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DH-DD(2023)1076

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Meeting: 1475th meeting (September 2023) (DH)

Communication from the applicant (07/09/2023) in the case of Omegatech Enterprises Ltd. v. Romania (Application No. 24612/07) (judgment S.C. Polyinvest S.R.L. and Others 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 : 1475^e réunion (septembre 2023) (DH)

Communication du requérant (07/09/2023) relative à l'affaire Omegatech Enterprises Ltd. c. Roumanie (requête n° 24612/07) (arrêt S.C. Polyinvest S.R.L. et autres 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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7 September 2023
(in continuation to
DH-DD(2023)886
and the
Reykjavík's summit
DH-DD(2023)687)

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 1475th meeting (September 2023) (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 1475th Meeting (September 2023) (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 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

CM/Del/Dec(2022)1436/A2b on 10 June 2022 (please see point 2)

CM/Del/Dec(2022)1443/H46-22 on 22 September 2022

CM/Del/Dec(2022)1451/H46-29 on 8 December 2022

CM/Del/Dec(2023)1459/H46-17 on 9 March 2023 (with CM/Del/Dec(2022)1459-app2 - please see page 3 and CM/Del/Dec(2023)1468-app1 please see number 30)

Honoured Excellencies, distinguished Ambassadors, Permanent and Deputy Permanent Representatives, respected Committee of Ministers of the Council of Europe, dear legal counsellors and governmental representatives,

We are welcoming the newly arrived and established Excellencies, Deputies and legal experts to your autumnal Human Rights Committee of Ministers Deputies' meeting (DH) supervising the execution of the final judgments of the European Court of Human Rights.

The present document is drafted to assist you in your study, assessment and decision how to proceed („new action“) in the case of the non-execution (non-payment) of the judgment of the European Court of Human Rights in the case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07) (joined to S.C. Polyinvest S.R.L. v. Romania no. 20752/07) (judgment S.C. Polyinvest S.R.L. and Others dated 29 March 2018), by the respondent state in the case subject of this document, Romania, a High Contracting Party to the Convention on Human Rights.

This case is fixed for examination at this forthcoming 1475th Human Rights meeting (DH) {please see your agenda under number 30 and also the latest decision adopted in this case CM/Del/Dec(2023)1459/H46-17}; specifically for you to consider, as determined in the previous decision, are going to be the „individual measures“ (payment) and the „new action“; due to the fact that the refusal by the respondent State, Romania, to pay (individual measures) becomes more and more evident and is long-lasting and ongoing, we ask you to decide to proceed with the adoption of the interim resolution serving formal notice on Romania, such as the word „action“ legally implies.

Far over five years have elapsed since the judgment of the European Court of Human Rights in the case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07) became final and, thus, the respondent state, Romania, a High Contracting Party to the Convention on Human Rights has been ignoring (the 2 and 3 month maximum deadline) of the judgment dated 29 March 2018 and all other subsequent actions, decisions and interim resolutions by the Council of Europe and the European Court of Human Rights and/or refuses to pay the judgment in the case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07) dated 29 March 2018.

We believe that it is high time, and time is of the essence, at these heights to act in strict accordance with Article 46 § 2 in this case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07) and at this forthcoming 1475th Human Rights meeting (DH) to adopt the interim resolution serving formal notice on Romania of your intention, at your next 1483rd Human Rights meeting (DH) on 5 December 2023, to refer to the Court, in accordance with Article 46 § 4 of the Convention, the question whether Romania has failed to fulfil its obligation under Article 46 § 1, and invite it to submit in concise form its view on this question by 29 November 2023 at the latest.

We have also already submitted our Rule 9.1 Communication for the 1475th Human Rights meeting (DH) in July, which may be found here DH-DD(2023)886 and we kindly invite you to read and use it for your study and assessment and your decision-making process.

You will also see that we observe in that document that the Secretariat of the Committee of Ministers **categorised** the Rule 8.2a information made available by the Romanian authorities on 7 July 2023 under the title [quotation open:] „Note d’information concernant les mesures individuelles dans les affaires *Omegatech Enterprises Ltd. v. Romania* (no. 24612/07), *SC Polyinvest SRL v. Romania* (no. 20752/07) et sept autres affaires similaires¹“ [quotation end] given its content **as** DH-DD(2023)836 „Communication from the authorities on **general measures** (07/07/2023) concerning the cases of SACALEANU and S.C. Polyinvest S.R.L. and Others v. Romania (Applications No. 73970/01, 20752/07)“. After the publication of our Rule 9.1 information made available on 25 July 2023 DH-DD(2023)886 publishing that observation though, we then noticed that this was **changed** and now reads „Communication from the authorities on the **individual measures** (07/07/2023) concerning the cases of S.C. Polyinvest S.R.L. and Others v. Romania (Application no. 20752/07) and eight similar applications (Sacaleanu group, 73970/01)“.

Yet, notwithstanding its title, there is no individual measures (payment) to be found in that document DH-DD(2023)836. The content made available by the Romanian authorities under Rule 8.2a on 7 July 2023 does not contain any single information on the individual measures (payment) of the case in subject and/or, with reservation of all rights, is rather misleading.

We herewith expressively deny and reject once more the respondent states’ information in **DH-DD(2023)836** 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 / restitutio in integrum) and/or 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.

We especially want to recall and emphasise and quote your Excellencies’, the Council of Europe’s Committee of Ministers’ Deputies CM/Del/Dec(2020)1369/H46-24 decision of 5 March 2020 in which you are „insisting once again on Romania’s unconditional obligation, under Article 46 of the Convention, to abide by the Court’s judgments fully, effectively and promptly, considered that the authorities’ recent plan to defer the payment of the sums due until a global solution is found for the settlement of all similar debts of State-controlled companies is not consistent with this obligation“.

¹ *Iordan c. Roumanie, Tomiuc c. Roumanie, Zlatin c. Roumanie, Beşleagă c. Roumanie, Podaru et autres c. Roumanie, Bod et autres c. Roumanie, RJ IMPORT ROGER JAEGER A.G. AND RJ IMPORT BUCURESTI S.A. c. Roumanie*

The obligation is to pay and not to issue an enactment - we would like to invite especially the newly arrived Excellencies to read our Rule 9.1 **DH-DD(2018)890** of 17 September 2018.

The document under Rule 8.2a submitted by the Romanian authorities contains further information that is legally irrelevant for the execution (payment) of the judgment in subject about the change of Romanian ministers.

{For the journalistic record we document in continuation to our penultimate submission in DH-DD(2023)687 after the Reykjavík summit „the President of Romania Mr. Klaus Werner Iohannis was accompanied by the Romanian Minister of Foreign Affairs Mr. Bogdan Aurescu and the Permanent Representative of Romania to the Council of Europe Mr. Ion Jinga“ and add that the Presidential Advisor at that time, Mrs. Luminița Odobescu, who is the current Foreign Minister, also formed part of the delegation attending the Fourth Summit 16 and 17 May 2023 in Iceland.

The change of Romanian ministers of 15 of June 2023 produced a.o. the assignment of the former Presidential Advisor Mrs. Luminița Odobescu to the post of Foreign Minister and the appointment of the former Minister of Foreign Affairs Mr. Bogdan Aurescu as the incumbent Presidential Adviser on Foreign Policy.}

In our last submission DH-DD(2023)886 for this same forthcoming 1475th Human Rights meeting (DH), we have called on the Council of Europe to adopt the interim resolution serving notice on Romania, which would be in accordance with the adopted decision of the 1459th Human Rights meeting (DH) that took place just before the Reykjavík summit.

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-DD(2020)1103 and in DH-DD(2021)249; and their DH-DD(2021)1138³ (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,**

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;

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.

DH-DD(2022)261, DH-DD(2022)986 and DH-DD(2023)200 in same points and we also deny and reject the respondent states' information in **DH-DD(2023)836** concerning this specific case in same points and for same reasons as above.

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**; **DH-DD(2022)491**; **DH-DD(2022)954**; **DH-DD(2022)1372**; **DH-DD(2023)213**; **DH-DD(2023)687**; **DH-DD(2023)886** 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** with the latest being **CM/Del/Dec(2023)1459/H46-17** of 9 March 2023; and further to the **Interim Resolution CM/ResDH(2020)182** of 3 September 2020, the **Interim Resolution CM/ResDH(2021)194** of 16 September 2021 and the **Interim Resolution CM/ResDH(2022)58** of 9 March 2022, and by virtue of the **Reykjavík Declaration** of May 2023,

we call on the Committee of Ministers:

- to monitor individually the payment situation in the case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07) under „**individual situation of the Applicant**“ until payment is finally made;
- **by serving formal notice**, to extraordinarily 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) **without delay**;

- in case of non-payment of the respondent state Romania by this current 1475th (Human Rights) Meeting (DH), to put the case of Omegatech Enterprises Ltd. v. Romania (no. 24612/07) on the agenda for the 1483rd (Human Rights) Meeting (DH) from 5-7 December 2023, **with debate** / {in addition to the cases of the Săcăleanu group of cases v. Romania (no. 73970/01) as was already decided in CM/Del/Dec(2023)1459/H46-17 and CM/Del/Dec(2022)1459-app2}.

We kindly ask the Secretariat to swiftly publish and distribute this submission to the delegations of all the member states of the Council of Europe. Further we kindly ask to please quote the DH-DD number of this Rule 9.1 submission and the previous one DH-DD(2023)886 in the Notes on the case on the agenda of this 1475th Human Rights meeting (DH).

Thank you 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