

Case No. II Ca 514/07



JUDGMENT
IN THE NAME OF THE REPUBLIC OF POLAND

12 February 2008

The District Court in Krakow Civil Appeal Division no 3:

Chairman: District Court Judge Beata Tabaka

after review, on February 12, 2008 in a closed hearing of the suit filed by Naukowa i Akademicka Sieć Komputerowa jednostka badawczo - rozwojowa w Warszawie (NASK) (*eng: the Research and Academic Computer Network - a research entity in Warsaw*)

vs. Piotr Zbigniew Sęczkowski and Ireneusz Andrzej Wis

for payment on appeal of the defendant Piotr Zbigniew Sęczkowski

from the judgment of the District Court for Krakow-Nowa Huta in Krakow from January 4, 2007 case no VI Cupr 278/06/N

dismisses the appeal.

[Round seal with the inscription]

District Court in Krakow *18*

Appropriate signatures on the original

I hereby certify that this is a true copy of the original

[Illegible signature]

Court clerk trainee
Przemysław Król

RESOLUTION

22 November 2007

The Supreme Court composed of:

Supreme Court Judge Hubert Wrzeszcz (Chairman)
Supreme Court Judge Mirosław Bączyk (Rapporteur)
Supreme Court Judge Zbigniew Kwaśniewski

Clerk Bożena Kowalska

regarding the suit of Naukowa i Akademicka Sieć Komputerowa jednostka badawczo -
rozwojowa w Warszawie (*Research and Academic Computer Network Research and
Development Unit*)

vs. Piotr Zbigniew Sęczkowski and Ireneusz Andrzej Wis

after the decision in the Civil Chamber in an open hearing on 22 November 2007

of the legal issue presented by the District Court in Krakow in the decision of 18 May 2007,
case no. II Ca 514/07:

“Is the limitation of claims for compensation under a maintenance of Internet
domains contract governed by article 751 of the Civil Code (C.C.) in
conjunction with article 750 C.C., or do the general rules regarding limitations
apply (article 118 C.C.)?”

Resolved that:

**The claim for compensation resulting from the registration and
maintenance of an Internet domain contract expires after the deadlines
provided for in article 118 C.C.**

Appropriate signatures on the original
Certified true copy:
Chief Court Inspector
[Illegible signature]

Bożena Kowalska

Substantiation

The legal issue presented to the Supreme Court appeared on the background of the following facts.

Reason - Naukowa i Akademicka Sieć Komputerowa (NASK) demanded from both defendants payment of the fee for maintenance on the Internet network of two Internet domains of the defendants. This claim is derived from two contracts with the defendants in 2003, registration and maintenance of Internet domains contracts. The defendants have not paid the plaintiff the fees for the periods indicated in the lawsuit. During the trial the defendants pointed to the two-year limitation period for the plaintiff's claim (article 751, paragraph 1 C.C.). The District Court held that a registration and maintenance of an Internet domain contract is not a telecommunications service contract within the meaning of art. 2, paragraph 37 of the act of 21 July 2000 - Telecommunications Law (Journal of Laws No 73, pos. 852, as amended; referred further as the "act of 21 July 2000"). It is similar to a lease agreement (art. 659 C.C.), although the object given for use is not a thing. There is therefore no basis for qualifying a registration and maintenance of an Internet domain contract as a service contract within the meaning of art. 750 C.C. This excludes the applicability of art. 751 C.C. regarding the limitation of claims arising from this contract. The claim for compensation resulting from a registration and maintenance of Internet domains contract expires after a three-year limitation period provided for in art. 118 C.C. as a claim for temporary services and simultaneously related to the conduction of economic activity.

Reviewing the appeal of one of the defendants, the District Court, after examining the broader content of the domain registration and maintenance contract, has grounds for doubting the presented legal issue.

The Supreme Court found as follows:

The legal issue presented to the Supreme Court concerns the limitation of the claim for compensation (fees) payable to NASK (the registrant entity), and arising from a registration and maintenance of Internet domains contract. On the substantiation of the District Court's decision there is no clear conclusion whether it relates only to the validity period of the act of 21 July 2000, or it also includes the duration of the binding act of 16 July 2004 - Telecommunications Law (Journal of Laws No 171, pos. 1800, as amended; referred further as the "act of 16 July 2004"), although the Court thought about the possibility to qualify the said contract as a telecommunications service contract and the claimed amount constituted the overall

remuneration of the plaintiff, which consisted of fees resulting under the previous government and the new law. The generally included questions allow assuming that the matter was about the decision regarding the limitation period of claims for compensation in both periods.

The substantiation of the legal issues presented to the Supreme Court and documents related directly to the contract between the parties (especially general standard contracts from the years 1998 - 2002 and application forms for the contract) may indicate distinct differences in terminology, not only for its general term, but the determination of its individual elements (e.g., the page numbers themselves). This implies the necessity to accept certain denominational conventions in this field by honoring the essential constructional elements of this contract already functioning in a permanent manner in legal transactions. Considering the contents of the defendants' motions to conclude a contract with the plaintiff (NASK), the mentioned standard contracts (defined in 2002 as the "principles for the registration and maintenance of Internet domains" and proposals formulated in literature, the analyzed contract can be generally defined as a "registration and maintenance of Internet domains contract". It is concluded between the "registrant entity" ("register") and the "registered entity" ("subscriber", "applicant"). In literature, this agreement is also defined, for example, as a "domain registration contract". It must also be remembered that in law there are also other contracts relating to Internet domains, including, for example, contract to use the domain by someone other than a registered entity, domain sales contract, etc. A registered entity may be a consumer (art. 21¹ C.C.) or an entrepreneur (art. 43¹ C.C.).

Broadly speaking, an "Internet domain" is the address identifying a computer connected to the network (the domain address) with a specific structure. In essence, a full Internet address is a sequence of domains in the proper sequence, and compositional and graphic order - (from the so-called first-level domain to designate the transmission protocol with delimiters).

Literature is dominated by the relevant position of exhibiting a wider understanding of the analyzed contract in question. In the contract the registrant entity is obligated towards the registered entity to "register" and "maintain a domain in the Internet" in principle for an unlimited time. This agreement therefore includes both of these obligations, although in the name itself it sometimes emphasizes only one of the two duties of the registrant entity. These obligations in a fundamental manner determine the existing relational commitment, are equivalent jurisdictionally and remain in a close technical and legal relationship with each other. The act of

registration is used for maintaining domains in the global system of domain designations in the form of relevant data on the server by the registrant entity. The legal meaning of the registration and maintenance of Internet domain contract therefore leads to registration and maintenance, usually for an indefinite period, by the registrant entity in the global system of domain designations, a precisely defined name assigned to a personalized entity (the registering entity). In the technical sense, domain registration is adding another label to the label of an existing domain. In the legal sense, it causes the effect that a registered entity obtains the exclusive right to use the new, registered domain (name) on the Internet network. Domain registration and maintenance in the Internet is a paid service, and the fee is covered by the registering entity in the amount and for the period provided for in the contract. In practice, there also occurs free contracts or contracts connected with a non-cash service for a registrant entity, i.e., in the form of conducting appropriate advertising on a so-called website.

Assuming the broadly understood provision of a service by a registrant entity in the registration and maintenance of Internet domains contract, i.e., structural connections in this contract regarding the obligation to register a domain and maintain it for an unlimited time, and the different ways of exhibiting their mutual relation within the frame of one obligatory relationship, the proper legal status of that contract is searched for in literature. Sometimes a contract of commission is perceived here or a contract similar to this contract with the possibility to apply by analogy the provisions of art. 629 C.C. It also exhibits - as did the District Court - features approaching the discussed contract with a lease agreement (art. 659 C.C.). Sometimes the mixed nature this contact is mentioned, combining the features of a contract of commission and a service contract (art. 750 C.C.).

This direction of search should be considered to be the most appropriate, which includes the analyzed contract as a service contract within the meaning of art. 750 C.C. A synthetic approach to the services of the registrant entity cannot however be compared to performing work or rental. The factual acts that comprise the services of the registrant entity (domain registration and its maintenance) are to ensure the contracting party a specific digital address for a certain name that he indicates in order for the purpose of using it in the Internet network for various purposes, i.e., including creating a website. The services of the registrant entity have the features of continuous service. The general conditions governing the domain registration and maintenance contract indicate that the fee charged to the registered entity relates to

the overall services of the registrant entity. These fees are paid in the periods specified in the contract (usually annual) and have the features of periodic services.

In accordance with art. 750 C.C., the provisions regarding an order are applied to service contracts that are not governed by other provisions. In literature there is disagreement as to how to understand the formula in a non-regulated service contract with other provisions. In any case, here the reference is to such a system of legal regulation of a given service contract (the placement of this regulation in the legal system, the extent of its details), which eliminates the possibility of using appropriate regulations regarding an order. The legal issue presented to the Supreme Court does not justify the need for a broader legal analysis in this regard. Just a general statement that the classification of the domain registration and maintenance contract to the category of provision of telecommunications services contracts, regulated by telecommunications law, would surely allow submission to the legal regime provided for in this law, also in terms of the limitation for claims for compensation due to the registrant entity.

In both legal acts, namely the act of 21 July 2000 and the act of 16 July 2004 it was not foreseen, for example, clearly that the registration and maintenance of domains contract belongs to the category of the provision of telecommunications services contracts within the meaning of these acts. An unequivocal answer also does not give the general subject of these agreements in the form of “telecommunications service”. In the act of 21 July 2000, this service is described as “economic activity in the transmission or directing signals in telecommunications networks” (art. 2, paragraph 37). In the act of 16 July 2004, telecommunications service is “a service consisting mainly in the conveyance of signals in telecommunications networks, this service does not constitute e-mail service” (art. 2, paragraph 48). Although both acts use the term “provision of telecommunications services contract”, the regulation that it contains has a framework character, general, geared more to protect customers using telecommunications services and regulation of the telecommunications market rather than producing a normative type of contract or group of telecommunications contracts with clearly profiled subjects of these contracts and defining the rights and obligations of the parties. Moreover, literature suggests a different classification of basic telecommunications services. It also exhibits a very broad approach to the subject of telecommunications services, through appropriately wide recognition of the formula “signal transmission” within the meaning of art. 2, par. 48 of the act of 16 July 2004 and stresses the fact that some services, depending of telecommunications transmission, may be associated with other types of services (e.g., informational,

commercial, financial). It should also be noted that in the documents of the case is the opinion of Urząd Regulacji Telekomunikacji (*the Telecommunications Regulatory Authority*) of 24 July 2001 in which - after a detailed description of the activities in the form of "maintenance of Internet data" - the view was expressed that such activity falls under communications service referred to in art. 46, par. 1 of the act of 21 July 2000 (as "network access service"). "Domain registration" in itself does not constitute telecommunications services.

In the decision of the Supreme Court the legal issue of defining telecommunications services appeared, so far, only in the judgment of 17 January 1999, III CKN 450/98 (OSN IC 2000, no. 5, pos. 97), which states that contracts for telecommunications services by telephone cable operators have appropriate application in the regulations regarding orders (art. 750 C.C.). This position was expressed during the validity of the act of 23 January 1990 concerning Communications (i.e., Journal of Laws of 1995, no. 117, item 564 as amended). In the decision of common courts the position was sometimes held (without further justification) that a domain registration and its maintenance in the network contract constitutes a contract for the provision of telecommunications services within the meaning of both the 2000 and 2004 telecommunications laws (for example in the judgment of the Katowice Court of Appeal of 13 June 2006 I ACa 272/06, not published). Literature is dominated by the position of *de lege lata*, the view that the telecommunications contracts do not apply the provisions of orders (art. 750 C.C.), precisely because of the fact of legal regulations of these contracts in telecommunications law.

Because a certain enough answer cannot be obtained to the question of whether a registration and maintenance of Internet domains contract belongs to the category of provision of telecommunications services contracts, and therefore - as states the provision of art. 750 C.C. - for contracts governed by other provisions, there is a question as to whether the regulations regarding orders may be applied concerning the statute of limitation for claims (art. 750 C.C. and art. 751, par.1 C.C.). The analyzed contract belongs, as already mentioned, do service contracts within the meaning of 750 C.C. while art. 751, par.1 C.C. refers to a claim for payment for completed transactions, which may also include domain registration and its maintenance in the network.

The domain registration and its maintenance in the Internet network contract constitutes the current contract, which has been for some time legally formed in legal transactions (at least in functioning standard contracts concerning this contract), that

there is no fundamental reason for referring to the provisions of an order in the limitation arising from its claims, instead of applying the general provision of art. 118 C.C. Such conclusions may also lead to the juridical features of the claim for compensation (fees) due the registrant entity. Undoubtedly, this claim will be linked to economic activity within the meaning of 118 C.C. Currently, besides NASK (the plaintiff), there are other so-called regional administrators (registrars) operating on the Polish market who provide services in the form of domain registration and its maintenance in the Internet network. Claims due to those entities for the payment of fees have the nature of periodic claims (art. 118 C.C.). The analyzed contract belongs to due diligence contracts, but it is distinguished from a commission contract by this important structural feature, that it is not an agreement based on trust between the parties, requiring personal performance by the provider. Such statements may eventually lead to the conclusion that a claim for compensation arising from a registration and maintenance of Internet domain contract lapse after the time limits provided in the general provision of art. 118 C.C.

For these reasons, the Supreme Court under art. 390 of the Penal Code resolved as at the outset.

SUPREME COURT
CIVIL CHAMBER III
DIVISION

Appropriate signatures on the original
Certified true copy
Chief Court Inspector
[Illegible signature]

Bożena Kowalska

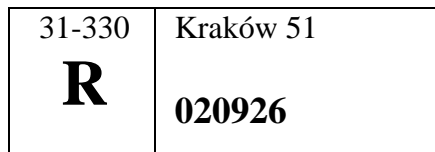
The District Court in Krakow
Civil Appeal Division no 3
ul. Przy Rondzie 7
31-547 Kraków



Case No. II Ca 514/07

REGISTERED LETTER
WITH RETURN RECEIPT

06 MARCH 2008



Naukowa i Akademicka Sieć
Komputerowa jednostka badawczo
- rozwojowa w Warszawie
ul. Wąwozowa 18 lok. 010
02-796 Warsaw