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DH-DD(2022)491

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Meeting: 1436th meeting (June 2022) (DH)

Communication from the applicant in the case of Omegatech Enterprises Ltd v. Romania (Application No. 24612/07) (judgment S.C. Polyinvest S.R.L. and Others v. Romania, 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 : 1436^e réunion (juin 2022) (DH)

Communication du requérant relative à l'affaire Omegatech Enterprises Ltd c. Roumanie (Requête n° 24612/07) (arrêt S.C. Polyinvest S.R.L. et autres c. Roumanie, 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.

Committee of Ministers (CM)
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2nd May 2022

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 1436th meeting (June 2022) (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 1436th Meeting (June 2022) (DH)**

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

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 and Interim Resolutions:

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

{please see together with payment awaited payment supervision list status 2 May 2018 - see from enclosure 5 to DH-DD(2018)1189; then also please see enclosure 6 and 8 to DH-DD(2018)1189 and page 11 of DH-DD(2019)15 all of these together with DH-DD(2018)1000 only, and page 12 of DH-DD(2019)15, enclosure 12 to DH-DD(2018)1189 and page 14 of DH-DD(2019)15 all of these together with DH-DD(2019)15 only}

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

CM/Del/Dec(2021)1419/H46-28 on 2 December 2021

CM/Del/Dec(2022)1428/H46-24 on 9 March 2022

Interim Resolution CM/ResDH(2022)58

Honoured Ministers' Deputies of the Committee of Ministers of the Council of Europe, your Excellencies, honoured Ambassadors and Permanent Representatives, respected Deputy Permanent Representatives and Legal Counsellors of the Permanent Representations of the Member States of the Council of Europe,

Next week you are to receive from the Secretariat the *Indicative list of cases proposed for examination with debate* (agenda) and we trust that the 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 is going to be reflected on this list for the 1436th (Human Rights) meeting (June 2022) (DH) as already called upon you, the Committee of Ministers [open quotation:] „in case of non-payment of the respondent state Romania by this 1428th (Human Rights) Meeting (DH), to put our case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) immediately on the agenda for the next 1436th CM (Human Rights) Meeting (DH) of 7 - 9 June 2022, for examination with debate on how to proceed“ [end quotation] (please see DH-DD(2022)145) and also our DH-DD(2022)247 pleading: „to put our case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) immediately on the agenda for the 1436th (Human Rights) Meeting (DH) of 7 - 9 June 2022, with debate“.

In the Interim Resolution CM/ResDH(2022)58, your honoured selves in the capacity of the Committee of Ministers have been „recalling the heightened concerns expressed in its decisions and Interim Resolutions CM/ResDH(2020)182 [of 3 September 2020] and CM/ResDH(2021)194 [16 September 2021] at the prolonged failure by the authorities to secure redress to the applicants in *S.C. Polyinvest S.R.L.* [judgment of 29 March 2018] and eight similar applications¹, by paying from State funds, all the sums due, granted in the court

¹ Judgment *S.C. Polyinvest S.R.L. and Others* (Applications concerning **S.C. Polyinvest S.R.L.** (No. 20752/07) and **OMEGATECH ENTERPRISES LTD.** (No. 24612/07); judgment **RJ Import Roger Jaeger A.G. and RJ Import Bucuresti S.A.** (1 application); judgment *Ignătescu and Others* (Application concerning **Bod and Others** (No. 30403/06)); judgment *Pășcoi and Others* (Application concerning **Podaru and Others** (No. 41786/14)); judgment *Zlatin and Others* (Applications concerning **Zlatin** (No. 24693/07), **Tomiuc** (No. 34883/10) and **Iordan** (No. 47967/13)) and judgment *Beșleagă and Vankay* (Application concerning **Beșleagă** (No. 35723/03)).

decisions or arbitral awards given in disputes with State-controlled companies, with default interest up to the date of the payment; [and have been] regretting that the payments have still not been made, but welcoming the authorities' recent steps to ensure that remedial action is taken at the highest level of government and expressing its strong expectation that the measures required to provide *restitutio in integrum* to these applicants will be adopted without any further delay; [and most importantly have, once more,] EXHORTED the authorities, at the appropriate level, to take all necessary action to discharge fully and immediately Romania's obligations under Article 46 of the Convention in these judgments" (please see Interim Resolution adopted by the Committee of Ministers on 9 March 2022 at the 1428th (Human Rights) meeting of the Ministers' Deputies).

The Secretariat has also proposed holding high level consultations with the Romanian authorities and a high-level mission to Romania was carried out from 5 -7 April 2022 on the execution of these judgments, such was reported in the news section on website of the Department for the Execution of Judgments of the European Court of Human Rights <https://www.coe.int/en/web/execution/-/bucarest>. The non-execution or delayed execution of domestic court decisions by State and by State-controlled entities, the rights of private companies were in the priority attention area discussions.

The press release of the Romanian government states that „the exchange of views“ between CoE's delegation of the Department for the Execution of Judgments of the European Court of Human Rights led by Mr. Christophe Poirel, Director of the Human Rights Directorate and Mr. Mircea Abrudean, Head of the PM Chancellery „aimed at assessing the progress in the execution by Romania of ECHR judgments, in the context of some delays in enforcing certain Court judgments“. Mr. Abrudean, in his capacity of Head of the Chancellery of the Romanian Prime Ministers gave assurances on the Government's close attention and is quoted to have referred to „the execution by Romania of ECHR judgments“ as „an essential foundation for the consolidation and efficient functioning of the rule of law, an objective that the current Government has firmly and responsibly assumed“ (please see <https://gov.ro/en/news/the-head-of-the-chancellery-of-the-romanian-prime-minister-met-with-the-council-of-europe-representatives>).

Almost a month passed since these high level consultations took place and albeit the assurances of the Prime Ministers Office, no action leading to results followed.

No payment of the final, binding and enforceable Judgment of the European Court of Human Rights in the case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) (joined to no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) dated 29 March 2018 has been received until today. We deem it very important the case is put on the *Indicative list of cases proposed for examination with debate* (agenda) and herewith -and in order to avoid

accountability of eliminating crucial consistency- ask in time and all the CoE organisations' limbs such as the Department for the Execution of Judgments of the European Court of Human Rights, the Secretariat of the Council of Ministers, the Bureau of the Council of Ministers and each and every Member Delegation of the Council of Ministers to employ all your expertise to have this case closely monitored and to closely monitor this case publicly on the agenda of the (Human Rights) meetings.

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)1328², **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 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-

² and DH-DD(2019)1328, unless the points that we are yet to expressly admit in writing such as -making this statement in the rest of this paragraph, asking, with explicit reservation of all our rights and without prejudice to any of our rights- and putting clearly in bold and/or quotation marks: the admitted fact that locally in the respondent state, the „Ministry of Foreign Affairs (MAE)“ gets in touch with the Ministry of Public Finance (MFP) but underline that the „Romanian Ministry of Foreign Affairs (MAE) is to give“ a proper, accurate and clear „written order for the payment of the final, binding and enforceable Judgment of the European Court of Human Rights in the case Omegatech Enterprises Ltd. v. Romania (no. 24612/07)“; also we do not deny the appropriateness of locally applying „Government Ordinance no. 94/1999“ but must underline that Government Ordinance 94/99 applies in whole and not in only some parts „concerning the effects of the European Court of Human Rights decision and the obligations incumbent on the Romanian state and most importantly, payment to be finalised within the timeframe prescribed by the said ECHR's decision“ and here exactly we invite you to read the starting from the referenced above and as per our submission DH-DD(2018)890 from the very whole beginning;

DD(2020)1103 and in **DH-DD(2021)249**; and their **DH-DD(2021)1138**³ (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 **DH-DD(2022)148** in all points which aim at postponement *sine die* the execution of the obligations arising under the final, binding and enforceable judgment of the European Court of Human Rights dated March 29, 2018 as well as their submissions **DH-DD(2022)148** and **DH-DD(2022)261** in same points

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**; **DH-DD(2021)1292**; **DH-DD(2022)145**; **DH-DD(2022)247** 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 2 years ago, last

³ which the respondent State, Romania, has 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 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) AND awareness is to be drawn to the fact that in this information note DH-DD(2021)1138, the respondent States' 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.

years' **Interim Resolution CM/ResDH(2021)194** and the **Interim Resolution CM/ResDH(2022)58**

we call on the Committee of Ministers:

- **to put our case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) immediately on the agenda for the 1436th (Human Rights) Meeting (DH) of 7 - 9 June 2022, with debate;**
- to continue to monitor individually the payment situation in the case Omegatech Enterprises Ltd. v. Romania (no. 24612/07);
- to clearly invite the State concerned, Romania 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);
- in case of non-payment of the respondent state Romania by the 1436th (Human Rights) Meeting (DH), to put our case Omegatech Enterprises Ltd. v. Romania (no. 24612/07) immediately on the agenda for the 1443rd (Human Rights) Meeting (DH) of 20 - 22 September 2022, with debate.

We kindly request the CM-DH Secretariat for swift distribution of this submission with its call to all delegations.

Again, thank you very, very much.

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