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

On 15/12/2006 the Regional Court decided in the case of the Plaintiff E. Š. vs. the Defendants 1. Q. and 2. CZ.NIC, on fulfilment of the obligation from the purchase contract within the proceedings to order a preliminary measure during the proceedings, and on the Plaintiff's appeal against the resolution made by the Municipal Court in Brno on 29/6/2006, as follows:

- The resolution made by the court of first instance is confirmed.

The resolution made by the court of first instance dismissed the Plaintiff's petition to issue a preliminary measure during the proceedings, by which the Second Defendant should have been imposed upon the duty to refrain from acts enabling transfer of the Internet domain "x+y+z.cz" except for transfer of the domain to the Plaintiff, as well as from acts resulting in cancellation of the domain "x+y+z.cz", until the decision in the case itself becomes legally effective. According to the conclusion reached by the court, if the Plaintiff itself stated that the Defendant was 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 of only a declaratory meaning, its petition to issue a preliminary measure is not justified.

The Plaintiff challenged the resolution in its appeal. It objected that it is true that the Second Defendant is not entitled to dispose of the domain on the basis of its position but it is the only person that performs alterations in the register of the Internet domains cz. According to point 7.1 of the Rules for registration of domain names in the domain.CZ (hereinafter referred to as the "Rules" only), transfer of a domain name is understood to be one of such alterations, which means, on the basis of the Rules, registration of a change in the domain name holder by the association CZ.NIC. Transfer of a domain name is a consequence of a legal fact which may be e.g. a purchase or gift contract or the death of a domain holder. On the basis of evidence of this fact the Second Defendant is obliged to perform the transfer of a domain name (registration of a change in the name of the domain holder). The petition to issue a preliminary measure is therefore in order. The domain "x+y+z.cz" is unique and the Plaintiff has no other possibility to achieve changes in the Internet domain register but its action. Other transfers (if any) of this domain also cause damage to the Second Defendant whose interest is that the entries made in the register it administers should correspond to the reality and, on the other hand, acts of the Second Defendant may complicate future faultless use of the domain by the Plaintiff. It also pointed out to the fact that the company P., which it had proposed as an enjoined party on the Plaintiff's side, had not expressed its consent to enter the proceedings. The First Defendant had the disputable domain transferred to that company within a short period after the action conceming the case had been filed. The Plaintiff is of the opinion that this is an attempt to impair its rights. It proposed that a preliminary measure should be proposed, imposing the duty on the Defendant CZ.NIC to refrain from acts enabling any transfer of the Internet domain "x+y+z.cz" except for transfer of the domain to the Plaintiff, as well as from acts resulting in cancellation of the domain "x+y+z.cz", until the decision in the case itself becomes legally effective.

The appellate court reviewed the resolution challenged by an entitled person on the basis of a timely filed appeal as well as the proceedings preceding thereto and did not find the appeal to be justified.

According to section 102 par. 1 of the Code of Civil Procedure, if the relationships of the parties must be regulated provisionally, or if there are fears after the proceedings have been initiated that the execution of the decision in the proceedings finally issued could be threatened, the court may order a preliminary measure.

If a preliminary measure is to be ordered, the provisional need to regulate legal relationships of the parties must be proven, and the other facts important for an order of a preliminary measure should be shown. There must be such a factual connection between the subject of legal protection, intended by the preliminary measure proposed after commencement of the proceedings and having effects against a party to the proceedings (section 102 of the Code of Civil Procedure), and the subject of the proceedings in the case itself so that the preliminary measure has a sense from this viewpoint, i.e. that the reasons for which the preliminary measure has been ordered are removed due to the positive decision in the case itself.

In the given case, the subject matter of the dispute is the issue of the "ownership" of the domain name. Use of a domain name is not regulated by law but is governed by acts of a private-law nature that are regulated, in the case concerned, by the Rules approved by the Second Defendant, which is a national administrator of the .cz domain in the Czech Republic. The Rules have become binding on the persons entered in the register.

If an action is focused against a person that is no longer entered in the register as the domain holder and the Second Defendant itself is not authorised to dispose of the domain, it cannot be deduced that the reason for which a preliminary measure would be ordered would cease to exist due to a positive decision in the case itself in the relation between the Plaintiff and the First Defendant. Under this state of affairs the Plaintiff did not prove, in the relation to the designated parties, any need for provisional regulation of the legal relationship which would give evidence for the need to issue a preliminary measure. Therefore the appellate court confirmed the challenged resolution of the court of first instance as materially correct while using the provision of section 219 of the Code of Civil Procedure.

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.