RESOLUTION
(DISMISSAL OF THE PETITION TO ISSUE A PRELIMINARY MEASURE)

On 29/6/2006, the Municipal Court decided in the legal case of the Plaintiff E. Š. vs. Defendants 1/ Q., 2/ CZ.NIC, on ordering a preliminary measure

- The petition requiring the court to order a preliminary measure imposing the duty on Defendant CZ.NIC to refrain from acts allowing transfer of the Internet domains "x+y+z.cz" except for transfer of the domain to the Plaintiff as well as acts resulting in cancellation of the domain "x+y+z.cz", until the decision on the case itself becomes effective, has been dismissed.

In its petition filed on 15/9/2000 the Plaintiff seeks fulfilment of the obligations arising from the purchase contract concluded between it and the First Defendant and the subject matter of which was the Internet domain "x+y+z.cz", which the Defendant sold to the Plaintiff for the price agreed in the amount of CZK 10,500. It claims that it fulfilled the conditions specified in the contract by which the transfer of the domain was bound, nevertheless the Defendant failed to fulfil its obligation from the purchase contract and later withdrew from the contract by sending a registered letter on 4/9/2000 without any reasons specified. The Plaintiff considers the withdrawal to be invalid and requires that it should be decided that the purchase contract is valid and that a duty should be imposed on the Second Defendant to designate the Plaintiff as the domain holder in the domain register while according to the decision it should be obliged to pay the purchase price to the First Defendant.

In connection with the original petition the Plaintiff required that a preliminary petition should be ordered whereby the court would ban the Defendant from selling, transferring, gifting or alienating in any other manner or charging in any other manner the transfer of the domain "x+y+z.cz" registered with the Second Defendant until the case is terminated in a legally effective manner. The court of first instance admitted the petition and ordered the preliminary measure. Upon the appeal of the First Defendant, which was the single party to the proceedings on the part of the defendants, the Regional Court in Brno cancelled these preliminary proceedings on the basis of the fact that if the Plaintiff formulated the demand for the proposed preliminary measure so that "the Defendant is banned from selling, transferring, gifting or alienating in any other manner or charging in any other manner the transfer of the domain ...", the duty formulated as such cannot be considered definite and enforceable, as the ban on legal disposal does not relate to the thing itself but to a legal consequence (effect) of the legal act in the form of creation, modification or termination of a legal relationship (transfer of the domain). With regard to the date of issuing the proposal the court of first instance was ordered to remove the aforementioned defect of the proposal to order the preliminary measure using the procedure according to the provision of section 43 par. 1 of the Code of Civil Procedure.

The Plaintiff responded by a detailed specification of the action itself by a proposal that an enjoined party should enter the proceedings; however this did not occur as Q. did not express its consent with such entry and subsequently with the petition for accession of the Second Defendant. It modified the action demand for the preliminary measure so that it demanded that the Defendant CZ.NIC should be imposed the duty to refrain from acts enabling transfer of the Internet domain "x+y+z.cz" except for the subject of the domain to the Plaintiff as well as acts resulting in cancellation of the domain "x+y+z.cz".

The Plaintiff justified this petition by claiming that according to the provision of section 118 of the Civil Code the subject matter of civil-law relationships includes things and, if admitted by their nature, also rights and other property values. The Internet domain is just considered to be another

property value by the professional legal public. CZ.NIC performs registration and administration of domain names. The register administered by this association may not be considered a register of domain owners, and the ownership title to a domain is not acquired by making an entry in the register but by a mere conclusion of a purchase contract. The entry in the register only has a declaratory meaning. This is also in accordance with the designation of an entity in the register of parties entitled to transfer of the registration as a holder or an applicant for registration of the domain. Therefore the Plaintiff claims that it is the owner of the domain "x+y+z.cz" on the basis of the purchase contract entered into with the First Defendant since the purchase contract was signed, which occurred on 3/4/2000, and it is of the opinion that this proves an urgent legal interest in the ordering of the proposed preliminary measure.

The court assessed the Plaintiff's petition according to the provision of section 102 and section 74 et seq. of the Code of Civil Procedure. The regulations contained in the Code of Civil Procedure on the day the court decides on the matter have requirements for the petition to order a measure in the meaning that the plaintiff must claim decisive facts and give evidence of its urgent legal interest in the ordering of a preliminary measure. If the court is considering the current petition from the aforementioned viewpoints, it cannot deem it to be justified. The Plaintiff demands that the association CZ.NIC should be imposed the duty to refrain from acts enabling transfer of the Internet domain "x+y+z.cz" and acts resulting in cancellation of the domain "x+y+z.cz" and it does not claim the entitlement of this entity to dispose of the domain at the same time. On the contrary, it claims that this is only an association of legal entities performing registration and administration of domain names as the ownership title is not acquired by making an entry in the register and the entry itself only has a declaratory meaning. Thus, if the court takes into account the fact claimed by the Plaintiff itself, it cannot come to the conclusion that the Second Defendant would be able to enable transfer or cancellation of the domain "x+y+z.cz" as a result of its acts. Therefore the court dismissed the petition.

While the decision is being studied, it is necessary to take into account the fact that the decision contains not only the court's statement itself and its justification but also a summary of claims made by individual parties while the court did not have to deal with some of the claims at all (e.g. while ordering a preliminary measure) and these claims only represent the legal opinion of the relevant party and not the conclusion reached by the court.

The decision made by the court cannot apply automatically to other cases (although similar with regard to the facts of the case) and the association CZ.NIC recommends that a particular case should be consulted with experts on domain names and with lawyers.