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zapsaná u Městského soudu v Praze, odd. C, vložka 137918, IČ: 283 86 671

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Sir Nicolas BRATZA
President of the European Court of Human Rights
European Court of Human Rights
Council of Europe
67075 Strasbourg Cedex
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Prague, August 10th 2012

Ref: Complaint no. 38817/04 - Vomočil vs the Czech Republic and

**Complaint no. 22548/05 – Axasmit and others vs the Czech Republic and other,
as indicated on the enclosed list, in total 4 943 complainants**

Dear Mr. President

I am writing to you, after much hesitation and strong personal embarrassment, about the matter connected with the complaints above.

These are the complaints about unlawful regulation of residential rent in the Czech Republic filed by owners of apartment houses. The quantity of reference numbers of these complaints is much bigger than the number of the complainants I act for (almost 5 000) and also the number of owners of apartment houses in the Czech Republic (approximately 50 000). In addition to the complaints indicated herein, several hundreds of other complaints have been submitted to the European Court for the same reason as those filed by my clients, however, I am not in personal contact with them, hence, I cannot indicate them in particular.

Obviously, this matter involves extremely large group of people, whose right guaranteed in Art 1 of the Supplementary Protocol no. 1, in our view, has been violated. The evidence about whether the right of the complainants was or was not violated has been

provided by the Constitutional Court of the Czech Republic, declared in minimum fifty-five of its findings, suggesting that the manner in which not only amount of rent but also procedure of concluding agreements of lease have been largely regulated are not consistent with the Constitution of the Czech Republic as well as the Convention on Human Rights and Fundamental Freedoms.

In spite of the number of findings of the Constitutional Court, the Czech Republic attempts to remedy this situation very reluctantly and more significant changes in legislation – which did not redress persisting and illegal condition at all - were made under the threat of above-mentioned complaints filed with the European Court for Human Rights.

Presently, the state of dealing with these complaints in the European Court for Human Rights (ECHR), chaired by you, cannot be referred to otherwise than absolutely unsatisfactory, with two cases - complainant filed by my client, Jan Vomočil (complaint no. 38817/04) as well as complaint filed by ART 38, joint-stock company (complaint no. 1458/07), represented by lawyer JUDr. Julie Šindelářová were selected as “pilot projects.”

Summarizing present situation, the following can be said:

Mr Vomočil filed his complaint in 2004, however, its hearing started only after filing aggregate complaints of other clients of mine in May 2005. In October 2006, ECHR decided to postpone all subsequently filed complaints until the decision about two pilot projects as indicated above has been made. I continued my communication regarding the “pilot complaint“.

On December 31st 2007, the Government of the Czech Republic sent its statement to ECHR, with joint comments by the lawyers engaged in both “pilot cases” sent on 30 April 2008.

On June 29th 2009, the Court asked the complainants to answer to additional questions of the Court, which answers were provided by “pilot” complainants on 29 Sept. 2009.

One year after, on 15 June 2010, the Court asked the complainants to respond further questions.

On September 29th 2010, the lawyers acting for both “pilot” complainants sent requested answers.

Since that time, i.e. two years, the Court is silent, more exactly, the Court is silent about both case indicated as “pilot“ by the Court as well as about more than 5000 other cases, many of which submitted to the Court as early as in 2005 or earlier.

All complainants were waiting for reaction of the Court to cope with the complaints during past two years, since it was obvious that the question of residential rent regulation is extremely sensitive for the Czech Government, not only in legal terms but, primarily, in terms of violation of legal principles affecting tens of thousands of persons. Therefore, sizeable discomfiture was aroused, by granting Juris Doctor h.c. title to Jean-Paul Costa, judge and president of the Court (your predecessor) at the Masaryk University in Brno, on occasion of his visit to the Czech Republic in 2009. Even higher discomfiture was aroused by the fact

President Costa met many representatives of the Czech Government, including Jan Fischer, Prime Minister of that time.

Many clients of mine considered the visit of Mr. Costa blatant prioritization of a member state of the European Council, i.e. the Czech Republic, by the European Court to the complainants.

Moreover, my clients noted that this visit was paid on invitation of the President of the Constitutional Court, JUDr. Pavel Rychetský, formerly engaged in politics, who during his office of the Minister of Justice declared, literally and in the public, that the complainants, i.e. owners of apartment houses with regulated residential rents are „stupid if they refer to Strasbourg in hope to get a win.“

I repeatedly criticized this opinion of my clients on the impossibility to enforce the law in courts of justice of the Czech Republic as well as corruption and lacking competence of Czech political representatives, arising, above all, from personal experience of my clients and wide public. I declared these wrong standards - widely established in the Czech political practice – cannot be applied to the performance of the European Court for Human Rights.

To my personal disappointment and hurt, I have to doubt about to this original belief of mine, in the light of the circumstances, and I have no option but to agree with those who - in compliance with the traditions of European Christian culture - refer to the Gospel of Mathew, chapter 7,16-20, according to which “Ye shall know them by their fruits. Men do not gather grapes of thorns, or figs of thistles“. Equally, justice cannot be gathered from the tree of the European Court for Human Rights, since no justice can be expected from this entity.

We cannot forget, dear Mr. President, that the Court has been founded to provide shelter for the weak and oppressed, to protect them against the dictatorship exercised by their own states. Now, where the European Court for Human Rights denies justice for Mr. Vomočil, my client, as well as 5 000 other clients, I cannot but say that the Court has betrayed its mission and instead of being a place of virtue, the Court, too, has accepted wrong political practices, pursuing actions agreed in prior with the member states of the European Council - against which it should protect their citizens.

I am aware of bringing extremely strong accusation of the Court, however, my clients and me, we do not find any other explanation for the actions of the Court on the one side and its lacking actions on the other side.

As already stated, the Court is silent about the case of my client and other people whose rights should be decided about, based on the result of my client’s case. At the same time, the Court prefers other cases from the Czech Republic - of other merits but even of the same merits.

We know that ECHR was dealing with other complaints and issued many decisions in the preceding two years, despite many of these complaints were filed years later than that of Mr. Vomočil and other complainants.

In particular, we cannot skip over the fact the Court dealt with complaints that were filed much later than that of my client, moreover, not assigned the “pilot case“ status, namely:

R&L, s.r.o. – no. 37926/05

Josef Čapský – no. 25784/09
Miroslava Jeschkeová – no. 36002/09
František Šumbera – no. 36687/09
František Šumbera – no. 44410/09
Michal Heldenburg and Olga Heldenburg no. 65546/09

All of these complaints were filed significantly later than that of M. Vomočil and - except of one – all of them were filed at the time, where the Court discontinued communication with my client.

An approach like this is deemed processual obstruction of the Court by all my clients, aimed at diversion of qualified defense of my client. This argumentation is supported by the Apartment Owner Association (OSMD) as one of the complainants.

Essentially, all questions put forward by the Government of the Czech Republic to new complainants have been answered in their entirety at prior dealing with Mr Vomočil's complaint - and thus all claims of the Government have been refuted. And now, the individuals, bearing excessive burden of decision on the matter affecting fifty thousand persons, should protect themselves again, in the same legal suit and in the same legal situation .

In our – unfortunately– useless efforts to look for reasons of this Court's proceeding, we also considered the influence of exclusion of the ECHR judge for the Czech Republic, JUDr. Jungwirth, from the case of Mr. Vomočil, as well as the new cases. We are afraid this influence cannot be excluded.

Since the position of the complainants – not only Mr. Vomočil and those who filed a complaint prepared by the OSMD but also new complainants, as specified above – has been consequently deteriorated by the Court, we have to consider the fact that judge JUDr. Kühn, was appointed to this office, ad hoc, by one of the parties of the dispute (i.e. the Czech Republic), hence, he has not the status of a judge who is independent on his country.

Even this concept, however, cannot explain and justify the actions of the Court in relation to Jan Vomočil, complainant, and thousands of other complainants who went to the Court with the same problem. Preference of new complaints is to the detriment of my clients. This can be documented by the opinion of the Government of the Czech Republic on new complaints. In its dealing with the new complaints, the Czech Government, in fact, also gives its view of all preceding complaints, primarily those filed by my clients and, first of all, the complaint filed by Mr. Vomočil, although this position is absurd. Unfortunately, Czech Government failed to inform other complainant about these comments and I was informed about this absolutely unethical proceeding of the Czech Government by chance, as a result of collegial relations with the lawyers acting for new complainants.

Hence, the cases of the complainants I act for, including Mr. Vomočil's pilot case, in fact, are decided about in an OTHER case, in which they have not even the status of associate participants.

In order to unveil disgusting approach adopted by the Czech Government - for which support, regrettably, the Court cannot be blamed - I refer to sections 104, 105 and 106 in the Statement of the Czech Government about new complaints, dated 29 June 2012. In this

statement, the Government makes direct reference to its conclusion on the complaints filed by the persons I represent.

The purpose of its blatant proceeding was unveiled by the Government in art. 107, stating:

"As already explained, the Government is strongly convinced that even if it could be accepted that a system-based lack of the Czech law or legal practice in this respect existed during certain period of time – as claimed by the complainants - this lack has already been remedied."

The Government has disregarded two essential facts:

First: Even if this lack would have been already remedied (which is not the case, in our opinion), this had been caused by legal pressure, i.e. the number of complaints about residential lease regulation filed with the European Court. These complaints have been fully neglected by the Court.

Second: With the alleged remedy that was made recently - as untruthfully claimed by the Government, - all prior damages, illegal acts and violation of the Convention should be redeemed. In fact, certain corrections, i.e. concession of the Government in residential rent regulation were only made after adoption of the Act no 107/2006 (Residential Rent Regulation Act), with effect from 1 Jan. 2007.

Consequently, failure to deal with the complaint filed by my client Mr. Jan Vomočil, as well as other complainants is of utmost interest of the Government, thus significantly strengthening its position.

The Government is aware of this fact and this can be documented by the Conclusion, stating in its art. 108 as follows:

*„ Considering the facts above, the Government of the Czech Republic proposes ... that the Court deletes all complaints in the list of the cases at issue. **The same approach should be adopted by the Court in cases of submitted complaints on the same issue**“.*

Dealing with the last complaint, obviously, the Government also provides its position on other complaints filed by the persons I act for as well as other complaints which number is not known to me, nevertheless, I know they are several hundreds of them.

Should an approach as described above, i.e. preferring one of the parties, be adopted by national courts of any member state of the European Council, undoubtedly, the Court would consider it violation of the provisions in art. 6 subsection 1 (right to have a fair process), based on own adjudication and, most likely, it would agree to the position of the affected party, considering purpose of action pursued by the High Contracting Party. In this case, however, the European Court derives benefit of the fact the European Council is not the High Contracting Party, hence, it can violate legal principles - which the Court requires from the parties.

In – not only mine – opinion, this embarrassing situation of the European Court for Human Rights must be considered in the general framework of political and legal context of the unification of Europe. Against the background of massive enlargement of the European

Union, with following fundamental extension of the competences of the Court of Justice of the European Union – also in the sector of human rights - I fully understand this approach of the Court. By dealing with the complaints filed by my clients, the European Court for Human Rights would get involved in significant conflict with one of the member states and legal confirmation of the position of complainants by the Court might result in stronger position of complainants, and thus weaker position of the state, also in other countries, at least in Slovakia, since the Slovak Republic, considering long existence of the common state, stems from the same legislation framework as that challenged by the complaints coming from the Czech Republic. The similar situation – in many aspects – can also be found in other countries, particularly, Austria and Slovenia. It can be expected that this decision by the Court would affect willingness of the member states of the European Council to follow decisions adopted by the European Court for Human Rights...

Dear Mr. President,

I have already said that I am deeply disappointed by the course of dealing with the complaints filed by my clients as well as the proceedings of the Court. Considering the arguments I put forward, you will probably understand my feeling that Europe, its legal principles and base as well as its cultural existence have been directly jeopardized by the actions of the Court. Therefore, my sorrow has no end.

Mr. President, current situation has not arisen in one day. Already in the past, I referred to the Court with comments on unclear and doubtful practices that might seem marginal, yet, they were signals of the current state. For instance, I sent a letter of comments to Mrs. Claudia Westerdiek on 14 November 2007 and on 31 December 2007 to Jean Paul Costa, President of the Court however, not any of the letters was (at least formally) answered.

Therefore, I do not look forward to, at least, acknowledgement of reception of this letter, the less so any remedy. However, this letter of mine is not only an attempt to seek remedy in this particular case or rather complaints related to the same merits. For me, writing this letter was an opportunity for reflections about the substance of the Court and its current state.

In my view, nothing remains but to observe gradual reduction of the reason of existence of this institution, founded by initiative of your outstanding compatriot, Winston Churchill. The Twilight of the Gods has come over Strasbourg and we, who considered it a place of justice, hide our faces for sorrow.

God be merciful to our souls.

Respectfully yours

JUDr. Klára Alžběta Samková, Ph.D.
Attorney at Law

