

File no. 5936/2019/VOP/BK
Ref. no. KVOP-20466/2020
Date 25. May 2020

Dear Mister
Tomáš Zach, LL.M.
Raisova 57
280 02 Kolín

Dear Mr. Magistrate,

I would like to inform you of my findings and conclusions from the investigation into the conduct of the Vice-President of the Regional Court in Prague in handling your complaint regarding the actions of the insolvency court and the insolvency administrator dated 20 September 2019.

I have concluded that the Vice-President made an error in handling your complaint. However, even if it had been handled correctly, it would not have resulted in what you were likely seeking at the time—namely, an apology from the court for a proven error in the insolvency proceedings (an invalid auction) and the subsequent complications.

I do not consider the handling of your complaint at that time to have been proper, because:

- It does not explain why your complaint about the inactivity of the insolvency court in supervising the insolvency administrator is not considered a complaint about delays.
- If the handler acknowledged that you raised objections about the overall length of the proceedings, the complaint should have been processed as a complaint about delays, including compliance with the 30-day deadline.
- The mere statement "no deficiencies were found" is not a convincing notification of the result of the inspection.
- An inadmissible submission cannot be processed as "unfounded," nor can a submission on the basis of which an inspection was carried out be labeled as such, regardless of the outcome.

You will find further details in the attached inspection report.

In later correspondence from December 2019, you wrote to me that you mainly question the court's inactivity in supervising the insolvency administrator. However, in the complaint to the president of the court, which spans nearly four pages, you did not explicitly make such a claim. That said, you did repeatedly point to the absence of oversight of the insolvency administrator, whom you criticized for his conduct (inactivity) regarding the return of the auction price. Supervision by the insolvency court is a judicial activity. However, if the court was inactive (i.e., did not respond to your notifications about the administrator's conduct or inactivity), you could have submitted a complaint about delays to the president of the court. In your September 2019 complaint, you did not refer to any specific unanswered submissions addressed to the insolvency court. You had already received most of the auction price back, and you had applied to the Ministry of Justice (hereinafter referred to as "the Ministry") for compensation for damages. In addition, you mentioned that the Ministry of Justice was already reviewing the conduct of the insolvency administrator. (It is indeed the Ministry—and not the court president as a body of judicial administration—that supervises the work of insolvency administrators.) Therefore, I believe that with your September 2019 complaint, you were not seeking to address (at that time) current inactivity on the part of the insolvency administrator, nor that of the insolvency court.

On 17 March 2020, you informed me that the insolvency administrator, despite a court order dated 20 February 2020, failed to submit an interim report on the status of the insolvency proceedings within the set 5-day deadline. Nevertheless, the court did not follow up on the submission of the report and took no action, which is why it remains inactive.

I am aware that I too am responding to your original submission and subsequent filings with a delay. As you know, I can only investigate how the president of the court handles complaints regarding delays in proceedings. I do not know whether you submitted a complaint about the most recent inactivity of the court. In the meantime, the insolvency administrator has submitted the report. In it, he also explains the non-return of part of the auctioned price, in the same way as in his report from 12 June 2019.

On 12 February 2020, you wrote to me that you had not received the results of the Ministry of Justice's oversight of the conduct of the insolvency administrator. At that time, JUDr. Miroslav Frýdek, Ph.D. et Ph.D., who was tasked with preparing documentation for the handling of your case, informed you by phone of the status of the case at the ministry (without substantive conclusions). I do not have any more recent updates. Even in this matter, as the Public Defender of Rights, it is not within my authority to directly assess the conduct of the insolvency administrator, but only the execution of state oversight—or the inactivity of the Ministry in performing it—should you not succeed in pushing the matter forward.

Dear Mr. Magistrate, to many, it surely may seem absurd that the problems of a single insolvency proceeding can gradually fragment into several separate cases, each requiring a specific formal process. Some of these procedures lead directly to a result (especially court proceedings, including actions for unjust enrichment—i.e. the auction proceeds—or damage compensation), others do not. The performance of judicial administration must indeed not interfere with the judicial decision-making process, and even state oversight (of the insolvency administrator) cannot fully replace a court decision.

Therefore, investigations by the Public Defender of Rights, focused on the exercise of court administration or state supervision, logically cannot resolve the original issue either.

I truly regret that I was not able to help you. However, that is because some problems simply cannot be resolved by going around them.

Sincerely,

signed

signed)

Attachment:
Investigation Report

JUDr. Stanislav Křeček,

Public Defender of Rights
(The letter is electronically