Panel Decision for dispute CAC-ADREU-001266

Case number	CAC-ADREU-001266
Time of filing	2006-05-22 11:47:15
Domain names	tourism-trnc.eu, trnc.eu, trnc-humanrights.eu, trncgov.eu, trnchumanrights.eu, trncinfo.eu, trncpio.eu, trncpresidency.eu, kktc.eu, northcyprus.eu, north-cyprus.eu, north-cyprus-constructions.eu, north-cyprus-properties.eu, north-cyprus-real-estate.eu, welcome-to-north-cyprus.eu, northerncyprus.eu, northern-cyprus.eu, northern-cyprus-constructions.eu, northern-cyprus-properties.eu, turkish-republic-of-northern-cyprus.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Presidency of Turkish Republic of Northern Cyprus, Mr. Hilmi Kansu

Respondent

Organization / Name	EURid

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain names.

FACTUAL BACKGROUND

All capitalized terms not defined herein are used by reference to the various regulations and rules identified in this decision.

This complaint arises out of the interpretation and application of Commission Regulation (EC) No 874/2004 of 28 April 2004 (“Regulation”) and the .eu Registration Policy and Terms and Conditions Domain Name Applications made during the phased registration period (“the Sunrise Rules”).

1. The domain names

Governmental bodies of the Republic of Cyprus (“Applicant”) applied for the registration of the domain names “tourism-trnc.eu”, “trnc.eu”, “trnc-humanrights.eu”, “trncgov.eu”, “trnchumanrights.eu”, “trncinfo.eu”, “trncpio.eu”, “trncpresidency.eu”, “kktc.eu”, “northcyprus.eu”, “north-cyprus.eu”, “north-cyprus-constructions.eu”, “north-cyprus-properties.eu”, “north-cyprus-real-estate.eu”, “welcome-to-north-cyprus.eu”, “northerncyprus.eu”, “northern-cyprus.eu”, “northern-cyprus-constructions.eu”, “northern-cyprus-properties.eu”, “turkish-republic-of-northern-cyprus.eu” (“the Domain Names”) during Sunrise Period I pursuant to the Sunrise Rules and based its application on Documentary Evidence.
The Presidency of Turkish Republic of Northern Cyprus (“Complainant”) filed a Complaint concerning Eurid (“Respondent”) decisions by which Respondent allegedly accepted the applications by Applicant for the registration of the Domain Names.

2. The ADR proceeding

On May 7, 2006, Complainant submitted a Complaint to the ADR Center.
On May 22, 2006, the ADR Center requested verification information from Respondent and the Documentary Evidence in a Non Standard Communication.

Respondent's Non Standard Communication filed on May 29, 2006, provided the verification information requested.
On May 30, 2006 the ADR Center notified the Complainant of deficiencies in the Complaint giving Complainant seven days to correct such deficiencies.
Complainant filed an amended complaint on June 2, 2006.
On June 6, 2006, the ADR Center found that the Complaint as amended satisfied the formal requirements of the ADR Rules and ADR Supplemental Rules and that the ADR proceedings could commence.
On July 26, 2006 the ADR Center notified Respondent of Respondent's default.
On July 27, 2006, Respondent filed a Non Standard Communication in lieu of response.
On August 13, 2006, Complainant filed a Non Standard Communication replying to the Respondent's Non Standard Communication of July 27, 2006.
On August 9, 2006, Respondent provided the Documentary Evidence following requests made by Complainant and the ADR Center. On August 10, 2006, Complainant requested that Respondent provide a translation of the Documentary Evidence as most of it was in the Greek language. Respondent answered this request on August 14, 2006, stating that it had no obligation to translate the Documentary Evidence.
On August 19, 2006, the Panel made a Non Standard Communication to the effect that, on the basis of the ADR Rules, Rule A(3)(d) and B(8) if a Party wished to rely on the Documentary Evidence or the Cypriot Government Validation Point rules, that Party should provide relevant translations by August 25, 2006. The Panel further stated that August 30, 2006 would be the last date to submit arguments. Neither Party has submitted documents since then. No translation has been submitted.

A. COMPLAINANT

In its Complaint the Complainant asserts the following.

"The disputed domains have been registered by the different governmental bodies of Cyprus Republic using the Sunrise period. Currently there is a political conflict between the two communities and the Turkish community on the island is being governed by its own local Administration. Even though Turkish Cypriots have voted to unite the island and join European Union in April 2004, since Greek Cypriots voted against this, Turkish Cypriots have been left out of European Union and lost the advantages that would provide to them. Since the Turkish Cypriot community does not have a say in the governance of Cyprus Republic, the Cyprus Republic government does not represent the geographical area Turkish Cypriots control and their rights and furthermore tries to prevent their direct communication with the rest of the world by the use of sanctions and embargos. Although Internet and the European Union are the two places where people should be free to express their thoughts and beliefs, Governmental bodies of Cyprus registered the listed domain names in order to prevent the most basic human rights of Turkish Cypriots, to communicate with the world and express their thoughts. The meanings of the domain names registered is directly related to Turkish Cypriot Community. TRNC is the short form of the Turkish Republic of Northern Cyprus which is the name of the local Administration representing Turkish Community. KKTC is the short form of Kuzey Kibris Turk Cumhuriyeti which is the Turkish translation of Turkish Republic of Northern Cyprus. As these explanations demonstrate all the domains registered are the combinations of those and naturally they should be owned by Turkish Cypriot community. The information above clearly shows that the only reason these domains have been registered is to prevent Turkish Cypriots to own them and have a chance to communicate with world and develop to the level of modern European countries and become an information society. The Ministry of Education and Culture of Cyprus Republic clearly aims to abuse the rights of ownership of these domains against Turkish Cypriot community on the island and unfortunately this political approach will damage the relations between the two communities and hinder the efforts for peace on the island."

Following the Non Standard Communication filed on July 27, 2006 by Respondent in lieu of a response, the Complainant made further submissions on August 13, 2006. These are as follows:

"According to Article 22 paragraph 1(b) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter "Regulation 874/2004"), the Complainant has the right to initiate an ADR procedure against a decision taken by the Registry if that decision conflicts with Regulation 874/2004 or with Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain (hereinafter "Regulation 733/2002").

Article 10 of Regulation 874/2004 states that public bodies may apply to register domain names during a period of phased registration before general registration of .eu domain names. Article 10 (1), which defines 'public bodies' as "institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organizations and bodies governed by public law and international and intergovernmental organizations" must be read together with Article 10(3).

Article 10(3) explains that it is the name of that public body, complete or the generally used acronym, that may be registered. Also,

“public bodies that are responsible for governing a particular geographic territory may also register the complete name of the territory for which they are responsible, and the name under which the territory is commonly known.” It is the assertion of the Complainant that the disputed domain names registered in the name of the Ministry of Education and Culture of Republic of Cyprus during Sunrise Period by the Respondent are neither the complete names of nor acronyms for the said Ministry. Turkish Republic of Northern Cyprus, North Cyprus, Northern Cyprus, TRNC which are common to all disputed domain names are in fact the names for a separate entity in the northern part of Cyprus. Furthermore, the Republic of Cyprus, that the Ministry of Education and Culture is in reality a public body of, fails to exercise effective control on the particular geographic territory, namely the territory in northern Cyprus.

Article 1 to Protocol 10 attached to 2003 Treaty of Accession expressly states that the area where the disputed domain names relate to, i.e. north of Cyprus, is an area that is not within the effective control of Republic of Cyprus and the acquis communautaire is suspended in those areas (Annex 1). In other words, since the territory in the North is expressly excluded by primary law of the European Union from the effective control of Republic of Cyprus, a public body of Republic of Cyprus cannot claim to govern this particular geographic territory and register domain names as its public body. No arm of the Government of Cyprus, neither the legislative, the executive, nor the judiciary, is authorized under EU law to take action, the effect of which is to extend the geographical parameters set by the 2003 Treaty of Accession. Given that, pursuant to Article 1.2 of Protocol No 10 of the Treaty of Accession, the withdrawal of the suspension of the acquis is to be decided by the “Council, acting unanimously on the basis of a proposal from the Commission”, neither the delegated legislation of Cyprus, nor the authorization of its Ministries, can extend the territorial reach of EU law, including within the context of Article 10(3) of Regulation 874/2004. It is equally well established that Member State Governments are precluded from taking measures that are ultra vires the terms of the relevant Treaty of Accession (see eg Case C-233/97 KappAhl Oy judgment of 3 December 1998 paragraphs 14 –24) (Annex 2) Moreover, the duties elaborated in KappAhl Oy, Kobler, and Marleasing apply equally to the Respondent as well as Government Validation Agency of Republic of Cyprus, namely the Office of the Commissioner of Electronic Communications and Postal Regulation (OCECPR). Thus, due to the primacy of Article 1 of Protocol No 10, the Respondent has a duty, wholly independent of the findings of the OCECPR, to interpret Article 10(3) of Regulation 874/2004 in conformity with this primary, and higher ranking rule of EC.

More specifically, the Regulation must be interpreted in conformity with the requirement for “effective control” contained in the, primary, accession rules. If it cannot be so interpreted, it is invalid (Joined Cases C-36/97 and C-37/97 Kellinghusen v. Amt für und Wasserwirtschaft Kiel, judgment of the Court of Justice of 22 October 1998) (Annex 3). For details on the requirement for secondary EC legislation to be interpreted in conformity with primary rules set in the EC Treaty see the Opinion of AG Fennelly of 15 June 2000 in Case C-376/98 Germany v. European Parliament and Council, judgment of 15 June 2000) (Annex 4). Also, the European Court of Human Rights in Cyprus v Turkey Application no. 25781/94 10th May 2001 (Annex 5) recognised the lack of control the Republic of Cyprus has over north Cyprus and the TRNC when it said; “Having regard to the applicant [Greek Cypriot] Government’s continuing inability to exercise their Convention obligations in northern Cyprus, any other finding would result in a regrettable vacuum in the system of human-rights protection in the territory in question by removing from individuals there the benefit of the Convention’s fundamental safeguards and their right to call a High Contracting Party to account for violation of their rights in proceedings before the Court.” Paragraph 78. And at paragraphs 90-98; “90. In the Court’s opinion, and without in any way putting in doubt either the view adopted by the international community regarding the establishment of the “TRNC” (see paragraph 14 above) or the fact that the government of the Republic of Cyprus remains the sole legitimate government of Cyprus (see paragraph 61 above), it cannot be excluded that former Article 26 of the Convention requires that remedies made available to individuals generally in northern Cyprus to enable them to secure redress for violations of their Convention rights have to be tested.

The Court, like the Commission, would characterise the developments which have occurred in northern Cyprus since 1974 in terms of the exercise of de facto authority by the “TRNC”. As it observed in its Loizidou judgment (merits) with reference to the Advisory Opinion of the International Court of Justice in the Namibia case, international law recognises the legitimacy of certain legal arrangements and transactions in situations such as the one obtaining in the “TRNC”, for instance as regards the registration of births, deaths, and marriages, “the effects of which can only be ignored to the detriment of the inhabitants of the [t]erritory” (loc. cit., p. 2231, § 45). …….. 98. For the Court, the conclusion to be drawn is that it cannot simply disregard the judicial organs set up by the “TRNC” in so far as the relationships at issue in the present case are concerned. It is in the very interest of the inhabitants of the “TRNC”, including Greek Cypriots, to be able to seek the protection of such organs; and if the “TRNC” authorities had not established them, this could rightly be considered to run counter to the Convention. Accordingly, the inhabitants of the territory may be required to exhaust these remedies, unless their inexistence or ineffectiveness can be proved – a point to be examined on a case-by-case basis”

It is the conclusion of the Complainant that the registration of disputed domain names in this case in the name of Ministry of Education and Culture is a violation of Article 10 (3). In this respect, according to Article 22(1)(b) of Regulation 874/2004, this Court has the power to question the decision taken by the Registry EURid since by taking such decision, EURid has violated Article 10(3) of the said Regulation 874/2004 in registering domain names relating to Turkish Republic of Northern Cyprus (namely, TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS.eu), its acronym TRNC (namely, TRNC.eu, TOURISM-TRNC.eu, TRNC-HUMANRIGHTS.eu, TRNCGOV.eu,

TRNCHUMANRIGHTS.eu, TRNCINFO.eu, TRNCPIO.eu,), the Turkish translation of the acronym, KKTC (namely, KKTC.eu) and, Northern Cyprus and North Cyprus where it exercises effective control (namely, NORTH-CYPRUS.eu, NORTH-CYPRUS-PROPERTIES.eu, NORTH-CYPRUS-REAL-ESTATE.eu, WELCOME-TO-NORTH-CYPRUS.eu, NORTHERNCYPRUS.eu, NORTHERN-CYPRUS.eu, NORTHERN-CYPRUS-PROPERTIES.eu) as well as its organs (namely, TRNCPRESIDENCY.eu.)

By way of remedy and in accordance with B(11)(c) of the ADR Rules, the Complainant requests the annulment of the disputed domain names (to the exclusion of NORTH-CYPRUS-CONSTRUCTION and NORTHERN-CYPRUS-CONSTRUCTIONS, which are claimed to be expired) that have been registered for the Ministry of Education and Culture of Republic of Cyprus and grant a decision to register it in the name of the Complainant.

The Complainant acknowledges the Respondent's argument that Article 13 of Regulation 874/2004 provides for such applications to be validated by validation agents. The same Article proposes that it is the Member States that shall provide for validation concerning the names mentioned in Article 10(3), namely for public bodies.

The Complainant is in full agreement with the Respondent that the Object and Scope of the Sunrise Rules states that Chapters V and VI of the "Sunrise Rules" do not apply where the applicant body applying for registration of a name referred to in Article 10(3) of Regulation 874/2004. However, as it is explained above, the Complainant argues that the public body, namely the Ministry of Education and Culture of Republic of Cyprus, is not a public body that can register domain names within the definition of registration of public bodies in Article 10(3) relating to North Cyprus. The responsibility to check, however, whether a public body is one that can apply for registration of a name referred to in Article 10(3) of Regulation 874/2004 remains with the Respondent. In this respect, Respondent erred in treating this application as a valid application within Article 10(3) and accepting the validation of the Cyprus Government Verification Point (GVP) on its face value. In any case, the assertion of the Respondent that GVPs are well-acquainted with the structure of public bodies of their respective countries and it is difficult to examine applications by public bodies does not absolve the Respondent from responsibility. In fact, as it is agreed by the Respondent, GVPs decisions may be reviewed by this Panel and previous decisions of the Panel show that GVP decisions are not taken on its face value and may be disregarded (Case No. 00386 Stockholm). At the same time, validation agents should assess the right which is claimed in respect of a particular name as provided for in Article 12 of Regulation 874/2004. In Case No: 00394 (Frankfurt), the Panel interpreted the word "assess" to imply at least some degree of judgment by the Respondent (EURid) or the validation agent (in this case GVP) and not the automatic acceptance of such application. A simple search of the internet with google search engine, for example, would have revealed that the registered domain names with .com or .org extensions are not registered in the name of the Ministry of Education and Culture of Republic of Cyprus but in the organs and/or the state of a separate entity, Turkish Republic of Northern Cyprus (Annex 6).

For the foregoing reasons, the Complainant requests an annulment of disputed domain names and a decision to register it in the name of the Complainant."

B. RESPONDENT

The Respondent responded via a Non Standard Communication filed on July 27, 2006. This is below.

"In accordance with Paragraph A2 (k) of the ADR Rules I/we communicate the following:

1. GROUNDS ON WHICH THE RESPONDENT ACCEPTED THE APPLICATION BY DIFFERENT GOVERNMENTAL BODIES OF CYPRUS REPUBLIC Article 10 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 (hereafter "the Regulation") states that public bodies may apply to register domain names during a period of phased registration before general registration of .eu domain names. Pursuant to article 10 (3) of the Regulation, a public body may apply for a domain name which consists of the complete name of this public body or the acronym that is generally used. With regard to the applications made pursuant to article 10 (3) of the Regulation, article 13 of the Regulation provides that such applications shall be validated by the Member States, more in particular by Governmental Validation Points (hereafter "GVP"). Article 3 (c) of the Regulation states that an applicant must affirm that to its knowledge the request for domain name registration is made in good faith and does not infringe any rights of a third party; Different governmental bodies of Cyprus Republic (hereafter "the Applicants") applied for a number of domain names. The documentary evidence for all but two applications was received in due time. The two applications for which no documentary evidence was received in due time are: NORTH-CYPRUS-CONSTRUCTIONS NORTHERN-CYPRUS-CONSTRUCTIONS The Cyprus GVP validated these applications but two. Therefore, the Respondent accepted the Applicants' application. The applications which have not been validated yet correspond to the domain names TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS and TRNCINFO. .

2. APPLICANT'S CONTENTIONS The Complainant argues that the Cyprus Republic government does not represent the geographical area Turkish Cypriots control, i.e. the northern part of Cyprus. The Complainant argues that by registering these domain names the Applicants are refraining the Complainant from using these domain names. The Complainant therefore requests that the Respondent's decision be

annulled and that it be transferred the domain names.

3. RESPONSE The Respondent would like to note that the applications for NORTH-CYPRUS-CONSTRUCTIONS and NORTHERN-CYPRUS-CONSTRUCTIONS expired as the documentary evidence was not submitted in due time (see exhibit 1). Therefore, these domain names are outside the scope of the present ADR proceedings.

3.1 The Respondent and the concept of public bodies
The validation process with regard to applications based on prior rights such as registered trademarks and trade names is substantially different from the validation process with regard to applications by public bodies.
Article 10 (1) of the Regulation clearly distinguishes between applications based on prior rights and applications by public bodies. Moreover, the Object and Scope of the Sunrise Rules states that chapters V and VI of the Sunrise Rules do not apply where the applicant is a public body applying for registration of a name referred to in article 10(3) of the Regulation. Public bodies applying for such names may be subject to specific rules imposed by the European Commission, the member state of the Applicant and/or the competent Government Validation Points. Chapter V of the Sunrise Rules deals with the validation of prior rights, chapter VI deals with the assessment of prior right claims, documentary evidence and decisions by the Respondent. The European Commission concurred with this limitation. Indeed, article 5 (3) of Regulation N° 733/2002 states that "Before starting registration operations, the Registry shall adopt the initial registration policy for the .eu TLD in consultation with the Commission and other interested parties. The Registry shall implement in the registration policy the public policy rules adopted pursuant to paragraph 1". The rationale for such a limitation is obvious. There are no official and exhaustive registers, much in contrast to for example registered trademarks, which make it possible to examine if the application should be accepted. There is a large difference between applications based on prior rights and applications by public bodies: there is very little for the validation agent to examine whether the application is well-founded. This is why a system of GVPs was set up. GVPs are well-acquainted with the structure of public bodies of their respective countries.
The difficulty with examining applications by public bodies which is explained above, has the additional effect that GVPs are granted far greater discretionary powers than the validation agent PriceWaterhouseCoopers has regarding applications based on prior rights. This is also confirmed by the Object and Scope provisions which states that GVPs may even provide in specific rules regarding the validation of applications by public bodies. Given the large discretionary powers granted by the applicable rules and regulations to the GVPs, and given that pursuant to article 22 (1) b of the Regulation, an ADR procedure may be initiated by any party where a decision taken by the Respondent conflicts with this Regulation or with Regulation (EC) No 733/2002, the decision by the Respondent to register the domain names subsequent to the Cypriotic GVPs validation cannot be incorrect.

3.2 Alleged bad faith of the Applicants
The Complainant seems to be arguing that the Applicants have acted in bad faith when registering the domain names. The Complainant indeed states that it is being refrained from using these domain names. The Respondent would like to refer the Panelists to inter alia cases n° 012 (EUROSTAR), 532 (URLAUB), 382 (TOS), 191 (AUTOTRADER) and 335 (MEDIATION). The Panelists in these cases all accepted that ADR proceedings regarding bad faith registrations should not be initiated against the Respondent.

3.3 Transfer of the domain names
With regard to the Complainant's request to have the domain names transferred, the Respondent would like to refer the Panel to article 11 (c) of the ADR Rules.
Two conditions need to be met before the Panel may order the transfer of a domain name:
• the Complainant must be the next applicant in the queue for the domain name concerned;
• the Registry must decide that the Complainant satisfies all registration criteria set out in the Regulation. The Complainant, as exhibit 2 shows, is not the next in the queue for the domain names Therefore, should the Panel consider that the Respondent’s decision must be annulled, the Complainant's transfer request must be rejected. For the reasons mentioned above, the Complaint must be rejected.”

DISCUSSION AND FINDINGS

1. INTRODUCTORY NOTE

Public bodies may apply for Domain Names based on Article 10(3) of the Regulation. Article 10(3) of the Regulation enables public bodies to register domain names that are either:
1/ Their complete name;
2/ The acronym that is generally used to describe them; or
3/ The complete name of a geographic territory, or the name under which the territory is commonly known, and which they are responsible for governing.

In respect to public bodies applying for registration under Article 10(3) of the Regulation, the Sunrise Rules’ Chapters V and VI on the validation of prior rights process do not apply. However, the preceding chapters apply and Chapter IV, Section 8 (3) (iv) provides that the

applicants are required to support their applications with relevant Documentary Evidence.

In this case the Applicants for the Domain Names are public bodies which are part of the Government of the Republic of Cyprus. This is not contested by the Complainant and is accepted by the Panel.

The Applicant has used a Government Validation Point to register the Domain Names in accordance with Article 13(2) of the Regulation. The Government Validation Points are entities, designated by Member States, in charge of processing applications for Domain Names made under Article 10(3) of the Regulation. As a result, although the final decision to register the Domain Names fell on Respondent, it is the Government Validation Point for the Republic of Cyprus that determined that the Documentary Evidence was sufficient to register the Domain Names. Respondent's role and function in these circumstances is purely that of processing the registration acceptances.

In order for the Panel to make a decision it needs to verify that there is sufficient Documentary Evidence to support a finding that the Domain Names answer the conditions set by Article 10(3) of the Regulation

2. THE EVIDENCE PRESENTED TO THE PANEL

2.1 TRANSLATION OF DOCUMENTARY EVIDENCE

Under Section 16(3) of the Domain Names Registration Terms and Conditions, the language of any and all proceedings against Respondent shall be English. Since these ADR Proceedings are in English all documents should be submitted in the English language. The second sentence of Paragraph A3(c) of the ADR Rules states that the Panel may disregard documents submitted in languages other than the language of the ADR Proceeding without requesting their translation, leaving the admission of the document to the discretion of the Panel.

Most of the Documentary Evidence is submitted in the Greek language.

Complainant and the ADR Center asked Respondent to translate the Documentary Evidence. The Respondent refused to do so.

The Panel requested that any Party who wished to rely on Documentary Evidence or other evidence should provide a translation of the relevant documents it was relying on. No Party provided translations. As a result the Panel has decided that it shall only take into account the part of the Documentary Evidence that is in the English language.

The Panel notes that the rules may be flawed in this respect as Respondent seems unwilling to defend a decision that "it" took. Respondent is not acting like an interested party in these proceedings. It knows that its refusal to translate the documentary evidence is likely to compel the panel to decide adversely against it. Still it refuses to do so and appears unaffected by the risk of having "its" decisions annulled. The reason for its refusal is that a cancellation of its decision is a loss only for the Applicant (fees, time and opportunity). A change in the rules may be warranted to ensure that the Applicant is guaranteed fair treatment.

2.2 RESPONDENT'S FAILURE TO RESPOND

The Respondent did not file its Response within the deadline of 30 working days as requested by the ADR Center pursuant to Article 22(8) of the Regulation and B3(a) of the ADR Rules. Pursuant to B3(f) of the ADR Rules, the ADR Center notified the Parties of Respondent's default. Respondent did not challenge the ADR Center's notification of the Respondent's default as provided for in B3(g) of the ADR Rules. Respondent has not put forward any reasonable explanation for its belated response. Respondent instead filed a Non Standard Communication in lieu of a response. The Panel could have decided not to admit the contentions made therein pursuant to Article 22(10) of the Regulation and B3(g) and B7(d) of the ADR Rules. However, in light of the Complainant's subsequent Non Standard Communications, the Panel has decided to admit all communications from the parties as long as they are in the English language.

2.3 THE EVIDENCE TAKEN INTO CONSIDERATION BY THE PANEL

As a result, the Panel has decided that it would use the following documents ("Evidence") in deciding this case.
The Complaint;
The Non Standard Communications made by both parties and relevant annexes if in the English language;
Those documents that are part of the Documentary Evidence and that are provided in the English language.

3. CANCELLATION OF THE DECISION IN RESPECT TO SOME NAMES (“ANNULLED DOMAIN NAMES”)

Article 10(3) states that for a public body to register domain names during the Sunrise Period such names should meet a number of conditions.

3.1 Respondent accepted the registration of the names based on Article 10(3) of the Regulation:

TOURISM-TRNC
TRNC
TRNC-HUMANRIGHTS
TRNCGOV
TRNCHUMANRIGHTS
TRNCINFO
TRNCPIO
TRNCPRESIDENCY
KKTC
TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS

The Panel has considered the Evidence and considers that these names should not have been accepted by Respondent. Respondent argues that Government Validation Points have broad powers to determine which names to accept for registration as domain names and that Respondent has little to no power to contest these decision and merely officialises the decision already taken by the Government Validation Point. It further claims that because Government Validation Points are given broad powers and even the right to define rules that apply to them, its decision to confirm the validation of a GVP cannot be incorrect.

The Panel cannot agree with this. GVP have to comply with the Regulations and ADR Rules. In particular and as argued by Complainant, they have to comply with the conditions set by Article 10(3) of the Regulation and the conditions that it imposes for registration of domain names by public bodies. Further, the Documentary Evidence should be sufficient to demonstrate that such conditions have been met.

The Panel agrees with Complainant that it is difficult to see how the Applicant could claim to comply with the Regulations in respect to these names. The names do not correspond to a geographic territory, are not an acronym that is generally used by the Applicant and are not the complete names of the Applicant. The Documentary Evidence presented by Applicant itself shows that it contests the very existence of the territories or bodies to which these names refer. As a result the requested names cannot be considered as falling under Article 10(3) of the Regulation. Based on the Evidence, on the Regulations and on the Rules, the Panel cancels the decisions to register the following Domain Names in the name of Applicant:

TOURISM-TRNC.EU
TRNC.EU
TRNC-HUMANRIGHTS.EU
TRNCGOV.EU
TRNCHUMANRIGHTS.EU
TRNCINFO.EU
TRNCPIO.EU
TRNCPRESIDENCY.EU
KKTC.EU
TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS.EU

3.2 Respondent accepted the registration of the following names based on Article 10(3) of the Regulation:

NORTH-CYPRUS-PROPERTIES
NORTH-CYPRUS-REAL-ESTATE
NORTHERN-CYPRUS-PROPERTIES
WELCOME-TO-NORTH-CYPRUS

For the reasons stated above, the Panel has considered the Evidence and considers that these names should not have been accepted by Respondent. The conditions defined under Article 10(3) of the Regulation have not been met. The names do not strictly speaking correspond to a geographic territory but rather to activities that relate to a geographic territory. They are not an acronym that is generally used by the Applicant and are not the complete names of the Applicant. As a result the requested names cannot be considered as falling under Article 10(3) of the Regulation.

Based on the Evidence, on the Regulations and on the Rules, the Panel cancels the decisions to register the following Domain Names in the name of Applicant:

NORTH-CYPRUS-PROPERTIES.EU
NORTH-CYPRUS-REAL-ESTATE.EU
NORTHERN-CYPRUS-PROPERTIES.EU
WELCOME-TO-NORTH-CYPRUS.EU

4. NON CANCELLATION OF THE DECISIONS IN RESPECT TO NAMES THAT HAVE BEEN REFUSED BY RESPONDENT FOR LACK OF DOCUMENTARY EVIDENCE

4.1 Respondent refused the registration of the names:

NORTH-CYPRUS-CONSTRUCTIONS.EU
NORTHERN-CYPRUS-CONSTRUCTIONS.EU

The Respondent has refused to approve the above names based on the Applicant's failure to timely submit the relevant Documentary Evidence in support of its applications for those names. Thus, Respondent did not accept registration of these names based on the Sunrise Rules. The Panel agrees with the Respondent's decision in this respect. Complainant itself agrees to this in its May 22, submissions. The Panel decides that the names were validly rejected by Respondent during the Sunrise Period.

4.2 NON CANCELLATION OF THE DECISION IN RESPECT TO NAMES ("CONFIRMED NAMES")

Respondent accepted the registration of the following names based on Article 10(3) of the Regulation:

NORTHCYPRUS
NORTH-CYPRUS
NORTHERNCYPRUS
NORTHERN-CYPRUS

Based on the Evidence, it does not appear that these names are acronyms generally used by the Applicant. Nor are they the complete names of the Applicant. However, each name does appear to correspond to a geographic territory. Names that correspond to a geographic territory, under which such territory is commonly known, may be registered if Applicant is responsible for governing the geographic territory to which the names refer. It is not contested by Complainant that these names represent a geographic territory, under which such territory is commonly known. What is contested by Complainant however is that the Applicant is responsible for governing such territory.

The Panel has reviewed the Evidence and finds that the Documentary Evidence provided to support the claim that the Applicant is responsible for governing the geographic territory to which the names refer appears valid. The Applicant does appear to have rights in the names. This does not mean that others cannot claim rights in the names too but merely that the Applicant has provided sufficient evidence to support its claim. The Complainant argues that the Applicant cannot demonstrate that it has effective control over the geographic territory. Complainant supports this argument by referring to Protocol 10 of the Republic of Cyprus accession Treaty and European Court of Human Rights decisions. Complainant however does not deny that Applicant is the sole legitimate government of Cyprus. It does not deny the value of the UN resolutions that state the same. In its May 22 submissions it even refers to the European Court of Human Rights decision in Cyprus v. Turkey of May 10, 2001 and uses to support its argument that it has effective control a paragraph from that decision that states that "the government of the Republic of Cyprus remains the sole legitimate government of Cyprus". The Applicant may not have effective control over the geographic territory but the Evidence shows that Applicant is the

legitimate government for the territory. The Panel is therefore unable to cancel Respondent's decisions in respect to these names. This is a complex issue with political and legal ramifications and Respondent's decision in view of the UN documents submitted to it is appropriate. Therefore, notwithstanding the fact that it does not exercise effective control over North Cyprus or Northern Cyprus, Applicant must be held to be responsible for governing the geographical territory commonly known by those names for the purposes of Article 10(3) of the Regulation.

Based on the Evidence, the Panel decides that the decisions in respect to the following domain names comply with the Regulation and the Rules:
NORTHCYPRUS.EU
NORTH-CYPRUS.EU
NORTHERNCYPRUS.EU
NORTHERN-CYPRUS.EU

5. TRANSFER OF THE ANNULED DOMAIN NAMES TO RESPONDENT

The Complainant requests that the domain names registrations be annulled and the domain names transferred to it.

The Panel has found that some of the Respondent's decisions in respect to the Domain Names should be annulled. The Annulled Domain Names are as follow:

TOURISM-TRNC.EU
TRNC.EU
TRNC-HUMANRIGHTS.EU
TRNCGOV.EU
TRNCHUMANRIGHTS.EU
TRNCINFO.EU
TRNCPIO.EU
TRNCPRESIDENCY.EU
KKTC.EU
TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS.EU
NORTH-CYPRUS-PROPERTIES.EU
NORTH-CYPRUS-REAL-ESTATE.EU
NORTHERN-CYPRUS-PROPERTIES.EU
WELCOME-TO-NORTH-CYPRUS.EU

As a result, Complainant's request for the transfer of the Annulled Domain Names should be answered.

Article 11(c) of the ADR Rules should be read in combination with Article 22(11)(2) of the Regulation, which Regulation prevails in case of conflict. Under Article 11(c), the Panel may only, if it so chooses, order the Registry or Applicant to transfer the Annulled Domain Names to Complainant if two conditions are met. First the Complainant should be the next applicant in the queue. Second, the Complainant should satisfy the registration criteria namely those described herein subject to confirmation by the Registry. Neither of these conditions conflicts with Article 22(11)(2) of the Regulation.

The Respondent's response indicates that the Complainant is not the next applicant in the queue waiting to register the relevant domain names. Complainant has not denied this. WHOIS information confirms this. There is in fact no indication by either Complainant or Respondent that Complainant has actually applied for the Annulled Domain Names and paid the relevant application fees. Again this is confirmed by the WHOIS which shows that only one applicant has applied for these names. As a result, and without the Panel having to review the fulfilment of the second condition, the Annulled Domain Names should not be transferred to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the Complaint in respect to some domain names is Denied.

A number of EURID's decisions are annulled.

the domain names TOURISM-TRNC, TRNC, TRNC-HUMANRIGHTS, TRNCGOV, TRNCHUMANRIGHTS, TRNCINFO, TRNCPIO, TRNCPRESIDENCY, KKTC, NORTH-CYPRUS-PROPERTIES, NORTH-CYPRUS-REAL-ESTATE, WELCOME-TO-NORTH-CYPRUS, NORTHERN-CYPRUS-PROPERTIES, TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS are revoked.

PANELISTS

Name	**Christopher Stothers**

DATE OF PANEL DECISION 2006-09-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

ANNULLED DOMAIN NAMES

Applicant failed to show that it could claim a right based on Article 10(3) of the Regulation for the following domain names:
TOURISM-TRNC.EU
TRNC.EU
TRNC-HUMANRIGHTS.EU
TRNCGOV.EU
TRNCHUMANRIGHTS.EU
TRNCINFO.EU
TRNCPIO.EU
TRNCPRESIDENCY.EU
KKTC.EU
TURKISH-REPUBLIC-OF-NORTHERN-CYPRUS.EU
NORTH-CYPRUS-PROPERTIES.EU
NORTH-CYPRUS-REAL-ESTATE.EU
NORTHERN-CYPRUS-PROPERTIES.EU
WELCOME-TO-NORTH-CYPRUS.EU

As a result Respondent’s decisions accepting registration of such names should be cancelled.

CONFIRMED DOMAIN NAMES

The Documentary Evidence and the Evidence adequately support Applicant’s claims that it fulfills the conditions set by Article 10(3) of the Regulation for the following Domain Names:
NORTHCYPRUS.EU
NORTH-CYPRUS.EU
NORTHERNCYPRUS.EU
NORTHERN-CYPRUS.EU
As a result Respondent’s decisions accepting registration of such names should be upheld.

RESPONDENT’S REFUSAL TO REGISTER DOMAIN NAMES

Respondent refused registration of the following names for lack of documentary evidence:

NORTH-CYPRUS-CONSTRUCTIONS.EU
NORTHERN-CYPRUS-CONSTRUCTIONS.EU

Respondent’s decisions refusing registration of such names should be upheld.

TRANSFER OF ANNULED DOMAIN NAMES

The Annulled Domain Names may not be transferred to Complainant as Complainant is not the next applicant in the queue as per Article 11(c) of the ADR Rules.