

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: John Darcy
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Date: 17/09/2018

DH-DD(2018)890

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Meeting: 1324th meeting (September 2018) (DH)

Communication from the applicant (14/09/2018) 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)

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 : 1324^e réunion (septembre 2018) (DH)

Communication du requérant (14/09/2018) dans l'affaire Omegatech Entreprises Ltd. c. Roumanie (requête n° 24612/07) (arrêt S.C. Polyinvest S.R.L. c. Roumanie (n° 20752/07)) (groupe Sacaleanu)

[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)
Council of Europe
Avenue de l'Europe
F-67075 Strasbourg - Cedex
by email to: john.darcy@coe.int



from: omegakepic@gmail.com
copy to: ilokepic@gmail.com

Strasbourg, 13 September 2018

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 1324th meeting (September 2018) (DH)**

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 1324th Meeting (September 2018) (DH)**

Status of non-payment / non-execution

w/ ref to **Final judgement 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 no. ECHR-LE.20.2bR on 29 March 2018 IBA/ OLT/dcz**

re Information concerning the individual measures in Application no. 24612/07 Omegatech Enterprises Ltd v. Romania
contained in Communication from the authorities (02/07/2018) concerning the case of S.C. Polyinvest S.R.L. and Others v. Romania (Application No. 20752/07) (Sacaleanu group (73970/01)) **for the 1324th Meeting (September 2018) (DH)**
published on the Council of Europe web ww.coe.int/en/web/execution/submissions-romania under S.C. Polyinvest S.R.L. v. Romania (20752/07)
DD(2016)697 Communication from the Romanian authorities 02.07.2018
DH-DD(2018)697 for 1324th Meeting (September 2018) (DH)

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

on **29 March, 2018** we were delivered from the Filtering Section of the European Court of Human Rights, along with the parties, i.e. the Respondent State (in this case, Romania), the

Secretary General of the Council of Europe, third parties, including the Council of Europe Commissioner for Human Rights, and any other party directly concerned, the final Judgement of the Committee of the European Court of Human Rights (Fourth Section) of 29/03/2018 in our Application number **24612/07 Omegatech Entreprises Ltd. v. Romania** **joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania**.

In accordance with the instructions for payment of just satisfaction contained therein, the payment request of **the sum in the amount of USD 4.665.912,03 as per 29.03.2018** (see enclosed Receivables List) to be received within the time frame legally set along with bank account information were sent to the Department for the Execution of ECHR Judgements (Directorate General I of Human Rights and Rule of Law) by email dgl_execution_just_satisfaction@coe.int, fax +33 3 88 41 27 93 and traditional postage mail on **20 April 2018**.

The case as jointly in a single judgement (20752/07 S.C. Polyinvest S.R.L. vs. Romania) dated 29/03/2018 was published on the website of the Department for the Execution of Judgements of the European Court of Human Rights contained in the chart of information relating to payment awaited, Romania was granted with a maximum 3 months payment period. Thus 29 June, 2018 became the maximum (!) due date for payment, i.e. the voluntary implementation period of the enforceable title and compliance of Romania, in our application: payment.

According to an email received from the Directorate General of Human Rights and Rule of Law Council of Europe - Department for the Execution of judgments of the European Court of Human Rights on **26 April 2018**, the Applicants in addition to receive confirmation that the [quote opening]: „payment request was transmitted to the Romanian authorities..“ [quote end] were asked to note that the case [quote opening]: „is examined by the Committee of Ministers in the framework of the group of cases Sacaleanu v. Romania (No. 73970/01)“ [quote end]. Calling the phone number + 33 3 90 21 55 54 as in the signature of that email -the call being directed to the legal officer Ms. Laura Ielciu-Erel- referring to the payment request as above from 20 April 2018 and the email leading to the concerned phone conversation of **2 May 2018**, suddenly a necessity arose to underline the legal incumbency and obligation of the respondent state, Romania, to abide by the ECHR judgement, especially under Article 46 and Article 41; thus, understanding that the Romanian legal officer'll handle the execution of the judgement in the department, immediately and clearly also it was brought to her attention 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.**

Attention was drawn to focus on receiving the payment first, as Sacaleanu Group lacks such legislation, thus invoking the impossibility of making the payment, it was rest assured that the payment request with bank details and receivables list for the payment of the sums indicated including the amounts of the domestic order **(final and binding domestic**

recognition and enforcement -in USD- as of 01/07/2003 of the final and binding Arbitral Award of the International Court of Arbitration, Paris 23/08/2002- Place of Arbitration: Geneva), the pecuniary damage, „the sum of USD 1.046.449,68 (one million fourty six thousand four hundred forty 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“ plus USD 72.600 (seventy two thousand six hundred), **as per 29.03.2018 to be received in the sum of USD 4.665.912,03**, were transmitted to the Romanian authorities.

Before 2 months from 29/03/2018 passing, especially the upmost above institutions have been informed about the behaviour of the respondent state on the verge of non-complying with the voluntary implementation period of the enforceable, final and binding title of the honoured Court protecting Human Rights and Fundamental Freedoms. Also in responses, the Court's awarding by way of just satisfaction for the above pecuniary damage **reiterated on 26 May 2018** and information further shared.

In accordance also with its **binding force** on the **respondent state** (that is in the present case, **Romania**), the final Judgement was transmitted to you, the Committee of Ministers, for the **supervision of its execution**, and in the 1318th when the (Human Rights) meeting of the Ministers' Deputies, taken place on **5-7 June 2018** (DH), the Judgement in our case 24612/07 (joined to 20752/07+ S.C. Polyinvest S.R.L. and Others vs. Romania), being a **final and binding judgement** (29 March 2018), was classified by yourselves and decided to have the execution of the judgement examined under the **enhanced procedure** (list of cases CM/Del/Dec(2018)1318/B1-add2).

Nearly reaching the maximum deadline for execution expiring was alarmed on **20 June 2018** with the subject (also as explained above) the superior foresight with respect to the maximum deadline execution of the final judgement in our case no. 24612/2007 expiring on the forthcoming Friday, June 29th, 2018.) And the Private Office of the Secretary General and the Deputy Secretary General arranged for a meeting to take place in the Department for the Execution of Judgments of the European Court of Human Rights. During our stay in Strasbourg from **24 June 2018** until **4 July 2018**, two meetings with the Deputy to the Head of the Department for the Execution of Judgements of the ECHR, 26 June 2018 and on 29 June 2018 awaiting payment within the maximum deadline.

Albeit all of the above endeavours undertaken together, it is visible that Romania managed to postpone the execution by its non-voluntary attitude towards enforcement and thus its execution even through the Department for Execution of Judgements of the European Court of Human Rights.

On **9 July 2018** we received by email from the Directorate General of Human Rights and Rule of Law Council of Europe - Department for the Execution of judgments of the European Court of Human Rights to „be advised that on **2 July 2018**, the Romanian authorities submitted to the Committee of Ministers a communication concerning the individual measures in Application No. 24612/07 (*Omegatech Enterprises Ltd. v.*

Romania)". This may be found on the internet site of the Council of Europe published under S.C. Polyinvest S.R.L. v. Romania (20752/07)

DD(2016)697 as copied in below:

S.C. Polyinvest S.R.L. v. Romania (20752/07)

► **DD(2016)697**- Communication from the Romanian authorities - 02.07.2018

Same as **DH-DD(2018)697** - Communication from the Romanian authorities - 02.07.2018
(for the 1324th meeting (September 2018) (DH))

but not published on the site under the Information from Contracting Parties/governments for 1324th (Human Rights) meeting of the Ministers' Deputies (18-20 September 2018), as per Rule 8.2.a).

Romania has not paid the sum awarded by way of just satisfaction, neither within the legal deadline and/or time-limit set by the European Court of Human Right nor from the expiry of the legal deadline nor maximum deadline, being three months, that expired on 29 June 2018 as held by the same Court. **And this is the fact that must be brought to the attention of Committee of Ministers in this 1324th meeting Human Rights Meeting of the Ministers' Deputies:** the current very status of the non-execution of the ECHR's judgement 24612/07 Omegatech Enterprises Ltd. v. Romania. The obligation to pay under ECHR's judgement is incument on the state.

Until today we have not received payment nor a statement from Romania in accordance with the final and binding Judgement of the European Court of Human Rights and the subsequent payment requests dated 20 April 2018 that was transmitted to the Romanian authorities by the Directorate General of Human Rights and Rule of Law Council of Europe - Department for the Execution of judgments of the European Court of Human Rights, neither towards the reminders sent via the a.i. Head of the Department of for the Execution of Judgements of the European Court of Human Rights Mr. Fredrik Sundberg on **23 August 2018**.

The information note concerning the individual measures in Omegatech Enterprises Ltd. v. Romania dated 29/06/2018 and received by the Department for the Execution of Judgements of the ECHR stamped **02 July 2018 and published on 06 July 2018 by the Secretariat of the Committee of Ministers DH-DD(2018)697 for the 1324th meeting (September 2018) (DH)** is legally not relevant and even contains misleading and wrong information. We reject it.

Anyhow but without prejucice and with reservation of our rights, the initial commentary from the Romanian lawyer dated **11 July 2018** may be found for insight in enclosure 1** and a drafted statement by the same lawyer in the attachment to the email dated **14 July 2018** under enclosure 2. *** out of respect for language and maybe sensible to the readers, a word has been blackened in the email communications*

On the same **14 July 2018** we have contacted Mr. Fredrik Sundberg, a.i. Head of the Department of for the Execution of Judgements of the European Court of Human Rights, for a new meeting as already agreed during our first stay in June/July 2018. The meeting indeed was granted by Mr. Fredrik Sundberg but preferably sometime after his return on **6 August 2018**. Not having agreed exactly on a fixed date after 6 August 2018, however, did not allow enough time as Mr. Fredrik Sundberg as of **10 August 2018** and the week after, was absent again. So, towards our comments sent by email on **16 August 2018** there was a telephone conference call taking place (participants: Mr. Fredrik Sundberg and Ms. Laura Ielciu-Erel and Mr. Marijan Kepic and Ms. Ilona Kepic) on **21 August 2018**. Once more it was repeated that considering the effects of the European Court of Human Rights Judgement in given in our particular Application no. 24612/07 Omegatech Enterprises Ltd. v. Romania by way of just satisfaction under Article 41 of the Convention visible in the Judgement joined application no. 20752/07 S.C. Polyinvest S.R.L. v. Romania, the obligations incumbent on Romania -even under its own Government Ordinance 94/1999- the European Court of Human Rights Judgement 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 being a **final, binding and enforceable title**, the written order for the payment is to be issued finally.

In this conversation and having the Romanian legal officer Ms. Laura Ielciu-Erel present in the phone conference call of 21 August 2018 this time having Mr. Fredrik Sundberg present, also once more, the fact of having the enforcement procedures within Sacaleanu Group of cases, was questioned, especially as Romania did not pay to date. As it is visible from the Romanian lawyer's note, this Group only invokes the impossibility of making the payment due to lack of legislation. As stated already in the first conversation with Ms. Laura Ielciu from 02 May 2018 and warned about this issue also, their local Ordinance 94/99 was repeated: namely, this implies that payment of the Judgement of the European Court of Human Rights is processed in the Romanian Foreign Ministry by also domestically publishing this ECHR Judgement, approve its payment and instruct the Ministry of Finance to pay.

In continuation to this phone conversation, on **23 August 2018** (marking exactly 16 years of the final and binding Arbitral Award Sentence of the International Court of Arbitration, Paris 23/08/2002 - Place of Arbitration: Geneva - locally in the repsondent state: final, binding and enforceable as of 01/07/2003), our request for sending an urgent reminder for payment to the Romanian authorites was sent by email to Mr. Fredrik Sundberg, a.i. Head of the Department for the Execution of Judgements of the European Court of Human Rights.

On **27 August 2018** Mr. Fredrik Sundberg promised to send their reply, stating that it would be transmitted probably on 28 August 2018 or 29 August 2018 and since Mr. Fredrik Sundberg explains by iMessage on 4 September 2018 that a letter was sent on Friday, 31 August 2018, there was no email received by the Department for the Execution of Judgements of the European Court of Human Rights on Friday, 31 August 2018 but one by the Director Office of the Commissioner for Human Rights dated **31 August 2018**.

Also on Friday, **7 August 2018** we called the a.i. Head of the Department for the Execution of Judgements of the European Court of Human Rights, when Mr. de Salas let us know that Mr. Fredrik Sundberg was away, in Stockholm. Thus, on Monday, **9 August 2018** we have let him know by iMessage that we are in Strasbourg. We have found that our case was on the agenda for the **1324th meeting (September 2018) (DH)** still not being on there „for debate“. We have immediately send a new iMessage to Mr. Sundberg kindly demanding to put the time for debate on the case on the agenda urgently.

Upon reminding him by email **12 September 2018** that we are still not in receipt of his letter dated 31 August 2018, Mr. Fredrik Sundberg has sent that letter immediately yesterday. In this letter, Mr. Fredrik Sundberg, the a.i. Head of the Department for the Execution of Judgements of the European Court of Human Rights already treats our Application no. 24612/07, judgement of S.C. Polyinvest S.R.L. v. Romania, 29 March 2018 as an „individual situation“.

We do ask you kindly to put all legal and political pressure available to you on this member of the Council of Europe. Again, Romania ignores an international judgement. And once more, Romania proofed its capacity not to adhere to the international legal framework, values and respect towards the Court and European expected standards, morals and ways of straightforward and transparent behavior, which needs to be brought to debate.

Conclusion:

In the light of the above, we call on the Committee of Ministers to

- recall the unconditional obligation of Romania under Article 46 of the European Convention of Human Rights that Romania is bound by and so is to abide by the final and binding Judgement of the European Court of Human Rights in 24612/07 Omegatech Enterprises Ltd. v. Romania (joined to 20752/07 S.C. Polyinvest S.R.L. and others v. Romania) of 29 March 2018 and pay the final and binding Arbitral Award of the International Court of Arbitration, Paris 23/08/2002- Place of Arbitration: Geneva (also final and binding domestic recognition and enforcement -in USD- as of 01/07/2003)
- That the case which is currently examined under the Group of cases „Sacaleanu“ is monitored individually as Omegatech Enterprises v. Romania (joined to application no. 20752/07 - S.C. Polyinvest S.R.L. v. Romania) under "individual situation of the Applicant" until final payment of the respondent state
- In case of non-payment of the respondent state Romania, that the case Omegatech Enterprises Ltd. is put on the agenda for the next 1331st CM-DH Meeting on December 2018, **with debate.**

We also request the CM-DH Secretariat for swift distribution to all delegations.

In anticipation of your highly appreciated understanding, we thank you very much in advance.

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

Asunto: RE: document

De: Mihai Marian (mihai.marian@cmalegals.eu)

Para: ilokepic@yahoo.com;

Fecha: Miércoles, 11 de julio, 2018 17:59:46

It is [REDACTED], excuse me. The ECHR's judgement obliges Romania (and not Sidermet) to ensure the execution of the arbitral award. It is the responsibility of the State of Romania and not of Sidermet. The obligation under the arbitration award is to pay an amount of money and not to issue an enactment. And in any case the amount mentioned in this letter is not correct.

Mihai Marian

Partner

Costea, Marian and Associates



17C Sevastopol St, 3rd floor, flat 24, District 1, Bucharest

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Fax: +40 314 344 290

Skype for Business: mihai.marian@cmalegals.eu

De la: ilona kepic <ilokepic@yahoo.com>

Trimis: miercuri, 11 iulie 2018 18:43

Către: Mihai Marian <mihai.marian@cmalegals.eu>

Subiect: document

Dear Mihai,

the link to the document is:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808c2918

but I have also attached it as .pdf.

I am available anytime. Look forward to your comments.

Best,
ilo

P.S. There's no English version, something I translate now.

Archivos adjuntos

- image001.png (24,60 KB)

Asunto: RE: Reservation for your direct flies from Bucharest to Frankfurt and retur on Thursday till Friday in the Morning at 11,15, 1 page

De: Mihai Marian (mihai.marian@cmalegals.eu)

Para: omegakepic@gmail.com;

Cc: ilokepic@yahoo.com;

Fecha: Sábado, 14 de julio, 2018 15:03:14

Make the booking. Herein attached you may find the reply letter.

Mihai Marian

Partner

Costea, Marian and Associates



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Email: mihai.marian@cmalegals.eu

Mobile: +40 722 152 512

Phone: +40 314 260 488

Fax: +40 314 344 290

Skype for Business: [mihai.marian@cmalegals.eu](https://www.skype.com/people/mihai.marian@cmalegals.eu)

De la: Marijan Kepic <omegakepic@gmail.com>

Trimis: sâmbătă, 14 iulie 2018 15:44

Către: Mihai Marian <mihai.marian@cmalegals.eu>

Cc: ilo <ilokepic@yahoo.com>

Subject: Reservation for your direct flies from Bucharest to Frankfurt and retur on Thursday till Friday in the Morning at 11,15, 1 page

Dear Mihail,

attached you can see my reservation for your a.m. trip.

Please let me/us know if we can make the booking.

With best regards

Marijan

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Archivos adjuntos

- Omegatech.docx (38,45 KB)
- image001.png (24,60 KB)

TO

Council of Europe
Committee of Ministers
Secretariat of the Committee of Ministers

REF

Communication from Romanian authorities (02/07/2018) concerning case of
S.C. Polyinvest S.R.L. and Others v. Romania (Application no. 20752/02)
(Sacaleanu group (73970/01))

FROM

Omegatech Enterprises Ltd.

Statement against the communication from Romanian authorities

As per the information available on ECHR website¹, the interdepartmental working group created by the Government of Romania started its activities back in 2014. As per the information letter submitted on July 2, 2018 to the Committee of Minister - after the expiration of the 90 days deadline provided in by ECHR's judgement dated March 29, 2018 in the case S.C. Polyinvest S.R.L. and Others v. Romania (Application no. 20752/02) - Romania in essence informs that no legislative and/or administrative measures required to ensure the execution of the domestic judgements by the Romanian State were identified nor adopted within the domestic legal framework, this interdepartmental working group still being under a never-ending analysis. The same information is confirmed by the content of the quoted website link.

Consequently, part of ECHR's judgements rendered against Romania are ignored by Romania since 2014 and the Committee of Ministers allows and agrees this approach from an EU member state. Meanwhile, Romania (including its Government) spends part of the EU's budgets to which the undersigned and its founders contributed and contributes as EU citizens.

This is not either in line with the text of the EU Treaty (which Romania accepted and adhered to it) or to its spirit and such violation should come to an end.

Omegatech Enterprises Ltd. strongly and firmly rejects the content and the information letter submitted by Romania on July 2, 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.

The information is irrelevant since it refers to Sidermet, the company owned by Romania and against to it exists the domestic judgment ignored by Romania for over 16 years, whilst the ECHR's judgment obliges Romania and not Sidermet. Romania has to abide ECHR's judgment and not Sidermet. Nothing and no one impeded Romania (from 2014) to identify and adopt a domestic legislative mechanism allowing the execution of such ECHR's judgements.

The information is misleading, as long as the Sidermet's insolvency procedure is invoked. The insolvency procedure of Sidermet lasts from 1999² and not from 2004 as stated in the information letter at hand. Henceforth, for over and almost 20

¹ Please refer to <http://hudoc.exec.coe.int/eng#?%22fulltext%22:%22sacaleanu%22,%22EXECDocumentTypeCollection%22:%22CEC%22,%22EXECIdentifier%22:%22004-12744%22>

² Please refer to http://portal.just.ro/97/SitePages/Dosar.aspx?id_dosar=9700000000001931&id_inst=97

years, Romania - the major creditor³ of Sidermet and, also the debtor under the ECHR's judgment at hand and, also as the legislator⁴ - controls and directs the insolvency procedure. As a major creditor, all decisions under the insolvency procedure may not be passed without its vote and, as a legislator, it amended and amends the legal framework whenever considers it is necessary for satisfying its debts⁵.

Since this insolvency procedure lasts for so many years with the support of Romania (as explained herein above), it is obvious that this mechanism is used by Romania for argument to disregard ones of the ECHR's judgements, including the one at hand.

The information is also misleading since the amount to which the undersigned is entitled to as per the ECHR's judgment was considerably decreased (due to the various changes in domestic law initiated and adopted by Romania in its double quality - major creditor and legislator). At the date of this statement, the correct amount due to the undersigned as per the domestic judgement is of USD [...].

Since mandatory and enforceable court decisions should be implemented voluntarily and in a timely manner it is a principle considered by ECHR when issues its judgments (including the one at hand), the undersigned asks the Committee of Ministers to also consider this principle when fulfilling its responsibilities and activities and, with respect to the case at hand, to initiate and implement any and all possible measures (under the EU Treaty) against Romania and its Government to fully give effect to a ECHR judgement in a voluntarily and a timely manner.

16/07/2018

³ As per the final creditor's lists herein attached.

⁴ In what concerns the entities or citizens having other nationality or citizenship other than Romanian.

⁵ Following such an amendment of the legal framework was decreased in the creditor's list the value of the amount due to the undersigned as per the arbitral award issued in 2002.