INTERLOCUTORY JUDGMENT

The High Court in Prague decided on 28 February 2001, with respect to a lawsuit between the Plaintiff **Č.** against the Defendant **O.** concerning the proclamation of an interlocutory judgement, as regards the appeal lodged by the Plaintiff against a verdict pronounced by the Regional Court in Hradec Králové on 18 May 2000 by modifying the aforesaid verdict of the court of the first level and decided to issue an interlocutory judgement, according to which the Defendant was obliged to abstain from the transfer of the internet domain **x+y.cz** to any party other than the Plaintiff. In addition, the court decided that the **CZ.NIC** association was obliged to abstain from registering any transfer of the internet domain **x+y.cz** to any other party than the Plaintiff. Finally, the court ordered the Plaintiff to file an action on the merits within 30 days from the effective date of this verdict.

The court of the first level refused the claim for interlocutory judgement which would put the Defendant under an obligation to abstain from any transfer of the internet domain **x+y.cz** to any party other than the Plaintiff and the obligation of CZ.NIC to abstain from registering any transfer of the internet domain **x+y.cz** to any party other than the Plaintiff. In the verdict justification, the court referred at first to the Plaintiff's arguments concerning its claims. On 21 December 1999, the Plaintiff filed with the Industrial Property Office of the Czech Republic an application for registration of the word trademark **x+y,** for class 00, and for classes 0 and 00 (on 18 January 2000). On 25 January 2000, the Plaintiff announced that it would render services under the identification **x+y** and, finally, on 1 March 2000, the Plaintiff started rendering these services and launched an extensive advertising campaign in media. The Defendant is registered with **CZ.NIC** as a user of the domain name **x+y.cz** and it promised to the Plaintiff in writing (on 25 January 2000) that it would transfer the aforesaid domain name to the Plaintiff. However, the defendant violated its previous promise and did not transfer the rights of use. Instead, the Defendant enabled the company **C.** to make use of the domain in a manner which is, according to the Plaintiff, in contrary to principles of fair and moral competition, for the Internet page **x+y.cz** for the so-called virtual store, where the company **C.** also offers services rendered by entities which are competitive to the Plaintiff.

According to the justification, the court of the first level based its decision on the fact that even though the Plaintiff has demonstrated its claim with photocopies of the trade licence, applications for ÚPV, a copy of the text presented at **x+y.cz** together with the text defining the **C.** company as the operator of the pages, Plaintiff's promotion leaflet, facsimile of an article of 26 January 2000, Defendant's statement of 26 January 2000, rules for the registration of domain names in the .cz domain and an extract from the domain name register. However, the court came to a decision that there were no reasons for which Section 74 and following of the code of civil procedure assumes an extraordinary intervention of the court based on an interlocutory judgement, so as to make temporary adjustments of the relationships between the parties to be involved in the further proceedings, as the Plaintiff mentions future enforcement of the predicated right to the transfer of a domain name per curiam, anticipating that the outcome of the proceedings would be beneficial for the Plaintiff, even though the premises for launching such proceedings have not been made duly evident, except for a Defendant's statement of 25 January 2000.

The court was convinced that the threatened interests of the Plaintiff had been adequately protected, as ascertained from the enclosed photocopy of the instructions pertaining to the registration of domain names within the .cz domain (particularly Clause 6), issued by the CZ.NIC association, against which the Plaintiff seeks stipulation of obligations pursuant to Section 76, Paragraph 2 of code of civil procedure and from another decision of the court of the first level, satisfying the claim of the Plaintiff and putting the **C.** company under the obligation of abstaining from using the domain name **x+y.cz**,

until the final verdict becomes legally effective and the Plaintiff under the obligation to raise an action. The court of the first level therefore decided to turn down the claim for the order of interlocutory judgement as unjustified.

The Plaintiff did not agree with the findings of the court of first level, i.e. that the threatened interests of the Plaintiff were adequately protected by the fact that another case had been decided according to the Plaintiff's claim, as provided above and lodged an appeal within the period required, claiming that such a decision was not an adequate guarantee of the protection of the Plaintiff's rights. In addition, the Plaintiff did not agree with additional findings of the court, i.e. that the premises for the proceedings concerning an enforcement of rights pertaining to the transfer of a domain name at court were not adequately documented. The Plaintiff referred to negotiations held on 21-25 January 2000 between the parties involved in the transfer of rights to the Internet domain **x+y.cz** to the Plaintiff, which resulted in an oral agreement concerning the transfer of rights to this domain, and confirmed the existence of this agreement in writing on 25 January 2000. Without such an agreement, the Plaintiff would not have launched its expensive advertising campaign for the provision of services under the identification of **x+y**. The Plaintiff suggested that the court of appeal modify the disputed provision and consent to the application for an interlocutory judgement at full scope.

The High Court in Prague, acting in the capacity of a court of appeal, pursued in compliance with Articles 1 and 15, Section I, Part 12 of the Law No. 30/2000 Coll., negotiated and came to a decision in compliance with the current legal regulations, i.e. code of civil procedure, as amended with a validity until 31 December 2000 (hereinafter the "code of civil procedure"). Based on the lodged appeal, the High Court reviewed the verdict delivered by the court of the first level, pursuant to the provisions of Section 212, Paragraph 1 of the code of civil procedure, having found the Plaintiff's appeal justifiable without any proceedings ordered in this respect (Section 214, Paragraph 2, Item c) of the code of civil procedure.

With respect to the issue in question, the Plaintiff requests that until a final decision is made, the relationships between the parties involved be adjusted by means of an interlocutory judgement according to the provisions of Section 74 and 76, Paragraph 1, Item f) of the code of civil procedure, since the Plaintiff is afraid that if it manages to succeed in having the domain transfer confirmed by the court, the Plaintiff will incur irreprievable loss due to the fact that the court's verdict would be no longer possible to execute. In addition, the Plaintiff requests that - based on an interlocutory judgement pursuant to Section 76, Paragraph 2 of the code of civil procedure - the **CZ.NIC** association is put under the obligation of abstaining from the registration of a transfer of the same domain to a person other than the Plaintiff.

An interlocutory judgement as a means of temporary adjustment of the relationships between the participants will in consequence affect the behaviour of the parties involved, and the protection from negotiation, imminent or existing, as of its issue. In order to ensure its issue, it is necessary to verify the necessity for an intervention in the form of the proposed interlocutory judgement and confirm the fact that the claimed conduct means abreach of the Plaintiff's rights. The obligation to abstain for a certain period from certain conduct does not prejudge the decision itself.

The Plaintiff confirmed that it was also a service provider *(further specified decision - note CZ.NIC)*, and that the Plaintiff filed with the Industrial Property Office of the Czech Republic an application for registration of the word trademark **x+y,** for class 00, and for classes 0 and 00 and that in 2000 the Plaintiff presented to the public that its services would be provided under the identification of **x+y** and subsequently began to provide such services and launched an extensive campaign in the media. It has

been authenticated that the Defendant has been registered by the **CZ.NIC** association as a user of the domain name **x+y.cz**. The Plaintiff also verified that the Defendant confirmed on 25 January - in writing - its consent with the transfer of this domain to the Plaintiff, however, that the Defendant enabled the **C.** company to make use of the domain for an e-Library instead, where **C.** offers services provided by companies directly competitive to the Plaintiff.

Unlike the court of the first level, the court of appeals found out that the terms and conditions of Section 74 and following of the code of civil procedure have been certified, for purposes of the proposed interlocutory judgement. According to the court of appeals, no other verdict of 18 May 2000, ref. No. AA 000/2000, in which the **C.** company as obliged to abstain from using the domain name **x+y.cz** until the final verdict becomes legally effective may prevent the possible transfer of the **x+y.cz** domain to any third party, because it is not the **C.** company but the Defendant, who is registered as the user of the domain name **x+y.cz** with the administrator of Internet domains in the Czech Republic, i.e. **CZ.NIC,** with an exclusive right to transfer domains to a third party. Considering the fact that other conditions for the interlocutory judgement have been fulfilled, the court of appeals considers it necessary to fulfil the proposal in its entirety.

The court of appeals therefore revoked the disputed provision according to Section 220, Paragraph 1 of the code of civil procedure, and modified by ordering an interlocutory judgement. It was not necessary to specify the period during which this judgement shall remain valid in the verdict, as the termination of interlocutory judgements has been stipulated for this case within the provisions of Section 77, Paragraph 1, Item a) through c) of the code of civil procedure. In addition, the court of appeals ordered the Plaintiff to file an action on the merits within the periods required, as defined in the verdict.

---

*Except for CZ.NIC, all participants of the proceedings are identified with the first letters of their surnames or trade names. The domain name in question is replaced with a **wwwx+y.cz** sequence. All other domain names mentioned in the text have been also replaced with randomly chosen sequences of letters and signs. Except for the identification of the participants or other entities and the pertinent domain names, there were only minimal interventions in the text of the decision. Any relation between the abbreviations and dummy symbols used and the people or domain names using such abbreviations or dummy symbols for purposes of identification is merely accidental.*

When studying this decision, it is necessary to be aware of the fact that the decision comprises not only the verdict alone and the pertinent justification, but also a summary of the claims presented by individual parties involved, and that the court may not have been concerned with some of these claims at all (e.g. with respect to the issue of interlocutory judgement) and that such claims represent merely a legal opinion of the party concerned, not a finding of the court.

This decision may not be automatically applied to other instances even though they may be similar, and the CZ.NIC association recommends consulting each particular case with experts in domain names and lawyers.