REFUSAL OF PETITION FOR ORDERING A PREVENTIVE MEASURE

The Municipal Court in Prague ruled on 28 July 2003 in the case of the Plaintiff O. against the Defendant CZ.NIC, on the petition for the ordering of a preventive measure in the proceedings on the protection of the name of a legal entity as follows:

The petition for the ordering of a preventive measure, by which the Court would impose on the Defendant the obligation to refrain, from the moment of the delivery of the ruling, from carrying out changes in the allocation or inclusion of the domain designation "x+y+z.cz" in the national database of the "cz" domains, including the enabling of the transfer of this designation to a third party, except for the carrying out of changes proposed by the Plaintiff, is refused.

With the suit in the case itself the Plaintiff is demanding the imposing of an obligation on the Defendant to remove the domain designation "x+y+z.cz", allocated to a person other than the Plaintiff, from the national database of "cz" domains and enable the allocation of this domain designation to the Plaintiff and include it in the national database of "cz" domains. He stated that in the course of 1999 and repeatedly in the year 2000 he wished to order from the Defendant the technical allocation of the domain designation "x+y+z.cz", but this designation had already been allocated by the Defendant to a third party. The Plaintiff sent a legal warning to the Defendant by his letter of 29 November 2000 and demanded the rectification of this illegal situation. After the repeated sending of the warning the Defendant did not replay until 20 March 2002. The Plaintiff reacted with the letter of 29 March 2002, to which the Defendant replied with the letter of 8 April 2002. The Plaintiff reacted with his letter of 16 May 2002 and the last letter from the Defendant, which is one of rejection, is dated 27 May 2002. At the same time the Plaintiff has exclusive ownership of the name X+Y+Z, which is his unique name as a legal entity. The Plaintiff thus has the right to be exclusively identified with his name. The Plaintiff appeals for protection both in accordance with the provisions of Par. 19b sections 1 and 2 of the Civic Code and also according to Article 10 section 1 of the Charter of Basic Rights and Liberties. The Plaintiff simultaneously petitioned for the ordering of a preventive measure through which the Court would impose on the Defendant the obligation to refrain, from the moment of the delivery of the ruling, from carrying out changes in the allocation of or the inclusion of the domain designation "x+y+z.cz" in the national database of "cz" domains, including enabling the transfer of this designation to a third party, with the exception of the carrying out of changes proposed by the Plaintiff. He substantiated this proposal by the need for interim regulation of the relations of the participants when the domain designation serves currently as a subject of trade, including speculative trade, giving rise to fear of a threat to the execution of the ruling. The Plaintiff perceives the grounds for the ordering of a preventive measure also in the need to prevent the occurrence or expansion of damage consisting of the evocation of the danger of confusion of the identity of the Plaintiff and his abridgement in informative self-determination.

The conditions of the ordering of a preventive measure in the stage following the start of proceedings (according to the provisions of Par. 102 of the Civic Court Rules) are basically identical to the conditions stipulated in the provisions of Par. 74 and following of the Civic Court Rules regulating the conditions of the ordering of a preventive measure in the stage before the start of proceedings. A preventive measure may be ruled if it is necessary to regulate the relations of the participants for the time being or if there is fear that the execution of the Court decision would be threatened. In the given case the fear of a threat to the execution of the future court decision does not come into consideration due to the character of the subject of the dispute. It therefore remains to consider whether the need exists for the interim regulation of relations. In making this decision the Court starts off from the definition of the proposed preventive measure and how the Plaintiff substantiates the need for the temporary regulation of relations. In the given case the Plaintiff claims interference in his rights by

the existence of the domain name "x+y+z.cz", which is registered in the national domain "cz", administered by the Defendant, to the benefit of a third party. As the Plaintiff claims, he ascertained the fact that the holder of the domain name concerned is a third party already in the course of 1999, when he himself tried to register the domain name with the Defendant. The Plaintiff attempted out of court rectification of the situation in the course of the period from 29 November 2000, when he began to correspond with the Defendant. The last letter from the Defendant, with a negative standpoint, is nevertheless dated 27 May 2002. With regard to these facts the condition does not exist of the urgency of the temporary regulation of the relations of the participants. The objective situation, which arose in 1999 and continued more or less up to 27 May 2002, has not altered in any way. If, then, the Plaintiff has put up for such a long time with what he declares to be interference with his rights, it is not possible now to deduce danger in delay and the condition does not exist here of the essential need for the temporary regulation of the relations of the participants through a preventive measure.

With regard to this conclusion the Court has refused the petition for the ordering of a preventive measure to its entire extent without investigating the level of verification of the facts stated by the Plaintiff.

The Court will decide on the costs of proceedings in accordance with the provisions of Par. 150 of the Civic Court Rules in connection with the final ruling on the case proper.

The participants in the proceedings, with the exception of the association of CZ.NIC are designated only by the first letter of their surname or commercial firm. The domain names concerned are replaced by the sequence x+y+z.cz. If there is mention in the text of further domain names, these have been replaced at random by other sequences of symbols. With the exception of data enabling the identification of the participants in the proceedings or other persons and domain names there has been the least possible interference with the text of the rulings. Any connection of the abbreviations and substitute symbols used with persons or domain names that actually use designations with the use of such abbreviations or substitute symbols is purely coincidental.

In the study of the rulings it is necessary to bear in mind the fact that the decision contains not only the actual statement of the court and its substantiation, but also a summary of the statements of the individual parties, some of which statements the court need not have taken into account at all in the decision (e.g. in the issue of a preventive measure) and these statements therefore represent only the legal opinion of the party concerned and not the conclusion of the court.

A court ruling cannot be automatically applied to other cases (albeit the basic facts are the same) and the CZ.NIC association recommends that a concrete case be consulted with experts on domain names and with lawyers.