

Annex n.



CONSTITUTIONAL COMMISSION

REPORT TO FIDE GENERAL ASSEMBLY - DECEMBER 2021

During the FIDE Congress 2021, the Constitutional Commission (hereafter CC) held an on-line meeting on 20th of December 2021.

The following members of the CC were present: Roberto Rivello (chairman), Marouane Tabti, Ian Wilkinson.

A first part of the meeting was public, open to the participation of all delegates, FIDE officials and Commissions members. It was attended by: Bachar Kouatly (FIDE Deputy President), Francois Strydom (chairman of the Ethics and Disciplinary Commission), Lakhdar Mazouz (chairman of the Verification Commission), Victor Bologan (Executive Director), Willy Iclicki (Special Projects Director), Bekim Ermeni, Norlan Gaitán, Yuriy Gnyp, Allan Herbert, Tshepiso Lopang, Margaret Murphy, Olexandr Prohorov, Patrick Van Hoolandt.

A second part of the meeting was not public and reserved exclusively to the members of the Commission.

The following points were inserted in the agenda, discussed and, when a decision had to be taken by the CC, decided in the second part of the meeting.

I) Issues concerning the 2021 Online General Assembly

The 2021 General Assembly has been convened by the President, following a decision of the Council, as an online meeting, in accordance with art. 4.16 of the General Assembly Internal Regulations¹, approved in 2020, given that it was necessary as a consequence of the extraordinary situation determined by the Covid-19 pandemic.

¹ “4.16. The General Assembly sessions may be held online if necessary. The rules for offline sessions shall apply to the online GA sessions *mutatis mutandis* unless otherwise decided by the GA for certain sessions with the following reservations:

- a) a reliable, well-known system / platform shall be used (Skype, Zoom, etc.);
- b) the system / platform and voting specifics shall be pre-approved by the FIDE Council;
- c) each session participant shall be solely responsible for his technical equipment and web connection;

There are some issues, about on-line meetings, that are not yet expressly regulated in the FIDE Handbook. However, the positive experience of the 2020 online General Assembly suggests that FIDE Office can deal with them as follows:

- Identification of the participants in the meeting: the system that the FIDE Office has been implementing (asking each Member Federation to officially communicate in advance e-mail and phone number of the delegates; identification of the participants, the day of the meeting, asking them to be visible by webcam and, if necessary, to show identity documents) is reasonable and give sufficient guarantees, even more than the usual practices employed in occasion of ordinary meetings “in presence”.
- Roll-call: the FIDE Charter make possible “electronic roll-call”, this helps to avoid tiring and time expensive roll-calls. After the previous preliminary identification of the participants, at the beginning of the meeting it will be sufficient to ask all Delegates to confirm their presence online, this way it will be possible to count the presences and to communicate the *quorum* to the President and to the Assembly.
- Electronic Voting system: the Council confirmed the same system of secured e.vote that was used in 2020. It was developed by an independent company, certified as an “European trustee third party”, in accordance with European Union rules, and the obligations this company assumed, seem to give sufficient guarantees about voting and counting, especially bearing in mind that in the 2021 meeting of the General Assembly there were no elections and also no other items in the agenda that can request a mandatory secret vote.
- Appointment of Scrutineers: when there are no elections, the Charter does not establish as mandatory the appointment of scrutineers, it will be to the General Assembly to decide if it can be opportune or not: in the opinion of the CC this year it does not seem necessary.

II) List of delegates and voting rights

In accordance with art. 3 (B) of the current Electoral Rules, in the years when there are no Presidential elections, the so called “other years”, “any disagreement as to who is entitled to vote at the General Assembly is referred to the Constitutional Commission for final decision”. Art. 27.3.e) of the FIDE Charter also attributes to the CC the competence “to deliver mandatory advisory opinions on any dispute concerning Part II of FIDE Charter, when it does not concern FIDE elections”. Therefore, it is to the CC to verify and decide who is entitled to vote in the 2021 General Assembly.

d) technical requirements and details of the system / platform use shall be specified by the President and notified to the participants in advance by the secretariat;

e) participants are strongly recommended to inform the Chairman of their intention to deliver a speech in advance in order to form a comfortable schedule to cover all items of the agenda, otherwise such speech may be limited”.

Given that, the CC examined the following situations submitted to its attention by the Council and/or by the FIDE Office.

Chess Federation of Morocco - Fédération Royale Marocaine des Échecs

With a motivated report, submitted to the Council in June 2021, the CC expressed the opinion that the Royal Moroccan Chess Federation violated art. 11 c) and art. 11 q) of FIDE Charter, but considered that the suspension of its membership could not be necessary, in the case the FIDE President and the FIDE Council would designate a FIDE “reverse delegate” for Morocco.

In accordance with the CC report approved by the General Assembly in December 2020, the appointment of a reverse delegate, for a temporary period, is a less severe measure than a suspension, that can be decided by the Council in cases of violations of art. 11 of FIDE Charter. The FIDE reverse delegate does not represent a Member Federation, even less has voting powers on behalf of that Member Federation, but is a person designated by FIDE and charged: from one side, to make the interests of that federation in front of FIDE, substituting the representative of the Member Federation in the ordinary contacts with FIDE, collecting, evaluating and sending FIDE the requests regarding players, arbiters, organisers and trainers; from another side, to inform FIDE about the situation and the evolution of national disputes and to liaise with national authorities. The reverse delegate is charged and empowered especially of the following activities: to evaluate and send FIDE requests about FIDE titles, ratings, events; to evaluate and send FIDE requests about participation of players in FIDE competitions, including team’s events, as Chess Olympiads; to liaise with national authorities, facilitating the solution of internal conflicts, if requested; to observe the organisation of the assemblies of the national federation, monitoring its regularity, in accordance with the Statutes of the national federation, FIDE rules and national law, reporting to the FIDE organs.

The Council, following this suggestion, nominated Mr. Bachar Kouatly (FIDE Deputy President) as a “FIDE reverse delegate” for Morocco.

Mr. Kouatly, after having positively acted for some months as reverse delegate, on a report submitted immediately before this meeting, informed the CC of what follows: on 8 December 2021 a new election was held by the Chess Federation of Morocco, Mr. Mustapha Amazzal was re-elected as President; this could be an important step in the direction of complying with the obligations requested by FIDE; however, both before and after the 8th of December, the reverse delegate and the FIDE Office received, from more than ten Moroccan chess clubs and from some Moroccan organisers of chess events, various complaints about an alleged illegitimacy of this election, related to the right to convene the meeting, the right to participate in the assembly, the right to vote, the right of Mr. Mustapha Amazzal to be candidate and to be elected, the organisation of the meeting. Among other things, a judicial officer charged with monitoring the regularity of the assembly would have been prevented from having access to the meeting and the same Mr. Kouatly, who asked to assist from distance to the meeting, throughout a web conference tool, received no answers to his request.

On these bases, the CC decided that Mr. Mustapha Amazzal cannot represent the Chess Federation of Morocco in this meeting of the General Assembly and that the Chess Federation of Morocco has no right to participate and to vote in this meeting of the General Assembly.

It will be to the Council to confirm or not the tasks of the reverse delegate and to assume any other decision reserved to the Council competence.

Chess Federation of Cote d’Ivoire - Fédération Ivoirienne des Echecs

With a report, submitted to the Council in September 2021, the CC expressed the following opinion:

“Since many years the situation of the Côte d’Ivoire Chess Federation has been under observation by FIDE, given a situation of conflict, inside that federation, between the representatives of two groups of chess clubs and pending a national judiciary case about the regularity of the 2017 election of Mr. Essoh Essis as FIDEC President, following a complaint submitted by Mr. Justin Brou, former FIDEC Vice-President.

In 2009 the *Fédération Ivoirienne des Echecs* (FIDEC) became the main chess organisation in Côte d’Ivoire, replacing a former existing federation.

In 2010 FIDEC was accepted as a member federation of FIDE.

In 2013 Mr. Essoh Essis was elected as FIDEC “président du comité directeur” and Mr. Justin Brou as “vice-président”. Alleged irregularities by the precedent FIDEC President were represented to FIDE, but this point is not relevant anymore, also if this already indicated a situation of internal conflict.

In 2017 a new FIDEC electoral assembly was called and organised by Mr. Essoh Essis. In accordance with the minutes of 2017 FIDEC general assembly and other documents sent by Mr. Essoh Essis, the representatives of 15 chess clubs, associated to FIDEC (the “oldest” since 2008, the large majority of them only since 2016-2017), attended the meeting and, by majority, voted to confirm Mr. Essoh Essis as “président du comité directeur”.

Mr. Justin Brou, that was a candidate to become President, was absent that day, because committed to accompany the national chess team participating in a tournament in Tunis.

Mr. Justin Brou contested the legitimacy of the candidature and of the election of Mr. Essoh Essis, as well as of the composition and the convening of the assembly, for various alleged violations of FIDEC Statutes, and submitted a complaint to the national ordinary judicial authority, also asking FIDE to not recognise the election of Mr. Essoh Essis.

Pending the national judiciary case, the representatives of a group of 10 chess clubs created an “alternative” association, in 2018, called *Fédération ivoirienne des Jeux d’échecs* (FIJEC), that elected Mr. Justin Brou as their President and asked FIDE to be

recognised as member, at the place of FIDEC (something that was possible, with the former FIDE Statute).

In 2018, the FIDE Electoral Commission, considering that FIDEC was the recognised member of FIDE and that the national judiciary authority had not yet taken a decision about the legitimacy of 2017 elections, decided that Mr. Essoh Essis could be authorised to exercise voting rights, in FIDE, on behalf of FIDEC.

After the FIDE elections, the General Assembly delegated an *ad hoc* committee to collect all necessary information and to make a recommendation to the Presidential Board. An informal “hearing” was immediately organised, listening the declarations of Mr. Essoh Essis, Paul Zilimba, Justin Brou and Mario Kpan. Both Essoh Essis and Justin Brou seemed sincere in reputing themselves as the “right” representative of their chess federation and both parties accused the other one to have violated FIDEC Statutes; both confirmed that a case was pending in front of the national judiciary authority and that a hearing was scheduled in November 2018, also if they did not agree on the nature of the case and its direct or indirect relevance for FIDE.

In April 2019, Mr. Hubert Blé Kouko, “on behalf of FIDEC”, sent documents regarding a FIDEC extraordinary electoral general assembly held on 30 Mars 2019, organised with the presence of an “huissier de justice” (a justice usher), that was requested by 2/3 of the current FIDEC members (for the huissier de justice the number of members in 2019 would have been 24), following a sort of exceptional proceedings better explained in the minutes. The same Ministry of Sport would have asked for this assembly, with the aim to try to reunify and reconcile the two parties (in the text of the decision it is possible to read: “Vu, l'Assemblée Générale Ordinaire électorale controversée du 28 Octobre 2017, organisée par le Comité Directeur de la FIDEC ; - Vu, que le Ministère a demandé le report de ladite assemblée, afin de procéder à la validation des candidatures et du collège électoral qui posaient problème; -Vu, la profonde fracture qui a marqué le milieu échiquien depuis cette date du 28 Octobre 2017, avec la création d'une seconde fédération dénommée, Fédération Ivoirienne du Jeu d'Echecs (FIJEC); -Vu, la rencontre du 3 Septembre 2018, entre la Direction des Sports de Haut Niveau du Ministère des Sports et le Comité Directeur de la FIDEC d'une part, et les représentants de la FIJEC d'autre part, à laquelle le Ministère invite à la reprise des élections du 28 Octobre 2017 pour le règlement de la crise; -Vu, le contentieux en cours à la Fédération Internationale Des Échecs (FIDE), entre la FIDEC et la FIJEC; -Vu, le cri de coeur de Monsieur Olalekan Adeyemi, Président de la Nigeria Chess Federation et Vice-président de la FIDE, de passage à Abidjan le 1er Décembre 2018, appelant les deux parties à la réconciliation et à l'union de la famille échiquienne de Côte d'Ivoire; -Vu, l'indifférence de Monsieur Essis Essoh Président de la FIDEC et de son Comité Directeur face à cette situation; -Vu en effet, qu'ils n'ont

entrepris aucune action dans le sens d'un règlement de la crise, mais semblent vouloir tirer avantages de cette division à des fins égoïstes; -Vu, l'absence des Assemblées Générales Ordinaires annuelles et des rapports du Commissariat aux Comptes, de 2014 à 2017; -Vu, le manque de transparence dans la gestion financière de la FIDEC; ...“).

The two candidates for the presidency were Mr. Essoh Essis and Mr Justin Brou.

In this assembly Mr. Justin Brou was elected as President (receiving 18 votes).

Mr. Essoh Essis was absent, requested by FIDE *ad hoc* committee to comment this election and to send a list of the clubs affiliated to FIDEC, he contested the legitimacy of the assembly and of the election of Mr. Justin Brou, answering that the number of clubs affiliated to FIDEC would have become 42 (it has to be noted that it seems quite an increment, especially in such a short period of time) but only 25 of them would have been “in good standing” and among them no one of the clubs that asked for the organisation of the extraordinary assembly held in March 2019, and that for this reason, in his opinion, the assembly would have been irregular.

On 27 May 2019 Mr Kpan sent a copy of the national judgment concerning the pending case, delivered by the First Instance Tribunal of Abidjan on 18 April 2019 and published on 24 May 2019: the judge annulled the election of Mr. Essoh Essis in the general assembly held on 28 October 2017 and condemned Mr Essoh Essis to the expenses of the judgment. It is relevant to notice that the reason of the annulment has been that the candidatures were not validated -as previewed- by the competent Ministry (therefore the Tribunal has not even had to evaluate the questions concerning the respect of FIDEC Statutes and internal rules), it is also interesting to notice that the Tribunal excluded the validity of the incorporation in the judgment of many clubs (and these clubs were some of the “original” members of FIDEC) because they still had not concluded the proceeding necessary to be recognised as a legal person.

Then, Mr. Essoh Essis informed FIDE to have submitted an appeal against the above mentioned judgment of the Tribunal of Abidjan.

On these bases the *ad hoc* committee concluded its mandate reporting to the Presidential Board that:

- FIDEC was a legitimate member of FIDE and no request of new membership was pending anymore;
- the 2017 election of Mr. Essoh Essis was annulled by a first instance decision of a national Tribunal and, in addition, the arguments of a violation of FIDEC Statutes (addressed to but not decided by the national Tribunal) also seemed, *prima facie*, well founded;
- however, also the 2019 election of Mr. Justin Brou was not undisputed and, from one side, the same number of FIDEC members was unclear (24, 25 or 42?) and it was also unclear if they had or not legal personality, if they could or not

be recognised as legal entities, a recognition that seemed a condition to become FIDEC members (in accordance with national legal system of Ivory Coast, as interpreted by the national Tribunal), therefore, it could be advisable to suspend any decision about the legitimacy of anyone to represent FIDEC in FIDE.

Expired the mandate of the *ad hoc* Committee, the case was then submitted to the attention of the CC, when relevant in connection with its competences.

On 31 January 2020, the Court of Appeal of Abidjan confirmed the decision of the Tribunal, rejecting the appeal lodged by Mr. Essoh Essis.

Also taking this into account, the CC, having to decide about the right to vote in the February 2020 Extraordinary General Assembly, decided that nor Mr. Essoh Essis, nor Mr. Justin Brou had legitimacy to exercise voting rights on behalf of FIDEC.

The same decision was taken by the CC regarding voting rights in December 2020 ordinary meeting of the General Assembly.

In April 2020 Mr. Essoh Essis challenged the judgment of the Court of Appeal in front of the Court of Cassation of the Côte d'Ivoire.

On 11 February 2021 the Court of Cassation of the Côte d'Ivoire, with a decision registered on 6 April 2021, dismissed this appeal as well, with a decision that is now final and cannot be challenged anymore.

Mr. Justin Brou asked FIDE to be recognised as legitimate FIDEC President, following the result of 2019 elections.

The CC was charged again to express a decision about this case.

The CC considers that, even if the results of 2019 elections were not challenged in front of a national judicial authority, they are disputed by Mr. Essoh Essis, that still claims to be the FIDEC President, by "*prorogatio*" -a thesis that, today, seems clearly not well founded nor supported by any other legitimate reason- but also probably by a group of chess clubs that support him.

It means that the situation, in the Côte d'Ivoire chess federation, is still quite conflictual and not fully clear. It's not relevant if there are or not some responsibilities of Mr. Justin Brou as well, we can assume that there are not, however, this situation is still creating a damage to all chess players and to the chess community in Côte d'Ivoire.

What is more important is that, evaluating the overall situation in the period 2017/2021, it seems clear that Côte d'Ivoire chess federation has not fully respected all its obligations, given that, in accordance with art. 11 of the FIDE Charter, it had to "comply with their own statutes, rules and regulations, refraining from taking discriminatory decisions or actions", "regularly organise general assemblies and elections, in accordance with their statutes and national legal order" and "maintain full control and governance of chess in their country", and this did not happen.

The Constitutional Commission believes that, taking into account the specificities of the case, also if the Côte d'Ivoire chess federation violated art. 11 of the FIDE Charter, a suspension of this Member Federation, in accordance with art. 13 of the FIDE Charter, would be a too severe measure. However, in order to guarantee the best interests of Côte d'Ivoire players, arbiters, trainers and organisers, the Constitutional Commission indicates the possibility and the opportunity to nominate a FIDE reverse delegate for Côte d'Ivoire”.

The Council has not yet taken any decision about this Member Federation.

On these bases, the CC decided that nor Mr. Justin Brou, nor Mr. Essis Essoh can represent as delegate the Chess Federation of Cote d'Ivoire in this meeting of the General Assembly and that the Chess Federation of Cote d'Ivoire has no right to participate and to vote in this meeting of the General Assembly.

Chess Federation of Pakistan

Pending an assessment of the results of an election organised by this Member Federation and about the current mandate of its representatives, the Council appointed Ms. Dana Reizniece-Ozola, Managing Director and Deputy Chairman of the FIDE Management Board, as reverse delegate for Pakistan.

There are no requests or oppositions by representatives of this Member Federation.

Therefore, the CC took note that the Pakistan Chess Federation has no right to participate and to vote in this meeting of the General Assembly.

Chess Federation of South Africa

FIDE Office informed the CC that the case between Mr. Joe Mahomole and Mr. Hendrik du Toit, about the election of one of them as President of this Member Federation, is still pending in front of the competent national judicial authority, and no new request or information was received from these parties.

Therefore, the CC took note that nor Mr. Joe Mahomole nor Mr. Hendrik du Toit can represent as delegate the Federation of South Africa in this meeting of the GA and that the Chess Federation of South Africa has no right to participate and to vote in this meeting of the General Assembly.

Chess Federation of Peru

The CC noted that a “Working Group”, with a three-months term of office, was charged by the Peruvian competent authorities to organise new elections of President and Board of the Peruvian chess federation. The Working Group performed its duties and sent to FIDE Office regular information. On the basis of the documents received, it seems that a first “online” election was organised on 30 June 2021, that elected as President Mr. Carlos Albert Torres Llapa, but then another election, in presence, was held on 7 August 2021, that elected as President Mr. Jaime Alfredo Ortega Choque, with a proceeding that seems correct and undisputed, but not yet ratified by competent

local authorities, an administrative step that seems necessary in accordance with national rules.

The CC decided that there are no sufficient elements to definitely recognise Mr. Jaime Alfredo Ortega Choque as legitimate President of the Peruvian chess federation, however, on a provisional basis, it is possible to grant to Mr. Jaime Alfredo Ortega Choque the right to participate and to vote in this meeting of the General Assembly.

Right to vote of all other Member Federations

In addition to the cases submitted by the Council or by the FIDE Office, the CC is charged to examine the list of delegates and the existence of any other disagreement about the right to vote.

In 2020, the CC was obliged to exclude the right to vote to some delegates, in accordance with art. 17.6 of the Charter. Art. 17.6 of the Charter rules that: “Presidents and delegates may only represent one Member Federation at a time and must, on the date of the meeting of the General Assembly, have either: - a citizenship or at least two years’ residency of the country or territory they represent, or - at least one year experience as an office holder of this Member Federation. They must also be elected or appointed by the appropriate body of that Member Federation”. At the current date, it seems that these conditions are fulfilled regarding the position of all delegates. There are some delegates that have not the citizenship nor the residency of the country or territory they represent, but who have more than one year experience as an office holder of their Member Federation.

The CC was informed that there is a pending case, in front of the Council, about alleged violations of art. 11 of the FIDE Charter by the US Virgin Islands Chess Federation. The CC was also requested to deliver a preliminary advisory opinion about the interpretation of art. 11 and art. 13 of the Charter, and this was done with a report submitted to the Council in September 2021. However, this does not concern the right to vote of the President and delegate of the US Virgin Islands Chess Federation in this meeting of the General Assembly.

Therefore, the CC decided to confirm the right to vote of all other Member Federations and approved the list of Member Federations having right to vote prepared by the FIDE Office.

III) Advisory opinions on the proposed changes in the FIDE Handbook and on the interpretation of the FIDE Handbook

In accordance with its competences (“to review ... changes of the FIDE Charter, By-laws, Electoral Rules, Ethics and Disciplinary Code, Financial Rules and Rules on Non-elected Commissions” and “to ensure that proposed changes of FIDE Charter, Electoral Rules, Ethics and Disciplinary Code, Financial Rules and Rules on Non-elected Commissions occur in conformity with the established procedural rules”), the CC examined the proposals of changes of rules included in items 4.1 of the agenda of the meeting of the General Assembly.

The CC, that has also been involved in the drafting of these documents, believes that the approval of the proposed new Electoral Rules, Ethics and Disciplinary Code, General Assembly Internal Rules, that entirely supports, would constitute another important step forward in the direction of a full respect of the “rule of law” and of a well developed and organised system of rules in FIDE.

About the proposal submitted by the Papua New Guinea Chess Federation: the institution of a new kind of membership, for “Associate Member Federations”, would constitute a radical change, in comparison to current art. 14 (Affiliated organisations) of the FIDE Charter. It’s an important but also very complicated issue. Current IOC rules must also be taken into account. It could become the object of a deeper examination by the FIDE organs, but it does not seem that the General Assembly could approve it now, with the proposed wording.

The CC was also requested to deliver an advisory opinion about the interpretation of art. 20.11 of the FIDE Charter (“The members of the Council will not receive any fees for their participation in the meetings and for their voluntary activities for FIDE, they will just be reimbursed of their expenses”). The interpretation of this rule seems clear to the CC: members of the Council cannot receive fees for their participation in the meetings of the Council, nor for what they do in strict connection with this function; however, they are allowed to receive fees, to be paid by FIDE, for other activities they can be requested to do, if any, for instance on the basis of their specific professional competences, not related to their participation in Council meetings (for example: to act as organisers of a given event, as members of an appeal committee in a tournament, to carry out a given project and so on).

Finally, the CC discussed plans for 2022 tasks: they have to include the integration of the composition of the Commission and the approval of CC Internal Rules.

Turin, 27 December 2021

Roberto Rivello

