

Legal opinion regarding the grounds for convening of the Extraordinary General Assembly of the World Traditional Karate-do Federation in Prague 28 September 2019

1. Introduction

This legal opinion has been done on the commission of joint request of the Polish Traditional Karate Federation (PZKT) and the Czech Traditional Karate Association (CATK). The subject of the opinion is the legal ground for convening of the Extraordinary General Assembly of the World Traditional Karate-do Federation in Prague 28 September 2019 (EGAM).

The need for issuing a legal opinion appeared due the events which took place in the WTKF in the years 2018 - 2019. In this period of time the President of the Management Board of the WTKF - Mr. Włodzimierz Kwieciński has resign from the position of the President of the Polish Traditional Karate Federation and focused himself on the tasks ensured to the President of World Karate-do Federation (WTKF). Despite the fact of good intentions of both parties: national karate federations and the WTKF, the cooperation in the subject of developing and popularising traditional karate in the world, have suffered many obstacles.

On the day 16 August 2019, the representatives of five national federations: Czech Republic, Poland, Lithuania, Moldavia, Ukraine, have called a Extraordinary General Assembly of the World Karate-do Federation, to manage the difficulties and come up with a solution to the internal problems of the WTKF.

There for, attorneys: Maciej Benderski and Filip Coufal, present this legal opinion regarding the legal basis for the EGAM and the grounds for recognition of the decisions that will be taken on the EGAM.

This opinion is based on the legal basis listed in point 2. and facts of the case presented by PZKT and CATK.

2. Legal basis

The legal basis of this Opinion are as follows:

- a) The Statute of the WTKF approved by the General Assembly on October 24, 2014 in Geneva (Statute)
- b) Swiss Civile Code of 10 December 1907 (Status as of 1 January 2019) - art. 60 - 79.

3. List of the documents

To issue this opinion, the following documents has been taken under consideration:

- a) The WTKF Financial Statements at 31 December 2017;
- b) A letter from the WTKF President to the Polish Ministry of Sports, dated on 5 August 2019;
- c) A letter from the WTKF President to PZKT Board of Directors, dated on 10 August 2019;
- d) A letter from the WTKF President to Mr. Andrzej Maciejewski, dated on 11 August 2019;
- e) An appeal against the decision of the Board of Directors, dated on 14 August 2019;
- f) A letter from the WTKF President to national karate federations of: Czech Republic, Ukraine, Lithuania, Poland, no date, in response to the appeal from 14 August 2019;
- g) The WTKF Trademark statement by PZKT, dated on 15 August 2019;
- h) Request to convene an EGAM, dated on 15 August 2019;
- i) Invitation to the EGAM, dated on 16 August 2019;
- j) A letter from the WTKF Secretary to Mr. Łukasz Wójcik, dated on 20 August 2019;
- k) A letter from the PZKT to the President of the WTKF (settlement proposal), dated on 27 August 2019;
- l) A letter from the WTKF President to Mr. Pavel Chernousov, dated on 6 September 2019;
- m) A letter from the Polish Ministry of Sports to PZKT, dated on 6 September 2019;
- n) A letter from the PZKT to Mr. Nelson Carrion, dated on 6 September 2019;
- o) A letter from the PZKT to the Polish Ministry of Sports, dated on 13 September 2019;
- p) The Agenda of the EGAM, dated on 17 September 2019;
- q) A letter from the WTKF Secretary to the WTKF Members, dated on 20 September 2019;
- r) A letter from the WTKF President to members of PZKT, dated on 24 September 2019;

4. Rules taken under consideration

The legality of the EGAM is determinate by fulfilling of the conditions:

a) Art. 7 of the Statute:

- a. The General Assembly may meet in extraordinary session whenever necessary, by decision of the Board of Directors or at the request of one-third of the active members.
- b. The General Assembly shall be considered valid regardless of the number of members present.
- c. The Board of Directors shall inform the members in writing of the date of the General Assembly at least six weeks in advance. The notification, including the proposed agenda, shall be sent to each member at least 10 days prior to the date of the meeting.

b) Art. 8 of the Statute - The General Assembly:

- a. shall approve the admission and expulsion of members;
- b. appoints the members of the Board of Directors and elects, at a minimum, the president, the secretary and the treasurer;

- c. notes the contents of the reports and financial statements for the year and votes on their adoption;
 - d. approves the annual budget;
 - e. supervises the activity of other organs, which it may dismiss, stating the grounds therefore;
 - f. appoints an auditor for the Organization's accounts;
 - g. decides on any modification of statutes;
 - h. decides on the dissolution of the association;
 - i. fixes the annual membership fees.
- c) **Art. 9 of the Statute** - The General Assembly is presided over by the president or the secretary.
- d) **Art. 63 of the Swiss Civil Code:**
- a. ¹ Where the articles of association do not provide rules for the association's organisation or its relationship with its members, the following provisions apply.
 - b. ² Mandatory provisions of law cannot be altered by the articles of association.
- e) **Art. 64 B of the Swiss Civil Code:**
- a. ³ General meetings must be convened in accordance with the rules set out in the articles of association and also, as required by law, if one-fifth of the members so request.
- f) **Art. 65 B of the Swiss Civil Code: Powers**
- a. ¹ The general meeting of members decides on admission and exclusion of members, appoints the committee and decides all matters which are not reserved to other governing bodies of the association.
 - b. ² It supervises the activities of the governing bodies and may at any time dismiss the latter without prejudice to any contractual rights of those dismissed.
 - c. ³ The right of dismissal exists by law whenever justified by good cause.

5. Legal judgment

In the presented case, the grounds of convening the EGAM have been fulfilled.

- a) In reference to art. 7 of the Statute *in principio*, the group of WTKF members convening the EGAM included six members - the national federations of: Czech Republic, Poland, Lithuania, Moldavia, Israel, and Ukraine.

The list of active members, as required by art. 7 of the Statute *in principio*, consists the number of 15 national federations taking an active role in the WTKF. Therefore the requirement of one-third of the active members, convening the EGAM, is fulfilled.

Furthermore representatives of national karate federation of Canada have joined the convening federations by proxy. Which means that the group convening the EGAM includes 8 members of the WTKF.

In addition the legal requirement from art. 64 B ³ of the Swiss Civil Code - of one-fifth of all the Association members was fulfilled.

- b) In reference to art. 7 of the Statute *in fine*, all the members of the WTKF were informed in advance of the time and place of the EGAM. The Invitation was issued via mail on 16 August 2019. The agenda was sent to all members on 18 September 2019. Both, the invitation and the agenda, was sent by Mr. Radek Janus, WTKF Board Member and the Treasurer.
- c) In reference to art. 9 of the Statute, the President of the WTKF was informed in accordance with the Statute. He has not confirmed his presence on the EGAM, there for the Vice President of the WTKF Mr. Andrzej Maciejewski, who has confirmed his presence, shall be legit to preside over of the EGAM.
- d) In reference to the art. 8 of the Statute, in conjunction with art. 65 B and 63 of the Swiss Civil Code, the agenda of the EGAM does not consider any actions that will be contrary to the Statute or the law.

6. Additional Circumstance

Referring to the facts of the case, an additional circumstance has occurred, that has to be taken in to consideration.

The President of the WTKF Board - Mr. Włodzimierz Kwieciński, has issued a number of decisions regarding the suspension of the national federations of: Poland, Czech Republic, Lithuania, Ukraine, and suspension of other WTKF Board Members: Mr. Andrzej Maciejewski, Mr. Radek Janus, Mr. Giedrius Dranevicius and Mr. Vladimir Savchenko.

After a close examination of the decisions issued by Mr. Kwieciński the following facts were disclosed:

- a. The WTKF Statute does not contain sanction of suspension. The WTKF Statute recognizes only as a sanction the expulsion of members - Article 8 let. a) None of the national federations were expelled.
- b. Under the article 8 let. a) of the WTKF Statute the sanctions have to be approved by the General Assembly. The sanction against the mentioned national federations were not approved by the General Assembly. See also the art. 65B¹ of the Swiss Civil Code.
- c. Article 5 let. b) of the Statute - states that in the event of sanctions being imposed, the member has a right of appeal within 30 days. The General Assembly handles the appeals. In this case, a number of appeals has been lodged within 30 days, but the case was never presented to the General Assembly.
- d. The WTKF Statute contains no reasons or rules justifying the imposition of sanctions. There for shall be no punishment without the law (*Nulla poena sine lege*).
- e. The President of the WTKF has not prove that the mentioned national federations conducted any unlawfull actions. There for shall be no crime without a action against the law (*Nullum crimen sine lege*).
- f. The decisions of the President of the WTKF were not handed to any allegedly suspended organization. There was only a letter notifying the persons and organizations about the suspension. There for a legal validation of the documents was not possible.

In reference to the above argumentation, should be accepted that the decisions of the WTKF President, regarding the suspension of the national federations of: Poland, Czech Republic, Lithuania, Ukraine, and suspension of other WTKF Board Members: Mr. Andrzej Maciejewski, Mr. Radek Janus, Mr. Giedrius Dranevicius and Mr. Vladimir Savchenko, are not valid.

7. Summary

In the summary of the above argumentation, there has to be pointed out that the legal requirements for convocating the Extraordinary General Assembly in Prague on 28 September 2019, arising from the WTKF Statute from 24 October 2014, and the Swiss Civil Code, have been fulfilled. The party convocating the EGAM consists 7 active WTKF members, which means that the requirement of one-third of the WTKF active members convocating the EGAM was fulfilled. Furthermore the additional legal requirement from art. 64 B³ of the Swiss Civil Code - of one-fifth of all the Association members was fulfilled.

The actions in aim to suspend a group of members of the WTKF and certain Members of the Board of Directors, taken by the current Board of Directors of the WTKF, especially the President and the Secretary are not valid, and should be treated as a private statements of the above individuals. The information about suspension of does not meet the legal requirements to be taken as a statement of the WTKF Board of Directors, therefore it does not include any consequences to the WTKF members.

According to the Agenda of the EGAM, the planed discussions and resolutions are in powers of the Extraordinary General Assembly, on the basis of the art. 8 of the WTKF Statute, as well as the art. 65 B and 63 of the Swiss Civil Code. Therefore the decisions made by the EGAM in accordance to the Agenda will be legit and in power.

Advocate Maciej Benderski
Kancelaria Adwokacka
Maciej Benderski
ul. Wodna 2, 62-035 Kórnik
e-mail: kancelaria@benderski.pl
tel. 665812433 NIP: 777-329-12-62

Advocate Filip Coufal

Mgr. Filip COUFAL
advokát
Bayerova 53, 756 01 Rožnov p. R.
ev.č. ČAK: 18 227 IČ: 07067178