

ARBITRATION PUBLIC BID

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Arbitration and domain names

Arbitration, as an alternative to the judicial proceeding, is still more used way of dispute resolution in the Czech Republic although the number of disputes solved via arbitration is much more less than those that are litigated at courts. Nevertheless, it is true that there are some types of disputes for which the arbitration is more suitable solution than a court proceeding. One of these areas is the issue of domain names disputes. The most important reason is simple – domain name disputes are very specific. They must be decided in very short time interval of weeks or months. The litigants (especially if the adverse party is a domain speculator) can hardly wait years for the final court decision. And the arbitration is undoubtedly faster than civil court proceeding.

It is understandable that there are attempts to implement arbitration process into domain disputes from the side of the association CZ.NIC, z. s. p. o. (hereinafter CZ.NIC). The association CZ.NIC has chosen a specific approach to implement the arbitration into domain name disputes. It has created a new legal institute called “Arbitration public bid”. This tries to regulate solving possible disputes between the Holder of a domain name and the third party.

This article will deal especially with this new institute and will explain its sense and impact on the parties of future domain disputes.

Arbitration public bid

The Arbitration public bid is defined in the ADR Rules (they create integral part of contracts between the Registrars and domain name Holders): *The Holder hereby irrevocably and publicly pledges to comply with the decisions of the Arbitration Court at the Chamber of Economy of the Czech Republic and the Chamber of Agriculture of the Czech Republic (hereinafter the “Arbitration Court” only) [...] with respect to property disputes in which a compromise can be achieved and in which a third person challenges any Holder's Domain Name, included in the electronic database of domain names under the national domain ccTLD .cz, administered by the CZ.NIC Association; provided that the third person expresses its will to the Holder to pledge to the decision of this Arbitration Court in the given issue,*

particularly by initiating such proceedings at the Arbitration Court in writing [...]. This is all we can find about Arbitration public bid in all the Rules published by the association. Very important is that there is no penalty settled here for the breach of this provision in the whole contract.

Interpretation

Prima facie, it seems, that the Holder of a domain name covenants in the contract with the Registrar, that if there appears any third person, who wants to solve the dispute about the domain name via arbitration, the Holder has no chance to refuse the arbitration, because of the obligation from the Arbitration public bid. It seems that the Arbitration public bid means that the Holder of a domain name is legally bound to conduct arbitration about the domain disputes every time, when some third person calls upon him to start arbitration. But in fact the meaning of the Arbitration public bid is rather different.

The contract about the domain name establishes the legal relationship between Holder and Registrar. It is natural, that there is an enforceable liability for the breach of the contractual obligations between the parties. The contract can't establish the obligations for the third parties and it can't substitute the declaration of will between the one of the contractual party and the third party.

The arbitration agreement is an agreement between the parties that the disputes from their legal relationship between them will settle one or more arbitrators (§ 2 of the Czech arbitration law). The Czech law does not allow entering into an arbitration agreement via "public proclamation" containing an obligation that all the disputes between the one who declares an Arbitration public bid and any other subject will be settled via arbitration. The arbitration agreement is not made even at the moment of service of an action to the arbitration court. The obligation to accede to arbitration is claimable only by the party of a contract, where the Arbitration public bid was incorporated but not by any third subject. This means that when anybody wants to settle the disputes related to the domain name between him and the Holder of a domain name via arbitration, he will have to enter into an arbitration agreement with the Holder irrespective of the existence of any public proclamation. If the Holder refuses to conclude an arbitration agreement to settle the dispute via arbitration, there is no other possibility to solve the dispute than to bring the action before a court.

The only way how to secure the performance of this obligation is to settle some kind of easily enforceable penalty for its breach. In that case the Holder of a domain name should choose

what will cause less troublesome consequences, if breach of the contract or its completion. To settle the contractual penalty in a reasonable motivating rate it seems to be the most suitable solution of this situation.

Conclusion

The idea and the sense of creating Arbitration public bid are clear. The association CZ.NIC wanted to implement arbitration as an essential way of disputes resolution. But the practical realisation of this “arbitration implementation” is not planned well to reach the presumed result. This means that the Arbitration public bid in fact does not influence the way of solving domain disputes – although if the Third party brings an action against the Holder at arbitrator, the arbitration agreement will not be created by delivering this action and the domain name dispute will not be settled via arbitration only because of the Arbitration public bid and the action. The conclusions of the article show this principle can't work and explain that Arbitration public bid has no real effect on the rights and obligations between of the Holder, the third party and their domain dispute.

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