

RECHTSANWALT
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VERTEIDIGER IN STRAFSACHEN

An
FINA
Internationaler Schwimmverband
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SWITZERLAND

Per Mail: publications@fina.org

23. January 2017

Re: Unbearable and disastrous state of affairs and conditions within the Austrian world of swimming.

Dear Ladies and Gentlemen,

I am contacting you as the legal representative and counsel of several Austrian swimming clubs and the State Swimming Federation of Salzburg within the Austrian Swimming Federation.

My clients have been at the forefront of exposing several incidents, in which vast sums of taxpayers- and sponsor-money have been embezzled by former executives and officers of the Austrian Swimming Federation (OSV). These incidents have led to several official parliamentary inquiries in the Austrian Parliament, a legal „statement of facts“ by the Austrian Ministry of Defense and Sports to the public prosecutor’s office of Vienna and an official enquiry by officers of the Ministry of Defense.

In retribution to the efforts of uncovering these scandals through my clients, the Austrian Swimming Federation has expelled several Clubs from the Austrian Swimming Federation, including my clients. We have appealed those illegal expulsions successfully in several trials, even winning a judgement of the Supreme Court of Austria. At the same time we are seeking financial compensation for the wrongful expulsion in several other law suits and trials against the Austrian Swimming Federation.

I assume, that the officers and representatives of the International Swimming Federation have so far not realized how much the sport of swimming has been damaged by the wrongful and illegal actions of the Austrian Swimming Federation. We are witnessing an endless stream of media

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stories, detailing the criminal actions and misdeeds of officers and executives of the Austrian Swimming Federation. As mentioned above, so far there have been at least 10 official inquiries by Austrian parliamentary parties questioning the actions of the Swimming Federation, its executives, the investigations of the state attorney and prosecutor and the reactions of the Austrian Ministry of Defense and Sport.

On January 17th 2017 we have been trying another suit by one of my clients at the States Civil Court in Vienna concerning a change of the bylaws of the Austrian Swimming Federation dating back to the year 2014. The intention of the change was to further cement and back the expulsion of one of my clients, the Swimming Federation of the State of Salzburg. This illegal bylaw-change was pushed through by the officers of the Austrian Swimming Federation only because several courts, including the Supreme Court of Austria, have ruled that my client is in effect the only rightful and legally legitimized State Swimming Federation of Salzburg until today. Despite the wrongful expulsion and the illegal creation of a „new“ state federation in Salzburg by the officers of the Austrian Swimming Federation.

But the officers and executives of the Austrian Swimming Federation did not stop at the illegal bylaw-change in 2014. One year later, in 2015, they once again changed the bylaws of the Austrian Swimming Federation massively, in order to be able to expel even more swimming clubs, which were not to their liking. In the year 2016 another 20 clubs were expelled by the Austrian Swimming Federation in clear violation of fundamental legal principles.

During the trial on January 17th at the States Civil Court in Vienna I pointed out, that according to the bylaws of the FINA Constitution section C.7.3, 4 & 5, any changes of national bylaws by FINA-Members have to be reported and authorized by FINA itself before they can go into effect.

At the trial, not only the lawyer representing the Austrian Swimming Federation but also Mag. Arno Pajek, the current president of the Austrian Swimming Federation, insisted, that they could not care less about the FINA-Constitution or any of the FINA-bylaws, because - according to the counsel and Mr. Pajek - they have no relevance or any binding consequences for the Austrian Swimming Federation. Especially, since the new bylaws of the Austrian Swimming Federation do not include any obligation or commitment to any FINA-Constitution, bylaws, regulations or rules.

My clients, who have been an integral part of the Austrian swimming scene and sport for decades, are very concerned and disturbed by all the incidents which have come to light and also by the recent actions of the Austrian Swimming Federation. We ask for your help and support in order to restore some order, legality and perspective to our sport in Austria.

Witnessing the statements of the federation's counsel and president Pajek at trial, we are perplexed by their self-assured ignorance of the FINA and its rules. We find it rather bold of executives of the Austrian Swimming Federation to officially proclaim in court, in front of a judge and for the court's record, that the Austrian Swimming Federation is not bound by any rules, regulations or bylaws of the World's Swimming Federation. In fact, according to the statements of Pajek and other executives, no swimming club in Austria can therefor evoke or insist that the Austrian Swimming Federation respects or obliges by the FINA-Constitution, any FINA-bylaws, -regulations or -rules.

Representing my client, I respectfully ask your support in this matter, since the sport of swimming in Austria is marred by scandals and legal battles while drowning in an avalanche of bad media and press. We can only assume, that you, as the international swimming body had no knowledge of all these disastrous events and developments or their scale. Should you need any further information, documents or any of the court rulings so far, please let me know. I will be happy to provide you with any and all facts necessary.

Our sport has been discredited and disreputed massively by former and current executives of the Austrian Swimming Federation. We are convinced, that FINA would have never sanctioned the new bylaws of the Austrian Swimming Federation which violate any legal understanding in so many points, that they will not stand a chance in any court, whether on state, federal or european level.

It seems obvious that the blatant illegality of the bylaws is quite clear to the current Executives of the Austrian Swimming Federation, explaining why the new bylaws have never been send to the FINA as required by the FINA-Constitution. Knowing that the new bylaws would have never been sanctioned by FINA, the Austrian Swimming Federation decided to keep them secret and not inform FINA. Going one step further - being forced to make a statement at court - the executives of the Austrian Swimming Federation argued their conduct by claiming that FINA-Rules have no bearing on or binding for the Austrian Swimming Federation. It would be very interesting for us and the court to have some reaction of FINA concerning this argument made by the Austrian Swimming Federation (OSV).

Thank you for your time reading this letter and possible future support in the matter.

Sincerely,
Dr. Thomas Krankl