

# Advokátní kancelář Klára Samková s. r. o.

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

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## Mr. Nikiforos Diamandouros

### Méiateur européen

1 avenue du Président Robert Schuman  
CS 30403  
F-67001 Strasbourg Cedex  
France

In Prague, on January 3<sup>rd</sup> 2013

## Re:

**Complaint regarding the impossibility to receive justice per curiam  
Complaint regarding the long-term and purposeful inactivity of the European Court of  
Human Rights**

Dear Sir,

I am writing to you in despair since it is impossible to obtain the protection of one's rights, including judicial rights, through standard channels.

My complaint is about the inactivity of the European Court of Human Rights in Strasbourg. I understand that this institution is not part of the European Union, however it is the sole instrument through which a citizen of the European Union can demand the protection of his rights against an EU member state since the rules of procedure of the Court of Justice of the European Union do not allow individual complainants to file a complaint. Therefore, I believe that the European Union should be very much interested in the activity of the European Court of Human Rights since it is the only way that an EU citizen actually has to protect his human rights.

I am writing to you on behalf of my client, Mr. Jan Vomočil, whose complaint has been dealt with by the European Court of Human Rights, under ref. No. 38817/04, since the year of 2004. Mr. Vomočil's complaint concerns the violation of Article no.1 of Supplementary Protocol no. 1 to the Convention – the violation of the right to possess property.

Mr. Vomočil owns an apartment building in which there has been state-controlled rent for 20 years now. The Constitutional Court of the Czech Republic declared in at least 55 of its findings that the state-controlled rent that existed and still partially exists in the Czech Republic was unconstitutional and in conflict with the Convention for the Protection of Human Rights and Fundamental Freedoms as well. However, even these findings did not force the Government of the Czech Republic to make legislative changes and so the legal regulation and partially also economic regulation of rent continues.

As mentioned above, the European Court received the complaint of Mr. Jan Vomočil on 20 October 2004. Under the pressure of this complaint and another approximately 6,000 individual complainants, of which I represent approximately 5,000 complainants at the European Court, the Czech Republic finally started to change legislation very slowly and imperfectly. However, the dealing of the European Court of Human Rights with this complaint was always very dilatory, and the current situation actually opens room for speculations about extraordinary agreements between the European Court of Human Rights and the Czech Republic at the detriment of the complainant Mr. Vomočil and other several thousands of complainants. It is obvious that the Czech Republic wants to delay and avoid this matter since due to its legislative dilatoriness; apartment building owners suffered damage of tens of billions of Czech Crowns, i.e. billions of EUR.

Eight years after it was filed, the complaint of Mr. Jan Vomočil still has not been admitted for a hearing; no decision has been even made regarding its admissibility. The communication between the complainant and the Court was as follows:

- 20 Oct 2004** Mr. Jan Vomočil filed the complaint.
- 16 May 2005** Another approximately 1,800 complainants – apartment building owners (complaint no. 22548/05 filed as Axamit a spol. vs. the CR) – filed complaints; by the end of 2006, another 3,200 complainants joined the complaint. In addition, there are another approximately 1,000 individual complainants.
- October 2006** The European Court of Human Rights decided not to deal with all of the complaints and selected four of them as pilot complaints, which means that based on the decision regarding these complaints, the complaints of the other complainants would be decided. One of the pilot complaints is also Mr. Jan Vomočil's complaint; the decision on his complaint will affect another approximately 6,000 cases.
- 31 Dec 2007** The Czech government sent its statement to the Court.
- Jan 2008** The number of pilot complaints dropped to two complaints because one of the complainants died and the estate proceedings are still in process and another two joint complainants withdrew the case at their age of 80 due to high psychological stress and attacks by the media.
- 30 Apr 2008** The remaining pilot complainants sent their joint statement regarding the Government's statement that concealed some crucial facts.
- 29 June 2009** The Court asked the complainants to answer additional questions of the Court that the pilot complainants answered. The Court originally gave the complainants only 14 days to answer the questions regarding the case lasting four years and to send them back to the Court. The timeframe was then extended to six weeks. The answer included another 19 rulings of the Constitutional Court of the CR regarding state-controlled rent and comments on the selection of pilot cases and provided some very typical cases.

- 30 June 2009** The Government of the CR sent the Court its answer to the additional questions that were identical with those sent to the complainants. All the more incredible is the total difference in answers.
- June 2009** The Court sent the statement of the Government to the complainants and vice versa and asked each party to comment on the statement of the other party.
- 29 Sept 2009** The complainants sent the Court their comments on the statement of the Government, describing in detail the situation in the Czech Republic.
- 15 July 2010** The Court asked to answer further questions, again in a very short timeframe of about 14 days, and the complainants had to beg the Court for an extension.
- 29 Sept 2010** The complainant answered the further questions of the Court.
- 10 Aug 2012** The attorney of Mr. Jan Vomočil sent a letter to the president of the European Court.
- 5 Sept 2012** In response to her six-page letter addressed to the president, the attorney received a three-line answer of the section registrar, about whose work the attorney complained.
- (all these documents are available in English at <http://www.osmd.cz/stiznost-u-eslp-1404036311.html>)**

The overview above shows that since 1 October 2010, i.e. for more than two years, the European Court of Human Rights has remained totally inactive. Yet, the decision-making activity of the European Court of Human Rights clearly shows that the Court regularly deals with complaints filed against the Czech Republic and decides complaints that were filed much later than that of the complainant, which is obvious from the following table<sup>1</sup>:

	Complaint no.	Filed on	Decided by the European Court of Human Rights on
1	7398/07	5 February 2007	4 September 2012
2	20493/07	15 May 2007	26 April 2012
3	8968/08	13 February 2008	5 April 2012
4	23944/04	<b>22 June 2004</b>	16 February 2012
5	48203/09	2 September 2009	16 February 2012
6	42856/06	18 October 2006	9 February 2012
7	20240/08	18 April 2008	2 February 2012
8	12266/07	16 March 2007	12 January 2012
9	74152/01	<b>14 September 2001</b>	19 January 2012

Out of these nine complaints decided in 2012, one complaint was filed in the same year as the complaint of Mr. Jan Vomočil and one complaint was filed three years before that of Mr. Jan Vomočil. The other seven complaints were filed significantly later and yet were decided on preferentially.

The decisions of the European Court of Human Rights were made in the same way in 2011 as well, i.e. in the year when the Court remained silent regarding the case of Mr. Jan Vomočil. In 2011, the following complaints against the Czech Republic were decided on:

<sup>1</sup> Information source: the Internet portal of the Ministry of Justice of the CR, see: <http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=390>

	Complaint no.	Filed on	Decided by the European Court of Human Rights on
1	40094/08	15 August 2008	20 November 2011
2	36561/05	5 October 2005	10 November 2011
3	8857/08	12 February 2008	27 October 2011
4	12579/06	14 March 2006	13 October 2011
5	16299/10	15 March 2010	13 October 2011
6	26908/09	12 May 2009	13 October 2011
7	22915/07	17 May 2007	13 October 2011
8	10583/09	2009	13 October 2011
9	8992/07	15 February 2007	13 October 2011
10	44438/06	24 October 2006	21 July 2011
11	20493/07	15 May 2007	23 June 2011
12	37400/06	11 September 2006	9 June 2011
13	7051/06	11 February 2006	26 May 2011
14	39822/07	31 August 2006	26 May 2011
15	38238/04	<b>22 January 2004</b>	10 March 2011
16	33908/04	<b>17 September 2004</b>	24 February 2011
17	6268/08	28 January 2008	17 February 2011
18	46677/06	14 November 2006	10 February 2011
19	21835/06	9 May 2006	10 February 2011
20	17273/03	23 May 2003	10 February 2011
21	39278/04	<b>27 October 2004</b>	10 February 2011
22	500/06	17 December 2005	3 February 2011

Out of these 22 complaints, two complaints waited for a decision of the European Court of Human Rights as long as that of Mr. Jan Vomočil and one complaint waited for a decision of the European Court of Human Rights half a year longer than that of Mr. Jan Vomočil.

After that, the complainant and his attorney learned that the European Court of Human Rights had started intensively dealing with the following complaints:

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 cases concerned the exact same subject-matter – state-controlled rent. All of these complaints were filed significantly later than that of Mr. Vomočil and – except for one – all of them were filed at the time when the Court discontinued communication with my client.

The Court decided to deal with the complaints that were not given the pilot case status and that were not supported with the extensive evidence of the Apartment Owner Association (OSMD, of which my other clients, including Mr. Jan Vomočil, are members.

Mr. Vomočil as well as my other 4,943 clients, who filed the same complaint at the European Court of Human Rights, deem this action of the Court as an attempt to divert qualified defense and make the position of newly argued and communicated complaints more difficult. The European Court of Human Rights apparently did not know that the attorneys who handle unconstitutional rent control know each other and provide each other with information, arguments and evidence and that they will inform each other about the action of the Court, which all these attorneys find unfair.

In this situation, I wrote Mr. Nicolas Bratza, the president of the European Court of Human Rights, a letter, a copy of which is attached. In the letter, I informed him about the doubts of my clients as well as about the action of the Court. I politely asked him if he could refute this suspicion of my clients by e.g. setting a certain timeframe, within which we could expect a decision regarding the complaint.

In reply, I received a three-line letter from the section registrar who is to decide about the complaint and about whose work I complain.

In this situation, all I can say is that the European Court has lost its position of a legal shelter and a defender of justice of EU citizens, including the citizens of the Czech Republic, who have no place to go for a just decision. Therefore, in the opinion of the complainant Jan Vomočil and other complainants who depend on this pilot case, the European Court of Human Rights has lost the reason for its existence.

For this reason, I would like to ask you, dear Mr. Ombudsman, to initiate relevant legislative measures that would allow individual complainants – citizens of EU states – to file their complaints to the Court of Justice of the European Union just as they used to file them to the European Court of Human Rights.

Respectfully yours,

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

Attachments:

- 1) Letter to the president of the European Court of Human Rights from 10 August 2012
- 2) Answer of the registrar of the Fifth Section of the European Court of Human Rights from 12 September 2012

Copy to:

- 1) Sir Nicolas BRATZA , President of the European Court of Human Rights  
European Court of Human Rights - Council of Europe  
67075 Strasbourg Cedex - France
- 2) Mr. Vassilios Skouris  
President of the Court of Justice of the European Union  
Palais de la Cour de Justice - Boulevard Konrad Adenauer  
Kirchberg, L-2925 Luxembourg  
Luxembourg

