VERDICT

> The Municipal Court in Prague decided on 14 June 2000, with respect to a lawsuit between the Plaintiff **B.** against the Defendant: 1) **CZ.NIC** and 2) **P.,** concerning the obligation to make entry into the registration of domain names and a claim concerning the issue of an interlocutory judgement, with respect to an appeal lodged by the Plaintiff against a verdict adopted at the District Court for Prague 6 on 29 March 2000, by cancelling the verdict adopted by the court of the first level and returning the case to the District Court for Prague 6 for further proceedings.

On the basis of the disputed verdict pertaining to the aforesaid legal issue, the court of the first level terminated the proceedings and claimed that none of the parties involved was entitled to a compensation of costs, and decided to return a half of the paid court fee to the Plaintiff. The court came to this decision with respect to an action through which the Plaintiff claimed delivery of a decision, which would oblige the Defendant No. 1 to enter the Plaintiff into the register of domain names of the second level as an owner of the specified domain names and which would oblige the Defendant No. 2 to suffer such entry in the register of domain names. Until a decision is made on the merits, the Plaintiff claimed that an interlocutory judgement be ordered, prohibiting the Defendants - until an effective verdict is delivered - to make any attempts at transferring the defined domain names to another entity. The court of the first level came to a conclusion that the obligations concerning the registration of domain names, as claimed by the Plaintiff, did not result from relationships to which negotiations and decision-making the court was competent, and that the issue does not pertain to any other matter which courts would determine on the basis of the law. The court therefore accepted that the lack of competence was a persistent deficiency with respect to the terms and conditions as defined by Section 103 of the code of civil procedure and ordered the proceedings to discontinue, pursuant to the provisions of Section 104 of the code of civil procedure.

The Plaintiff lodged an appeal against this decision, within the periods required, objecting particularly to the fact that it was very difficult to understand from the justification of the decision made by the court of the first level, what consideration influenced the court's decision to terminate the proceedings. The Plaintiff considers the only possible explanation the fact that the court of the first level may have come to a conclusion that the dispute is a statutory relationship between the Plaintiff and the Defendant No. 1. If this was the case, the Defendant No. 1 would have to be classified as a participant of the administrative law at the position of a state authority. This would also mean a necessity for a statutory regulation pertaining to the registration of domain names; however, no such regulation exists, and in fact the Defendant No. 1 is a national registrar of domain names, even though it is an entity existing on the basis of private law. The Plaintiff referred to the charter of fundamental rights and freedoms, according to which everyone may claim rights at an independent and impartial court, and the Plaintiff should not be at a disadvantage due to the fact that there is no explicit legal regulation defining the principles of registering domain names. The Plaintiff suggested that the court of appeal cancel the decision adopted by the court of the first level and return the issue for further proceedings.

The court of appeal reviewed - on the basis of the lodged appeal - the disputed verdict adopted by the court of the fist level and without ordering any further proceedings (Section 214, Paragraph 2, item c) of the code of civil procedure) the court came to a decision that the appeal was justifiable.

The court of the first level reached an inadequate finding, claiming that the issue in question did not fall in the competence of the court, as defined by the provisions of Section 7, Paragraph 1, 2 of the code of civil procedure, and - in conflict with Section 104, Paragraph 1, Item two of the code of civil

procedure, the court did not express to which higher court it would refer. The decision in which the court merely claims the proceedings discontinued due to lacking competences is unacceptable. The court must define the authority which is competent to make a decision. Due to the fact that the aforesaid verdict of the court of the first level does not comprise any such information, the decision is - pursuant to the provisions of Section 221, Paragraph 1, Item c) - impossible to review and it was therefore cancelled and returned to this court for further proceedings (Section 221, Paragraph 2 of the code of civil procedure).

Within further proceedings, the court (providing that it reaches the same verdict as regards the lack of competences) must also define the authority to which the case shall proceed. If no such authority seems to exist, it will be assumed that the court alone is entitled to express a verdict concerning the claim, and the court shall continue the proceedings. It is impossible to refuse an execution of one's rights and claim that there is no competent authority, as the possibility of claiming one's rights at courts or other authorities is inter alia guaranteed in Clause 36 of the charter of fundamental rights and freedoms, as accentuated by the Plaintiff.

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.