

## SECRETARIAT / SECRÉTARIAT

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Contact: Zoë Bryanston-Cross  
Tel: 03.90.21.59.62

Date: 29/11/2021

### DH-DD(2021)1292

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Meeting: 1419<sup>th</sup> meeting (December 2021) (DH)

Communication from the applicant (29/11/2021) in the case of Omegatech Enterprises 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 : 1419<sup>e</sup> réunion (décembre 2021) (DH)

Communication du requérant (29/11/2021) relative à l'affaire Omegatech Enterprises Ltd. c. Roumanie (requête n° 24612/07) (arrêt S.C. Polyinvest S.R.L. c. Roumanie (n° 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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Committee of Ministers (CM)  
Council of Europe  
Avenue de l'Europe  
F-67075 Strasbourg - Cedex  
by email to: [Zoe.Bryanston-Cross@coe.int](mailto:Zoe.Bryanston-Cross@coe.int)



from: [omegakepic@gmail.com](mailto:omegakepic@gmail.com)  
copy to: [ilokepic@gmail.com](mailto:ilokepic@gmail.com)

29th November 2021

**Subject:** 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 the Rule 9.1 *for the 1419th meeting (December 2021) (DH)*

Rule 9.1. Communication from the Applicant in the case 24612/07 Omegatech Enterprises Ltd v. Romania 24612/07 (joined to case no. 20753/07 - S.C. Polyinvest S.R.L. v. Romania) under the Rule 9.1 **for the 1419th Meeting (December 2021) (DH)**

**Status of non-payment / non-execution / non-abidance by the respondent State**

w/ ref to **Final judgment of the European Court of Human Rights 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 no. ECHR-LE20.2bR on 29 March 2018 IBA/OLT/dcz**

**CM Decisions:**

**CM/Del/Dec(2018)1318/B1-add2 from 7 June 2018**

**CM/Del/Dec(2019)1340/H46-15 from 14 March 2019** (please see point 4)

**CM/Del/Dec(2019)1348/H46-22 on 6 June 2019** (please see point 2, 3 and 4)

**CM/Del/Dec(2019)1355/H46-15 on 25 September 2019**

**CM/Del/Dec(2019)1362/H46-20 on 5 December 2019**

**CM/Del/Dec(2020)1369/H46-24 on 5 March 2020**

**CM/Del/Dec(2020)1377 on 4 June 2020** (please see item H46-27)

**CM/Del/Dec(2020)1377bis/H46-27 on 3 September 2020**

**Interim Resolution CM/ResDH(2020)182**

**CM/Del/Dec(2020)1390/H46-18 on 3 December 2020**

**CM/Del/Dec(2021)1398/H46-22 on 11 March 2021**

**CM/Del/Dec(2021)1398/H46-23 on 11 March 2021**

**CM/Del/Dec(2021)1406/H46-23 on 9 June 2021**

**CM/Del/Dec(2021)1411/H46-28 on 16 September 2021**

**Interim Resolution CM/ResDH(2021)194**

Honoured Excellencies and Ministers' Deputies of the Committee of Ministers of the Council of Europe, distinguished Ambassadors, Permanent Representatives and Deputy Permanent Representatives of the 47 Member States of the Council of Europe and esteemed Foreign Ministers of the 47 Member States of the Council of Europe, dear Legal Counsellors and governmental representatives,

We are extremely grateful and thoroughly impressed that you tirelessly continued and (as will be seen further below) continue to act in such a determined and righteous manner as proven once again during the last 1411th (Human Rights) Meeting (DH) of September 2021 when you have decided to adopt and have adopted yet another **Interim Resolution CM/ResDH(2021)194** in addition to the **Interim Resolution CM/ResDH(2020)182** of September last year, that is in 2020, and to the very many Decisions before and in between these two Interim Resolutions (please see above). Therefore, it is with even more deep regret to have to inform you once more that **no payment of the final and binding Judgment of the European Court of Human Rights in the present case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07)** (joined to S.C. Polyinvest S.R.L. v. Romania) (no. 20752/07) **of 29 March 2018** has been received; And this, albeit you, the Ministers' Deputies have anewly and in such a just, legally firm, transparent, fair and straightforward manner, in your collective capacity as the Committee of Ministers of the Council of Europe „STRONGLY EXHORTED the [added: Romanian] authorities to urgently secure redress to the applicants for the violations found by making the required payments without any further delay;“ on 16 September 2021 (quoted from the **Interim Resolution CM/ResDH(2021)194**).

Instead of making the required payments as per the Committee of Ministers' exhortations, the Romanian authorities have opted to merely submit an information note under Rule 8.2a on 29 October 2021 (DH-DD(2021)1138) -a month before this present 1419th (Human Rights) Meeting (DH) starting tomorrow, Tuesday, 30 November 2021 and lasting until Thursday, 2 December 2021- which they have entitled „information note concerning the

individual measures in the cases *Omegatech Enterprises Ltd. v. Romania* (n° 24612/07), *S.C. Polyinvest SRL. v. Romania* and seven similar cases“ and which, with reservation of all the Applicant’s rights and without prejudice to any of the rights of the Applicant, strictly contains some sort of general measures<sup>1</sup> rather than the long-awaited information confirming payment of the sums in question under the European Court of Human Rights judgment in the case *Omegatech Enterprises Ltd. v. Romania* (n°. 24612/07) as per the required execution measures, that is payment of the sums of money that the Court awarded (just satisfaction and/or required individual/remedial measures - reparation due / equitable reparation - redress) in accordance with the judgment, its corresponding transmission letter, the receivables list, the Decisions, all the publications including the complaints and, above all next to the enforceable titles, the Committees’ firm Interim Resolutions concerning this final and binding judgment.

Thus, at this point, it is to be recalled that „this final and binding ECHR decision is an enforceable title even as per the Romanian legal provision available in their domestic law: the Romanian obligation under the Romanian law of a final and binding ECHR decision, as per the Romanian Ordinance 94/1999; **it has to obey this ECHR decision without delay and without thinking that it may be challenged and without invoking whatsoever reason for not making the payment.**“ (quote from DH-DD(2018)890)). In terms of payment of the sums in question under the European Court of Human Rights judgment in the case *Omegatech Enterprises Ltd. v. Romania* (n°. 24612/07), that is payment of the sums of money that the Court awarded (just satisfaction and/or required individual/remedial measures - reparation due / equitable reparation - redress), the respondent States’ primary obligation is „to pay an amount of money and not to issue an enactment“ (quote continuation from DH-DD(2018)890)).

Also, the duly registered complaints and formal non-acceptance of the respondent States’ actions (its terms and conditions), DH-DD(2018)1000 of 08 October 2018 and DH-DD(2019)15 of 07 December 2018 are still vital, in place and relevant.

In continuation to the above and as per the Romanian Ordinance 94/1999, we are also to recall that the written order for payment specifically for this present case of *Omegatech Enterprises Ltd. v. Romania* (n°. 24612/07) has been transmitted from the Romanian

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<sup>1</sup> it is to be made aware of the fact that the respondent States’ information note DH-DD(2021)1138 refers to its latest submission of DH-DD(2021)74 of 15 January 2021 but lacks the information that

- (i) there has been a Decision by the Committee of Ministers adopted concerning that in **CM/Del/Dec(2021)1398/H46-22** on 11 March 2021; and another one
- (ii) concerning the general measures which were examined in the context of the *Săcăleanu* group **CM/Del/Dec(2021)1398/H46-23**, the same day, on 11 March 2021.

Foreign Ministry to the Romanian Ministry of Finance on 18 October 2019 (see DH-DD(2019)1328) and the Ministry of Finance is purely to calculate and pay (please see DH-DD(2020)1103), also the penalties of the delay.

But further to non-payment, we could not even find any information on the individual status of payment of the sums of money that the Court awarded (just satisfaction and/or required individual/remedial measures - reparation due / equitable reparation - redress) in the case of Omegatech Enterprises Ltd. v. Romania (n°. 24612/07) in the respondent States' latest information note under Rule 8.2a of 29 October 2021 (DH-DD(2021)1138)).

Therefore, we understand that the urgency of payment of the case as explained above and, but above all, the obligation to abide by the judgment as per Article 46, paragraph 1, of the European Convention on Human Rights is ignored by the respondent state, Romania, for years now, and consequently to this, we understood and have found on the Committee of Ministers' website the Information document prepared for the Committee of Ministers on [CM/Inf/DH\(2016\)33-rev](#) on the „Procedure for the implementation of Article 46, paragraph 4 of the European Convention on Human Rights - Document prepared by the Department for the Execution of Judgments of the European Court of Human Rights“ on 10 November 2021 for the study, familiarisation and edition during this forthcoming 1411th (Human Rights) Meeting (DH).

## Conclusion:

In light of all of the above,

and further to denying and rejecting all the respondent states' information made available in their Communications concerning this specific case (see DH-DD(2018)697; DH-DD(2018)1129; DH-DD(2019)133 alone and combined with DH-DD(2019)132; DH-DD(2019)278; DH-DD(2019)447; DH-DD(2019)566, **unless the points expressly admitted in our DH-DD(2019)606 clearly in quotation marks**; DH-DD(2019)66 alone and/or combined with other, allegedly, similar cases; and DH-DD(2019)1328, **unless the points that we are yet to expressly admit in writing such as clearly marked in quotation marks in our last DH-DD(2020)181**; DH-DD(2020)66 and DH-DD(2020)526, **unless the points expressly admitted in writing in our DH-DD(2020)734** and as in **DH-DD(2020)1103**; DH-DD(2020)897 and DH-DD(2020)941 (submitted by the respondent state Romania after the Interim Resolution was adopted!) **unless the points expressly admitted in writing in our DH-DD(2020)734** and in **DH-DD(2020)1103**; and DH-DD(2020)1177 solely and/or in combination with DH-DD(2021)74 in terms of general measures

answering/postponing payment of the sum of money that the Court awarded (just satisfaction and/or individual measures - reparation due); **unless the points expressly admitted in writing in our DH-DD(2020)734 and DH-DD(2020)1103; DH-DD(2021)74 unless the points expressly admitted in writing in our DH-DD(2020)734, in DH-DD(2020)1103 and in DH-DD(2021)249; and their current DH-DD(2021)1138** (again, submitted by the respondent state Romania after the second Interim Resolution in this case was adopted!) in terms of general measures answering/postponing payment of the sum of money that the Court awarded (just satisfaction and/or individual measures - reparation due) and

repeating and adopting the content of all our information made available in our communications (including the payment requisition letter with its receivables list sent to the Department for the Execution of Judgments of the European Court of Human Rights on 20 April 2018) and all our content and call/s on the Committee of Ministers in our **DH-DD(2018)890**, our complaint **DH-DD(2018)1000** (duly filed in time); our **DH-DD(2018)1189**; our complaint **DH-DD(2019)15** (duly filed in time); **DH-DD(2019)281**; especially our **DH-DD(2019)606**, **DH-DD(2019)948**, **DH-DD(2019)992**, **DH-DD(2020)181**, **DH-DD(2020)449**; **DH-DD(2020)734**; **DH-DD(2020)1103**; **DH-DD(2021)249**; **DH-DD(2021)589**; **DH-DD(2021)895** and **this present one**; the final, binding and enforceable Judgment of the European Court of Human Rights dated 29 March 2018 and the transmission letter of the Registry of the European Court of Human Rights dated 29 March 2018, the payment request with bank details and receivables list transmitted to the Romanian authorities by the Council of Europe for payment within the deadline and all the content of the Deputy Ministers' adopted Decisions as linked to above under the title **CM Decisions**; and further to the **Interim Resolution CM/ResDH(2020)182** of last year, this years' **Interim Resolution CM/ResDH(2021)194**

we call on the Committee of Ministers to:

- clearly invite the State concerned, Romania, once more, to provide information confirming payment of the sums in question under the European Court of Human Rights judgment in the case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) without ANY further delay;
- to monitor individually the payment situation in the case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) under „individual situation of the Applicant“;

- in case of non-payment of the respondent State, Romania by this 1419th (Human Rights) Meeting (DH), to put our case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) immediately on the agenda for the 1428th (Human Rights) Meeting (DH) of 8 - 10 March 2022, with debate;

We kindly request from the Secretariat of the Committee of Ministers to swiftly distribute this submission to all delegations.

Thank you very much.

Upmost respectfully 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 Ltd. v. Romania