human Rights in our application 24612/07 Omegatech Enterprises Ltd. v. Romania (joined
to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) dated 29 March 2018 was

listed for your close supervision from 12th until 14th March 2019 (both dates inclusive); we have found the Sacaleanu Group v. Romania (73970/01) -currently our case is being examined under the Group of cases „Sacaleanu“- on the agenda of the 1340th (Human Rights) meeting (DH) from the Consolidated indicative list of cases for the 1340th meeting (March 2019) (DH) adopted at the 1331st meeting CM/Del/Dec(2018)1331-app of 6 December 2018.

Today, with your meetings underway and in full progress we have, to our dismay, found another new additional publication of the authorities of the state under examination in the execution of our judgment of the European Court of Human Rights in our application 24612/07 Omegatech Enterprises Ltd. v. Romania (joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania)) dated 29 March 2018. We strictly object to and reject this new communication DH-DD(2019)278 containing irrelevant and even misleading information -please see our [DH-DD\(2018\)890](#)- and repeat and adopt everything in our communications [DH-DD\(2018\)890](#), [DH-DD\(2018\)1000](#), [DH-DD\(2018\)1189](#), [DH-DD\(2019\)15](#).

Key points:

On 29 March 2018 the European Court of Human Rights delivered its judgment finding violations of the European Convention on Human Rights (please see judgment, please see enclosure 13 to our [DH-DD\(2018\)1189 Communication](#) from the applicant (26/11/2018)).

As soon as the judgment in our application 24612/07 Omegatech Enterprises Ltd. became final, that is also, amidst other, as per the above-mentioned ECHR-LE20.2bR IBA/OLT/dez 29 March 2018 and the publication of the judgment on the Court's Internet site for the purposes of Article 44 § 3 of the Convention and Rule 78 of the Rules of the Court: 29 March 2018, the state concerned, the respondent state in the proceedings before the Court, is obliged to comply with that judgment as soon as it becomes final, to execute it.

The case was listed on the publicly available payment supervision list accessible through the website of the Department for the Execution of Judgments of the European Court of Human Rights.

Thus, that date, and only on 29 March 2018, the sum of money to be received was US\$ 4.665.912,03. As from 30 March 2018, there is additional interest as per the Award Sentence of the International Court of Arbitration, France (Place of Arbitration: Geneva) 23/08/2002 - and final domestically in Romania on 01/07/2003- „the sum of US\$ 1.046.449,68 (one million fourty six thousand four hundred fourty nine and sixty eight cents), plus interest at the rate of 18 % (eighteen per cent) per year from the 31st May, 1999 until the date of actual payment“ and the arbitration cost (costs of arbitration and legal costs) of „US\$ 72.600,00 (seventy two thousand six hundred and no cent)“.

On 20 April 2018 we have also sent a letter in accordance with the above-mentioned ECHR-LE20.2bR IBA/OLT/dez 29 March 2018 and the Department for the Execution of Judgments of the Court at the Directorate General of Human Rights and Rule of Law of the

Council of Europe confirmed receipt of the letter on 26 April 2018 acknowledging receipt of „our communication of 20 April 2018, which has been included in the case-file and transmitted to the Romanian authorities and will be brought to the attention of the Committee of Ministers, in accordance with the Rules adopted by the Committee for the supervision of the execution of judgments and of the terms of friendly settlements (Rule 9 § 1)“ (please see enclosure 2 and 3 of our DH-DD(2018)1189 Communication from the applicant (26/11/2018)) in addition to raising awareness in the Council of Europe asking superior foresight with respect to the deadline execution of the final judgment in our case no. 24612/2007 expiring on the Friday, June 29th, 2018.

The case was still on the publicly available payment supervision list accessible through the website of the Department for the Execution of Judgments of the European Court of Human Rights (please see enclosure 5 of our DH-DD(2018)1189 Communication from the applicant (26/11/2018)). All events up to 13 September 2018 are explained in our Communication DH-DD(2018)890 from the applicant (14/09/2018).

Instead of payment, the state concerned, the respondent state in the proceedings before the European Court of Human Rights, dated their information note concerning the individual measures in the case Omegatech Enterprises Ltd v. Romania (24612/07) 29 June 2018, the last day of the deadline set in the final and binding judgment of the European Court of Human Rights and wrote as visible in their Communication DH-DD(2018)697 from the authorities (02/07/2018) „l'exécution de la mesure individuelle indiquée par la Cour européenne soulèvent des questions délicates et complexes qui dépasse la cadre particulier de la présente affaire. Justement en vue de ces particularités, parti les mesures á caractère général envisagées dans le plan d'action pour l'exécution du groupe d'affaire Sacaleanu“.

Nevertheless, we want to underline here already that the final and binding judgment of the European Court of Human Rights provided also for this situation already on 29 March 2018.

We firmly rejected everything brought forward in the authorities' of the respondent state Communication DH-DD(2018)697 (02/07/2018) in our Communication DH-DD(2018)890 from the applicant (14/09/2018) „as being irrelevant and misleading, its only direct scope being to postpone *sine die* the execution of the obligations arising under the ECHR's judgement dated March 29, 2018“ (please see enclosure to our DH-DD(2018)890 Communication from the applicant (14/09/2018)).

On 18 September 2018 we received from the Department for the Execution of Judgments of the Court at the Directorate General of Human Rights and Rule of Law of the Council of Europe, an email where we were informed that the payments, as visible on the publicly available payment supervision list accessible through the website of the Department for the Execution of Judgments of the European Court of Human Rights (please see enclosure 6 and 8 of our DH-DD(2018)1189 Communication from the applicant (26/11/2018)) were „in the case at hand, the sums awarded to the two other applicant companies in respect of non-pecuniary damage and costs and expenses, which were paid by the Romanian authorities“.

There was a deadline 08 October 2018 until which we were to file and submit our communication/complaint along with proofs and so we did: our Communication DH-DD(2018)1000 from the applicant (08/10/2018), where we do not accept non-payment as payment of the sums on the State's terms and conditions (please see our Communication DH-DD(2018)1000 from the applicant (08/10/2018)).

On 16 November 2018, the authorities of the respondent state submitted yet another Communication DH-DD(2018)1129 from the authorities (13/11/2018) not providing any information concerning payment or as to the reason why they delayed but titled information note on the individual measures in the case Omegatech Enterprises Ltd v. Romania (24612/07) and as is visible from it they repeated (as in DH-DD(2018)697 (02/07/2018)) „l'exécution de la mesure individuelle indiquée par la Cour européenne soulèvent des questions délicates et complexes qui dépasse la cadre particulier de la presente affaire“ and this time elaborated „Ainsi, le Gouvernement est dans le procès de réflexion afin de saisir la Cour d'une demande en interprétation de l'arrêt rendu le 29 mars 2018.“

In our Communication DH-DD(2018)1189 from the applicant (26/11/2018) we firmly reject everything brought forward in their Communication DH-DD(2018)1129 from the authorities (13/11/2018) (please see our Communication DH-DD(2018)1189 from the applicant (26/11/2018)).

Also as you will see in the enclosure 12 to our Communication DH-DD(2018)1189 from the applicant (26/11/2018), also HUDOC-EXEC case details stated a new deadline 08/12/2018 and as we have not received any payment, we have duly filed and submitted our communication/complaint where we do not accept non-payment as payment of the sums on the State's terms and conditions (please see our Communication DH-DD(2019)15 from the applicant (07/12/2018), which is published in your present meeting file for this 1340th (Human Rights) meeting starting on 12 March 2019 (DH).

We would like to ask you to invite to the state concerned to provide information concerning payment of the sums without any further delay.

Neither do they provide any information concerning payment in their present Communication DH-DD(2019)133 from the authorities (05/02/2019) which contains their information note concerning individual measures in 9 cases v. Romania (included in the Sacaleanu group) in which they repeat again as in their information note concerning the individual measures in the case Omegatech Enterprises Ltd v. Romania (24612/07) 29 June 2018, the last day of the deadline set in the final and binding judgment of the European Court of Human Rights (Communication DH-DD(2018)697 from the authorities (02/07/2018) and in DH-DD(2018)1129 (13/11/2018) „l'exécution de la mesure individuelle indiquée par la Cour européenne soulèvent des questions délicates et complexes qui dépasse la cadre particulier de la presente affaire.“ and from their previous DH-DD(2018)1129 (13/11/2018) „Ainsi, le Gouvernement est dans le procès de réflexion afin de saisir la Cour d'une demande en interprétation de l'arrêt rendu le 29 mars 2018.“ manifest in their present DH-DD(2019)133 that „Ainsi, le Gouvernement est en train de saisir la Cour d'une demande en interprétation de l'arrêt rendu le 29 mars 2018.“

We firmly reject everything brought forward in the authorities communication DH-DD(2019)133 from the authorities (individual measures in 9 cases) (05/02/2019) concerning our case Omegatech Enterprises Ltd. v. Romania 24612/07 (joined to case no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania) and in the authorities communication DH-DD(2019)278 from the authorities concerning individual measures (13/03/2019) concerning our case Omegatech Enterprises Ltd. v. Romania 24612/07 (joined to case no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania) for the examination of case Omegatech Enterprises Ltd. v. Romania 24612/07 (joined to case no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania) within the Sacaleanu Group v. Romania (73970/01) for the present 1340th (Human Rights) meeting (March 2019)(DH) from the concerned state, that is the respondent state in the proceedings before the Court and adopt and repeat everything contained in our communications DH-DD(2018)890, DH-DD(2018)1000, DH-DD(2018)1189, DH-DD(2019)15.

Today, with your meetings underway and in full progress we found their new communication DH-DD(2019)278 and elaborating from their initial arguments brought forward in Communication DH-DD(2018)697 from the authorities (02/07/2018) which we legally rejected in in our communications DH-DD(2018)890 „as being irrelevant and misleading, its only direct scope being to postpone *sine die* the execution of the obligations arising under the ECHR’s judgement dated March 29, 2018“ (please see enclosure to our DH-DD(2018)890 Communication from the applicant (14/09/2018)), they elaborated also on the their previous DH-DD(2018)1129 (13/11/2018) „Ainsi, le Gouvernement est dans le procès de réflexion afin de saisir la Cour d’une demande en interprétation de l’arrêt rendu le 29 mars 2018.“ and their DH-DD(2019)133 „Ainsi, le Gouvernement est en train de saisir la Cour d’une demande en interprétation de l’arrêt rendu le 29 mars 2018.“ and now, in their Communication of the authorities DH-DD(2019)278 concerning individual measures (13/03/2019) and which they dated Tuesday, 12 March 2019 -the day that your 1340th (Human Rights) meetings started, they inform that „Le 8 mars 2019, le Gouvernement avait formulé une demande d’interprétation de l’arrêt de la Cour prononcé le 29 mars 2018 dans l’affaire S.C. Polyinvest S.R.L. contre la Roumaine et autres, à l’égard des requêtes introduites par S.C. Polyinvest S.R.L. et Omegatech Enterprises Ltd.“.

We reserve our right to submit our written comments within the time-limit laid as described in the Rules of the Court, should that become necessary.

Most important, the respondent state in the proceedings before the Court was already found to have violated the Convention on Human Rights and delivered the final and binding judgment in our application Omegatech Enterprises Ltd. v. Romania 24612/07 (joined to application no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania) by the European Court of Human Rights in Strasbourg, France on 29 March 2018.

As per the European Convention on Human Rights Article 46 § 1 „The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties“, so the state concerned, the respondent state in the proceedings before the Court, is obliged to comply with that judgment as soon as it becomes final, to execute it.

We'd like to call on the Committee of Ministers not to allow, as straightforward regards us, the Applicant, the non-execution of the final and binding execution of judgment by the state concerned, the respondent state, which unfortunately has started already by not having made us reach payment in a timely neither within nor out of the deadline, which the European Court of Human Rights also was provided for also, by the European Court of Human Rights in their judgment in our application Omegatech Enterprises Ltd. v. Romania 24612/07 (joined to application no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania) in Strasbourg, France on 29 March 2018, as part of a completely new procedure: firstly, through non-payment neither communication and upon expiry of Court's deadline and/or as from the very last day of the deadline of the Court with irrelevant and even misleading information (please see Appendix to our Communication DH-DD(2018)890).

We firmly rejected and objected to the non-payment as payment on the terms and conditions of the state concerned, the respondent state in the proceedings before the Court for nearly a year now, informing you about all the problems encountered as seen in our communications DH-DD(2018)890, DH-DD(2018)1000, DH-DD(2018)1189, DH-DD(2019)15 and are thus kindly asking you in your collective responsibility to meticulously examine this time period as from 29 March 2018 and until 12 March 2019, which passed with the judgment of the European Court of Human Rights against the respondent state in the proceedings before the Court, being final and binding and during which the state concerned, the respondent state in the proceedings before the Court, was and is obliged to duly comply with the Court's judgment of the European Court of Human Rights in our application Omegatech Enterprises Ltd. v. Romania 24612/07 (joined to application no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania).

Case summary:

The respondent state Romania ignores not one but two final, enforceable and binding international awards, the Award Sentence of the International Court of Arbitration, Paris, France (Place of Arbitration: Geneva, Switzerland) of 23/08/2002 -and domestically, in Romania, final and binding as of 01/07/2003- and now even the final, enforceable and binding Judgment of the European Court of Human Rights, Strasbourg France in our application no. 24612/07 Omegatech Enterprises Ltd. v. Romania (joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) of 29 March 2018.

We would like to emphasise that both final, enforceable and binding international awards are also final, enforceable and binding, domestically on their territory, thus whilst the state concerned, the respondent in the proceedings before the Court, informed that „le Gouvernement est en train de saisir la Cour d'une demande en interprétation de l'arrêt rendu le 29 mars 2018“ (DH-DD(2019)133), we ask the Committee of Ministers please not to stop or pause to exercise their important and vital supervisory function and role under Article 46 of the European Convention on Human Rights and in the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

We would like to thank you very much for your time, legal and diplomatic expertise and action in advance.

Conclusion:

In light of the above, and having in mind that we did not receive any payment as per the judgment of the European Court of Human Rights in our application 24612/07 Omegatech Enterprises Ltd. v. Romania (joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) of 29 March 2018

we call on the Committee of Ministers to

- recall the unconditional obligation of Romania under Article 46 of the European Convention on Human Rights and so is to abide by the final and binding judgment of the European Court of Human Rights;
- invite the state concerned, the respondent state in the proceedings before the Court, to provide information of where the Romanian translation of the final and binding judgment of S.C. Polyinvest S.R.L. and Others vs. Romania (Application no. 20752/07 to which our application no. 24612/07 was joined to) from the European Court of Human Rights dated 29 March 2018 has been published in The Official Gazette (Official Journal / Official Bulletin) of Romania;
- invite the state concerned, the respondent state in the proceedings before the Court, to provide information concerning payment in the judgment of our application no. 24612/07 Omegatech Enterprises Ltd. v. Romania (joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) of 29 March 2018 without any further delay;
- to put the case of our judgment in our application no. 24612/07 Omegatech Enterprises Ltd. v. Romania (joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) of 29 March 2018 already on the agenda for the next 1348 CM-DH Meeting of June 2019 and the next 1355 CM-DH Meeting of September 2019, with debate;
- submit a copy of this to the European Court of Human Rights, if the Committee of Ministers deems this apt;
- undertake any additional action in your power based on the reality that execution of final judgments is within your competency, that is the competency of the Committee of Ministers that Rule of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements of the that the Committee of Ministers which it considers appropriate.

Sincerely yours,

-drafted for the Representative of the Applicant Mr. Marijan Kepic by his daughter Ilona in
press capacity, therefore reserving all the legal rights, without prejudice to any rights of the
Applicant-

Marijan Kepic
Representative of the Applicant
in case no. 24612/07
Omegatech Enterprises v. Romania