

## **DECISION**

**Republic of Austria  
Civil Court of Vienna**

## Republic of Austria

### Civil Court of Vienna

#### DECISION

...

The applications to abolish the default judgement of 7.9.2005 , to deliver the action, for restitution to the previous condition to the time limit for answering the action as well as the appeal against the judgement are rejected. ... The ITF, group around Ung Chang has to refund the costs of the proceeding ...

#### GROUNDS:

With the action, delivered to the court at 15.7.2005, the plaintiff ITF Germany applied for the declaration that the election and/or registration of Mr Ung Chang for President, of Mr Ki Ha Rhee for Vice President, of Georgius Stylianides for Secretary General, and of Mr Son U Chol for Treasurer of the defendant (International Taekwon-Do 'Federation ITF) in summer 2004 shall be void, as well as all actions set by the named Persons in the name of the defendant and the decision; void shall also be all decisions, which have been made at a Congress held on the 26.07.2004. The plaintiff also applied for the declaration that the board of the defendant consists of the following persons: President: Tran Trieu Quan, Vice President: Pablo Trajtenberg, Secretary: Thomas Mc Callum, Treasurer Wim Bos.

This action has been delivered by deposition on 26.7.2005 at the address 1210 Vienna, Brünnerstraße 190/2/16, the action has not been answered, a default judgement has been made and delivered at the same address on the 20.9.2005.

On the 25.11.2005 a pleading of the International Taekwon-Do Federation ITF, Draugasse 3, 1210 Vienna, was filed to the court. Mag. Werner Hauser, Mag. Lothar Schulmeister (attorneys at law), represented the defendant. They made applications for abolishment of the default judgement of 7.9.2005, for a new delivery of the action, for restitution to the previous condition, for injunction and an appeal against the judgement.

The defendant, from now on named intervenient, elaborated that the only person representing the ITF would be Mr. Ung Chang. It was also evident that Mr. Ung Chang has given the power of attorney to Mr. Hauser.

On 6th of December 2005 a pleading was delivered to the court with an information, a revocation of the power of attorney (to Mr. Hauser) and the withdrawal of all applications, this pleading was also filed by the ITF, (now again) situated in Brünnerstraße 190/2/16, 1210 Vienna, who was represented by (the attorney at law) Mag. Werner Suppan, ... .

In this pleading was elaborated, that President of the ITF (who will be named in this coherence as the defendant) would be Mr. Tran Trieu Quan, who never had given power of attorney to the office of Mr. Schulmeister /Mr. Hauser. Mr. Ung Chang had

only arrogated his power of representation. It was evident from the explanations that Mr. Tran Treu Quan had given the power of attorney to Mr. Suppan.

...

That means that there exists a (defendant) party in opposition to the plaintiff, of whom however on the one side Mr. Ung Chang and on the other side Mr. Tran Trieu Quan claim presidency and both of them set contradictory steps in the proceeding.

To find out, which of the contradictory steps in the proceeding shall be valid, the question must be solved, which of the two, Mr. Ung Chang or Mr. Tran Trieu Quan represent the society.

...

**The court states the following facts:**

The International Taekwon-Do Federation ITF is one of several governing bodies in the Taekwon-Do sport. It is a society registered and situated in Vienna, the latter approximately since 1985. Members of the society are besides some natural persons as supporting members a number of national Taekwon-Do societies and governing bodies, whose number cannot be stated exactly.

The foundation of Taekwon-Do Federation ITF (in the following ITF) goes back to General Choi Hong-Hi. General Choi was from North Korean and founded the ITF in 1966, however in Seoul. The first and, until his death, only president was General Choi. The bylaws of the ITF have been stated written as addendum .A, which shall be an integrated part of this decision. General Choi died on 15th June 2002 in Pyongyang. In 2001, World Championships have been held in Rimini. Such a Championship is always combined with a general assembly. Championships and general assemblies are held every two years and it has been concluded in the summer 2001 in Rimini to make the next general assembly in the summer 2003 in Warsaw.

In Rimini 2001 there has been agreed that General Choi should only stay President until 2003. Then his son should succeed him. Because of arising conflicts between General Choi and his son, General Choi decided to call an extraordinary Congress (general assembly) in January 2001 in Vienna, where Mr. Russel McLellan has been elected as Senior Vice President.

§ 14 sec. 2 of the bylaws (addendum .A) provides that the Vice President shall assume all rights and obligations of the president if he is absent or prevented for any reason (in case of vacancy). There must be stated that the German translation of the bylaws complies with the English original in all relevant points.

In January 2002 not only Mr. Russel McLellan has been appointed as Senior Vice President, but also a Consultative Board was founded. This was a consultative Committee, which should accompany General Choi in his dispute with his son. There was also decided that General Choi should stay president for the full period of six years and not only two years, as originally planned.

At this time General Choi suffered already from cancer. Towards the end of his life, he went to Pyongyang. It cannot be stated, to what extent he expressed during the last days of his life, that he would have wanted Ung Chang to be his successor.

...

When General Choi died, Mr. Russel Mc Lellan became acting President according to the bylaws.

In Korea, there exists a custom to arrange 100 days after the death of a person a memorial service. It is a fact that there have been sent invitations to this 100 days memorial service to physical persons and national governing bodies and that there was a rumour, that an extraordinary general assembly should be held by occasion of this memorial service, an invitation to such an assembly has however never been sent.

§ 10 sec. 3 of the bylaws provides that an extraordinary general assembly has to take place on a written and founded application of at least one third of the members with voting power. The President determines the place of the general assembly, but has to meet the requests of the members as far as possible.

In fact it happened, that an assembly was held in situ. It can be left open as to whether participants partly took part only under pressure or another part was not even conscious that there was held a general assembly. In any case, Mr. Ung Chang appeared at this assembly and there was applause. It can however not be stated if the applause was an act of politeness or if the applauding participants wanted to voluntarily or under pressure acknowledge him as president.

In any case Russel Mc Lellan did not invite to a general assembly, more than that, he had even pointed out in advance that Ung Chang would not have the right to appear or act like the president.

...

Ung Chang who already acted like a president of the ITF since the 100 days memorial service called a meeting of the board of directors at the 16th of November 2002 in Vienna. Russel Mc Lellan came to Vienna and had even a (personal) meeting with Ung Chang. He however did not take part at the board meeting and did also not resign from his function. 18 from 15 members of the board met in Vienna. They decided to make the next general assembly not in Warsaw, as concluded in Rimini, but in Pyongyang.

...

Thomas Mc Callum was already under General Choi Secretary General of the defendant. Russel Mc Lellan adhered to the decision to hold the next World Championships and the general assembly 2003 in Warsaw. He advised Thomas Mc Callum as Secretary General to post the invitations. Tadeusz Loboda, the President of the Polish Taekwon-Do Federation posted by his own emails and letters in November 2002. He posted the invitations according to a list from Thomas Mc Callum.

This list embodied all members that had also been members in the year 2001, when the congress was held in Rimini. As already stated, members were physical persons and national organisations, to which natural persons were assigned. However, it

cannot be stated, that the assigned persons were delegates with the right to vote, only process agents or persons, who, without actually being one of the two, only have been treated as such persons.

However, it is a fact that Thomas Mc Callum knew best from all officers, which national organisations are actually members and which delegates with the right to vote were assigned to these governing bodies. In any case he handed over such a list to Tadeusz Loboda, who issued the invitations according to this list.

...

At this time, the predictable splitting was still under way. Tadeusz Loboda invited all persons respectively all organisations, who were named by Thomas Mc Callum, also those, of whom he already knew, that they had declared for Mr. Ung Chang. It is important that the exact number of members cannot be clarified; the quorum is however only fulfilled, if one third of the members are present. Some calculate the quorum on the assumption of 120 members others only on the assumption of 75 to 77 "active" members. It is absolutely impossible to ascertain the real number of member-societies. It only can be stated that Tom Mc Callum, as already pointed out before, invited respectively took care for the invitation of all members that already have been invited to the Congress in Rimini in 2001.

...

At the beginning of March 2003 further official invitations have been posted to all members respectively all members, who appeared to be those in Tom Mc Callums lists. ... Fact is that the planned date for the Congress was the 16.6.2003, one day after the Championships would have ended and there were participants, who thought that it would make sense to put the Congress in advance. Tadeusz Loboda informed on advice of Russel Mc Lellan and Tom Mc Callum all members about the option to hold the Congress already on 13th of June 2003. Again all who appeared on Tom Mc Callums lists have been informed and not only those members who declared for the acting President Russel Mc Lellan. There has been concluded in situ on the 11th or 12th of June by all present persons acting as delegates to advance the Congress to the 13.6.2003.

Russel Mc Lellan was present und chaired the Congress; he however was accompanied by a Canadian lawyer, who has been elected to the chairman.

One of the agenda items, which have been announced in advance, was the election of the President.

Mr. Tran Trieu Quan and Mr. Wim Bos have been proposed, the proposal of Mr. Wim Bos was however not accepted, and so the only candidate was Mr. Tran Trieu Quan. Mr. Tran Trieu Quan was elected with majority. The following directors have also been elected: Thomas Mc Callum as Secretary General, Pablo Trajtenberg as Senior Vice President, Juan Ferrando as Vice President and Wim Bos as Treasurer. All of them have been elected by hand-signs; the electing delegates raised voting cards.

...

Let us come back to the meeting of the board of directors in November 2002: The board of directors had decided to hold the next World Championship and general

assembly in Pyongyang. Ung Chang refrained from this plan and finally held the Congress in Thessalonica, Greece. It was held on 12th of June 2003. It cannot be said who has been invited and who took part at this congress. Because the splitting-process was still at the beginning it however can be assumed that in great parts all members, natural persons, governing bodies, persons with voting rights, delegates, etc., who were accepted as those already at the time of General Choi's presidency have been invited to this Congress.

...

It is however important that there was no election at the assembly in Thessalonica; Mr. Ung Chan, of whom his "supporters" believed, that he has already been elected much earlier, has only been acknowledged in his position by raising hands. It would have been necessary to declare elections and to provide voting cards.

At this congress in Thessalonica only the Secretary General and five Vice Presidents have been elected.

The Taekwon-Do Committee of Korea sued against the conclusions of 13.6.2003 in Warsaw. The proceedings is suspended, an indefeasible decision does not exist. Latest in summer the splitting was a fact, both groups invited to the further activities only those persons or members, who were assigned to them. New national governing bodies have been founded too, so the splitting into Tran Trieu Quan's and Ung Chang's group was carried on at the national level.

...

Consideration of Evidence:

...

Especially Thomas Mc Callum appeared very authentic. He was, as he described himself, Under-Secretary General for many years and very close with General Choi. Focusing on the main-question, which concerns the resolutions at the Congress in Warsaw, Tom Mc Callum appeared to be very keen to clarify the things.

...

If Mr. Rhee Ki Ha refers to General Choi's last will and his wish to make Mr. Ung Chang President, General Choi might have said this or not in that clearness, in any case it is of no relevance for the actual legal questions. That is the reason why the court didn't go into details about General Choi's last words.

The court came to similar conclusions what concerns the memorial service that in situ has been converted to an extraordinary assembly, where Mr. Ung Chang shall have been made president.

The defendant is a Society under Austrian Law situated in Vienna, with bylaws, which have to be observed. The memorial service did not in the least comply with activities according to the bylaws. That was the reason why there was no necessity to dwell on the procedures at this memorial service.

...

That also means that Leong Wai Meng could not give any essential information, concerning his description of the Congress held on the occasion of the memorial service. Leong Wai Meng thought that there was an election for Presidency in Thessalonica namely an election of Ung Chang. With this testimony Leong Wai Meng is however in conflict with Mr. Ung Chang himself, who confirmed that there was no election in Thessalonica, in no case! Ung Chang himself is the President of the intervenient; therefore it is assumed that he knows better.

...

Mr. Ung Chang left the impression in front of court to consider himself being very important. He seemed not to be authentic in alleging, that the President's function would be burdensome to him. It was interesting that he believed to have been elected in a democratic way, although he pretended that he was not even aware to have been elected on the occasion of the assembly at the 100 day memorial service.

The court could not follow his statement that in November 2002 Russel Mc Lellan did not want to be concerned with Taekwon-Do any more. Russel Mc Lellan finally fulfilled his function as acting President until Warsaw 2003, he called the Congress and testified that he would even have been ready to support Ung Chang (if elected in a democratic vote), and also testified that in any case he did not resign. This (Russel Mc Lellan's testimony) seemed to be by far more authentic.

...

One of the very important witnesses was Tran Trieu Quan, who appeared reputable and seemed to be one of those persons, who was aware of existing bylaws at all. He was one of those persons, who made clear, that it could not be clarified who is member with a right to vote and who is not.

...

Mr. Russel Mc Lellan was also of special importance, he testified authentically the activities around the 100 days memorial service and, what happened in November 2002 in Vienna (Directors meeting), namely that he did not resign in favour of Mr. Ung Chang. He also explained the organisation of the Congress in Warsaw arranged by him as acting President. Russel Mc Lellan was authentic and also a person, who has not forgotten that the defendant party is a society.

Legal consequences:

...

The court had to solve the preliminary questions, who is representative of International Taekwon-Do Federation ITF at all, who can give power of attorney, following that whose steps in the proceedings are valid and whose are not.

...

The bylaws relevant for the proceedings are those, which were already valid at the last Congress in the year 2001, when General Choi was still alive, that were those,

which were valid for the whole year 2002 and in any case until the Congress in Warsaw 2003. These bylaws are enclosed as integrated part of the decision as addendum ./A.

...

As already stated before the invitation for the participants in Warsaw has been posted (several times and) the last time in March 2003, what means, that with the utmost probability even the 3-month period (for the invitation) has been kept.

§ 7 of the law of societies says that illegal conclusions of a society or those against the bylaws stay effective until an appeal has been successful. Only those resolutions are (from the beginning) absolutely void, if the content and goal of the law or morality demand this. § 7 makes therefore a difference, it distinguishes between resolutions that are only defeasible but stay valid for the first and between those, which never gained validity, which are void from the beginning.

...

What concerns the invitation and holding of the Congress in Warsaw, there were at least not such mistakes that would be so serious, that the resolutions at this Congress must be estimated of being void from the beginning.

...

What concerns the Conclusions at the 100 days memorial service under these aspects, the activities there (however) have to be judged in a way, that the resolutions were not even preliminary valid.

As stated, in Thessalonica has an election for Presidency not even been held.

...

An evaluation of all Congresses after the year 2003 remained undone because the complete splitting has followed (Thessalonica and Warsaw) ... .

According to the court's opinion the last general assembly with an election for Presidency, that was not void, has been held in Warsaw in the year 2003. All decisions without major defects, that lead back to these resolutions are therefore also at least preliminary valid.

**That finally means that Mr. Tran Trieu Quan, who alone can give power of attorney, represents the defendant. In consequence of that the applications of the intervenient, who base on a representation and power of attorney by Mr. Ung Chang had to be rejected.**

...

**Civil Court of Vienna  
1016 Vienna, Schmerlingplatz 11  
division 12, on 13.8.2007**