JUDICIAL RESOLUTION

In the case between the petitioner S. E., s. r. o., and the respondent No. 1: C. S., s. r. o., and the respondent No. 2: CZ.NIC, concerning the motion for preliminary ruling, the Regional Court in Plzeň decided on 12.01.2005 as follows:

The Court orders the following preventive measure:

- The motion for preliminary ruling which would order the respondent No. 1 to refrain from using the domain name www.x+y+z.cz and to redirect it to the internet websites with the domain name www.t+u+v.cz, to refrain from any activities resulting in alteration of the registration of the domain name www.x+y+z.cz, in particular its transfer, unless the transfer is to the benefit of the petitioner, and which would order the respondent No. 2 to refrain from alterations in the registration of the domain name www.x+y+z.cz with the exception of its transfer from the respondent No. 1 to the petitioner, is hereby dismissed.

On 11.01.2005, the petitioner filed a motion for the aforementioned preliminary ruling to the present court and stated, among others, that it is a business company selling electrical appliances under the corporate name S. E., s. r. o. The respondent No. 1 is a business company undertaking business in the field of provision of software and automated data procession. The respondent No. 2 is an association authorized to register the Internet network domain names. The Respondent No. 1 possesses the domain name www.x+y+z.cz; when this website is requested, the website www.t+u+v.cz is immediately shown, operated by the company E., s. r. o., who is the competitor of the petitioner. The company E., s. r. o., claims not to be aware of such redirection or of the existence of the www.x+y+z.cz website. Despite the petitioner's request, the respondent No. 1 did not cease its activities. The petitioner believes that the activities of the respondent No. 1 bear features of unfair competition and that the respondent No. 1 also infringes the petitioner's rights to the corporate name. The petitioner intends to defend himself and lodge a petition against it. Such petition is however not specified in the motion for the preliminary ruling. The petitioner also failed to state in the motion for the preliminary ruling since when it is aware of the activities of the respondent No. 1.

Whereas the activities of the respondent No. 1 cause damage to the petitioner on an everyday basis, the petitioner states that with regard to the danger in delay there is a need to temporarily arrange the relationship between the parties in a preliminary ruling. The petitioner is also concerned that the enforcement of the judgement issued afterwards could be endangered in case the respondent No. 1 transfers the domain name during the proceedings.

The attached documents confirm that the petitioner was entered to the Commercial Register as of 08.10.2002 under the corporate name S. E., s. r. o. The purpose of its business is wholesale trade. The respondent was entered to the Commercial Register as of 20.09.2000; according to the extract from the Commercial Register it undertakes business in the field of software provision and automated data procession. The respondent No. 2 is an association of legal entities. The extract from the Register of economic entities in ARES confirms its existence.

Additional documents acknowledge that the domain www.x+y+z.cz has been registered for the respondent No. 1 since 24.02.2004.

The company E., s. r. o., was entered to the Commercial Register as of 01.10.1999; its purpose of business is purchase for resale and sales.

The representative of the petitioner asked the company E., s. r. o., in a letter as of 17.09.2004 to cease to use the domain www.x+y+z.cz. On 22.09.2004, the company E., s. r. o., responded that it was not aware of such domain or of reasons for its redirection to the website www.t+u+v.cz. The petitioner then called on the respondent to cease to use the domain www.x+y+z.cz in a letter as of 24.09.2004.

The letter was sent to the respondent No. 1 in registered mail on 24.09.004. Later, the petitioner repeated such notice on 15.10.2004, which was sent to the respondent No. 1 in registered mail on 16.10.2004.

Pursuant to the provisions of sec. 74(1) of the Civil Procedure Code, the chairing judge may, prior to the commencement of the proceedings, issue a preliminary ruling in case it is necessary to temporarily arrange the relationship between the parties or in case of a concern that the enforcement of the judgement could be endangered.

The court has not found any reasons justifying the preliminary ruling, as it believes that no temporary arrangement of the relationship between the parties is urgently needed and that there is no concern that the enforcement of the judgement could be endangered.

The domain www.x+y+z.cz was registered to the benefit of the respondent No. 1 in February 2004 and such situation has not been altered since then. It means that the petitioner suffered such situation at least for the period from February 2004 until January 2005, when the petition for preliminary ruling was filed and did not attempt to obstruct it in any other way except of the two sent notices. In the proceedings the petitioner did not state the period for which it was aware of the situation; it is clear from the submitted documents that it had been at least from September 2004. Even then the petitioner did not file either a motion for preliminary ruling or a petition, although the respondent No. 1 failed to respond to its notices. The time of 4 months, from September 2004 until the motion for preliminary ruling was filed, expired without any actions taken while the petitioner suffered such situation, claimed to be improper, without difficulties. The motion for preliminary ruling was not even accompanied by a petition addressing such situation and the dispute between the parties. With regard to present situation there is no urgent need to arrange the relationship between the parties.

The court also believes that the concern is not justified that the enforcement of the judgement issued afterwards could be endangered, because the petitioner did not claim that the respondent No. 1 tried to transfer the domain to third persons and nothing to this end was implied in the submitted documents. If the respondent No.1 does not make any acts aimed at the transfer of the domain and if such intention cannot be proved, such activities may not be banned in a preliminary ruling since the concern that the enforcement of the judgement could be endangered is not confirmed.

The court dismissed the motion for preliminary ruling upon the aforementioned grounds and did not consider any further prerequisites related thereto.

The costs of the proceedings were not determined pursuant to the provisions of sec. 145 of the Civil Procedure Code.

Only the first letters of the surname or corporate name of the parties to the proceedings are used, with the exception of the association CZ.NIC. The relevant domain names are substituted by the sequence x+y+z.cz. If in the text of the ruling there are also some other domain names mentioned, these were randomly substituted by other sequences of characters. Except for the data enabling identification of the parties to the proceedings or other persons and domain names, the text of the judgement was changed to the least extent possible. Any connection between the used abbreviations and substituting characters on one hand and other persons and domain names actually using such abbreviations or substituting characters on the other hand is incidental.

When considering the judgement please note that the judgement includes not only the statement of the court and its reasoning but also the summary of the allegations of each of the parties; the court may not take into account some of the allegations (e.g. in case of preliminary ruling) and these then represent merely the legal opinion of the relevant party, not a conclusion of the court.

The judgement cannot be automatically applied to other cases (even if they are linked in questions of

facts) and the association CZ.NIC recommends to consult specific cases with the domain names experts and lawyers.