RESOLUTION

The High Court of Justice in Olomouc decided on 26 January 2005 in the legal case of the plaintiff M against the defendant no. 1 E and the defendant no. 2 CZ.NIC concerning the issue of an interlocutory judgement, originally adjudged by the Regional Court of Justice in Ostrava on 19 October 2004 and appealed against by the defendant no. 1, as follows:

- The first instance court's resolution is affirmed.

In the aforementioned resolution the Regional Court of Justice issued an interlocutory judgement in which it ordered the defendant no. 1 to refrain from disposing of the rights of the owner of the domains "x+y+z.cz" and "t+u+v.cz", to make sure that her web administrator (webhosting provider) deactivates the re-routing from the domains "x+y+z.cz" and "t+u+v.cz" to www.stránky, electronic mail and other electronic services and to suffer the said deactivation.

In accordance with the court's rationale the plaintiff claims protection of corporate body title, protection of ownership rights to registered trademarks and protection against unfair competition. In the course of legal proceedings, the plaintiff applied for the issue of an interlocutory judgement, presenting documents verifying her entitlement to the name X+Y+Z Co., T+U+V product labels and registered trademarks x+y+z and t+u+v preceding in time the right of the defendant no. 1 to the domains x+y+z.cz and t+u+v.cz. In the first instance court's opinion, the plaintiff and the defendant no. 1 are business competitors. The first instance court also established that the aforementioned domains were not linked to any website and when trying to access the domains, all internet users were re-routed to the website of the defendant no. 1 www.a+b+c.cz offering professional services. As a result, the first instance court, regarding the plaintiff's fear that her clients are being enticed andher trademarks devaluated as sufficiently verified, decided that in order to prevent further deterioration of the plaintiff's situation, it was necessary to regulate the relationship between both parties by an interlocutory judgement.

The defendant no. 1 launched within the statutory time limit an appeal against the aforementioned interlocutory judgement in which she claims that the executive director of her company, L. š., was never employed by the plaintiff and only maintained standard business relations with the plaintiff, purchasing and selling her products even after establishing his own company, E. s.r.o., and that the said company used other trademarks to label its products, in no way parasitizing on the trademarks X+Y+Z and T+U+V. On 9 February 2000, the defendant no 1 registered the domain a+b+c.cz and on 24 February 2000, the domains mirel.cz and mirelon.cz. The domains x+y+z.cz and t+u+v.cz have been subject to re-routing since March 2003. The defendant no. 1 claims to have done so not with a malicious intent but in connection with her business project focused on presentation of various production machines designed by her at that time and designated for sale and on presentation of various products manufactured on the said machines. The defendant no. 1 is convinced that it is not possible to draw a parallel between trademarks and internet domains because internet domains are not classified as industrial property. In addition, she claims that the plaintiff's combined trademarks no 198050 and 202939 do not establish any right to terms such as www.x+y+z.cz or www.t+u+v.cz. The defendant also does not agree that the term t+u+v, generally used to identify polyethylene foam insulation, should become subject to registration. The defendant also points out the actions of the plaintiff's patent representative, at first asking for the domains to be transferred free of charge and then lodging a suit, without waiting for the start of mutual negotiations. The defendant is convinced that the challenged resolution anticipates final decision on the case, which, in her opinion, will be very complicated. The defendant no. 1 also concludes that this is not a solution that could not be delayed, supporting her claim by the fact that both domains were registered as early as in 2000, and that there is no urgent legal request to issue an interlocutory judgement. That is why she proposes that the challenged resolution be changed and the plaintiff's application for the issue of an interlocutory

judgement rejected.

Having assessed the challenged resolution as well as the proceedings preceding its issue, the court of appeal came to a conclusion that the appeal of the defendant no. 1 is ungrounded.

The court of appeal, affirming the conclusions made by the first instance court, agrees with the plaintiff's claim supporting her application for the issue of an interlocutory judgement as well as with the legal opinion, according to which the plaintiff's losses could further increase, if the interlocutory judgement were not issued. The defendant's objection that the case is not a matter that could not be delayed until final decision is ungrounded. Both the plaintiff's suit and application for the issue of an interlocutory judgement were presented on 14 October 2004 and the defendant no. 1 herself in her appeal states that the re-routing from the registered domains www.x+y+z.cz and www.t+u+v.cz was activated only in March 2003. She also admits that the plaintiff's suit was preceded by unsuccessful attempts of the plaintiff's patent representative to acquire the domains free of charge. The overall amount of losses that could be suffered by the plaintiff as a result of the present situation is directly proportional to the time the situation lasts and the challenged interlocutory judgement is, therefore, fully justified. The objection of the defendant no. 1 that the interlocutory judgement anticipates final verdict is also ungrounded. Here, it is necessary to refer to constant jurisprudence of courts. Even though it is usually not permissible that the injured party should achieve through an interlocutory judgement what can only be achieved through a final verdict, it is not possible to preclude the issue of an interlocutory judgement, whose objective is to stop actions accomplishing the elements of unfair competition, because the determining factor in such cases is the prevention and/or reduction of the injured party's further losses (see R 46/1996).

Other objections of the defendant no. 1 are legally irrelevant to the court's review of the issued interlocutory judgement and will be subject to further validation.

That is why the court of appeal hereby affirms the challenged resolution as materially correct (Section 219 of the Rules of Civil Procedure).

Except for the association CZ.NIC, the parties involved are identified only by their personal or business initials. The internet domains concerned are replaced with the sequence x+y+z.cz. All other domains mentioned in this resolution have been also replaced by random alphabetic sequences. Apart from the identification of the parties involved, other subjects and domains, the text of this resolution has been modified as little as possible. Any connection between the used abbreviations and substitute symbols and actual subjects and/or internet domains is purely incidental.

When studying this resolution, it is necessary to bear in mind the fact that it contains not only the verdict itself and its grounds, but also the respective statements of the parties concerned. However, some of them (or parts thereof) the court did not have to take into account (for instance, when issuing an interlocutory judgement). Such statements, therefore, represent only a legal opinion of the given party and not a judicial conclusion.

The court's resolution cannot be automatically applied to other cases (even if their merits are similar or identical) and the association CZ.NIC recommends that each individual case be consulted with internet domain experts and lawyers.