



## **CONSTITUTIONAL COMMISSION**

### **REPORT TO THE FIDE COUNCIL AND GENERAL ASSEMBLY** **DECEMBER 2023**

The Constitutional Commission (hereafter CC) held an online meeting on 11<sup>th</sup> of December 2023.

All members of the CC attended the meeting: Roberto Rivello (chairman), Ivy Claire Amoko, Daniel Florea, Marouane Tabti and Ian Wilkinson.

The first part of the meeting was open to the participation of Delegates, Commissions' members, and other persons admitted to the FIDE Congress, with an open discussion on all issues listed on the agenda.

The participation in the second part of the meeting was restricted to the members of the CC, to take all decisions reserved to the CC competence.

The following persons participated in the first part of the meeting: Lewaks, Andre; Gradev, Georgi; Hater, David; Jalihenna, Mohamed; Martynov, Aleksandr; O'Connor, Jonathan; Pelov, Bojidar; Polovina Elena; Priest, Allen; Scotland, Daniel; Stefanova, Antoaneta; Strydom, Francois; Todorov, Nikolay; Van Hoolandt, Patrick; Yordanova, Svetla; Wandera, Gilbert.

The meeting started with a brief report of the CC chairman on the previous 2023 activities of the Commission (especially regarding the advisory opinions delivered by the CC about: the request of the Russian Chess Federation for transfer from the European Chess Union to the Asian Chess Federation; the rights of the Russian players and the exceptions to the transfer rules; FIDE affiliated organisations and affiliated members; pending cases concerning Section II of the FIDE Charter; FIDE regulations to be approved by the Council).

After that, the following points, all related to the 2023 FIDE General Assembly and its agenda, were discussed, and decided:

- List of delegates/Member Federations entitled to vote and complaints regarding the right to vote and its exercise;

- Order of the discussion and decisions about issues inserted in the GA agenda as Section 3.1;
- Decisions concerning expulsion of a Member Federation: counting of votes, interpretation of the Charter;
- Issues related to the requests of admission of new member federations;
- Issues related to the requests of admission of new affiliated organisations;
- Appeal in front of the General Assembly against decisions of the Council or of other FIDE organs: proposals to the GA regarding the proceedings;
- Proposed changes of the Charter and voting procedure in case of proposals of changes concerning the same article of the Charter;
- Limits of the competences of the General Assembly regarding proposals of amendments concerning rules and regulations approved by the Council.

### **1) LIST OF DELEGATES/MEMBER FEDERATIONS ENTITLED TO VOTE AND COMPLAINTS REGARDING THE RIGHT TO VOTE AND ITS EXERCISE**

In accordance with articles 3.5, 3.6 and 3.7 of FIDE Electoral Rules: “when no elections are previewed, the list of Member Federations having right to vote and the list of suspended Member Federations shall be published fifteen (15) days before the first meeting in which the exercise of the right to vote is previewed and Member Federations will be free to communicate the participation of the FIDE Delegate in the President’s place or vice versa up to eight (8) days after such publication”; “in case of elections all complaints regarding the right to vote and its exercise must be brought before and shall be decided by the Electoral Commission, when there are no elections by the Constitutional Commission. All complaints must be addressed to the competent Commission, through the e-mail address office@fide.com, in writing”; “at the opening of the General Assembly, the Chairman of the Electoral Commission or of the Constitutional Commission reports on the complete list of those entitled to vote and answers any questions and comments. The General Assembly cannot overrule the decisions of the Electoral Commission and of the Constitutional Commission”.

Fifteen days before the scheduled opening of the 2023 meeting of the General Assembly, FIDE Offices regularly published the list of Member Federations, specifying that there are no “suspended Member Federations”, but adding what follows:

- that the Council nominated a “FIDE reverse delegate” for the South African Chess Federation and this Member Federation has no right to vote;
- that the Council nominate a “FIDE special envoy” for the Moroccan Chess Federation;
- that the Bulgarian Chess Federation has “no recognised management who has the right to represent the Federation”.

No one submitted complaints regarding the right to vote and its exercise.

Therefore, the Constitutional Commission approves the list of Member Federations having voting rights, as prepared by FIDE Offices, specifying that the South African Chess Federation and the Bulgarian Chess Federation **have no right to vote** in the 2023 meeting of the General Assembly, while the Moroccan Chess Federation has voting rights (also if this Member Federation still has not demonstrated a full compliance regarding its obligations in accordance with art. 11 of FIDE Charter and the Council could assume, in the near future, if necessary, more severe measures than the current appointment of a “special envoy”).

Representatives/alleged representatives of South African and Bulgarian Chess Federations can participate in the meeting, but without voting rights and without the possibility to take the floor, except in occasion of the discussion of the issues concerning their federations.

Today, FIDE Offices sent an updated list of Presidents/Delegates for the 2023 meeting of the General Assembly.

After a preliminary exam of this list, it was noted, from one side, that some Member Federations indicated, on time, that their Vice President, or Executive Director or Secretary General will participate in the meeting in the place of their President: this has to be considered as admissible, but as the equivalent of the substitution of their Delegate (when a different name was previously indicated as Delegate).

From another side, it has also been noted what follows: it seems that some requests of changes (of the FIDE Delegate in the President’s place or vice versa) were sent some hours after the previewed deadline (but it is possible that there was a misunderstanding about the interpretation of the wording “up to eight (8) days after such publication”); for other requests it is not sure that they were signed by the President/Delegate; for other ones there is no full evidence that they were sent from the official email address of a Member Federation.

However, given that this is not an electoral year (the applicable rules are partially different) and that, till now, there are no contrasts nor disputes about the notifications transmitted by the Member Federations, the CC decides to provisionally approve all received requests of changes, but asks FIDE Offices to publish the list, sending an additional request of confirmation to the interested Member Federations (only to the Member Federations whose requests present the problems indicated above) and to give time until Thursday 14<sup>th</sup> of December, 6.00 PM (CET Time) for the submission of complaints regarding the indications of Presidents/Delegates legitimated to participate in the 2023 meeting of the General Assembly.

## **2) ORDER OF THE DISCUSSION AND DECISIONS ABOUT ISSUES INSERTED IN THE GA AGENDA AS SECTION 3.1**

Art. 12.2 of the FIDE Charter rules that: “decisions on the admission of new federations shall be made before any other order of business, except elections. A new member can fully participate in all FIDE meetings, including the right to vote, from the moment it is accepted for membership by the General Assembly”, and art. 13.4 of the FIDE Charter specifies, in the same sense, that: “decisions by the General Assembly on the ... expulsion of a Member Federation shall be made before any other order of business”.

Therefore, the CC indicates that all issues inserted in the agenda of the 2023 meeting of the General Assembly in Section 3.1, must be discussed and decided immediately after Section 1 and before Section 2.

## **3) DECISIONS CONCERNING EXPULSION OF A MEMBER FEDERATION: COUNTING OF VOTES, INTERPRETATION OF THE CHARTER**

The “Bulgarian Chess Federation 1928”, which in 2020 was admitted by the General Assembly as FIDE Member Federation, officially informed FIDE that they do not intend to represent anymore Bulgaria, asking at the same time the recognition of a different association as a new Member Federation.

It seems that there was not, till now, a formal extinction/dissolution (previewed in their Statute) of the “Bulgarian Chess Federation 1928”, nor a formal transformation into another association, however it is clear (and this emerges also on the basis of the report submitted by the FIDE special envoy appointed by the FIDE Council) that the “Bulgarian Chess Federation 1928” is not anymore the national chess association currently having principal authority over chess activities in Bulgaria.

In accordance with art. 9.2 and 9.3 of the FIDE Charter “only one Federation for each country can be affiliated to FIDE as a Member”, and “the request of admission by a different federation, as a representative of a given country, can be considered only if the previously recognised Member Federation has been expelled by the General Assembly or has withdrawn from FIDE or is disbanded according to the procedure set out in its statutes and regulations”.

Therefore, the General Assembly must decide if the “Bulgarian Chess Federation 1928” has to be expelled (or if it has effectively withdrawn from FIDE, in both cases the procedure is the same).

Art. 13.4 of the FIDE Charter rules that “the Member Federation whose ... expulsion is requested has the right to submit written defences and to be heard before the decision”, but in this case the “Bulgarian Chess Federation 1928” voluntarily asked

to be expelled (or to withdraw from FIDE) and has not requested to exercise this right. Therefore, the CC opines that no hearing has to be organised on this issue.

In accordance with the same art. 13.4 decisions by the General Assembly “on expulsion requires a two third majority of valid votes”.

It is necessary to interpret the wording “valid votes”.

Art. 17.2 of the Charter (about proposals of changes of the FIDE Charter) and art. 17.1 of the Electoral Rules (about elections) specify that “valid votes” must be counted “without considering abstentions”, and art. 4.2 of the General Assembly Internal Rules indicates that “Electoral Rules regarding the *quorum* and votes are also applicable to non- electoral GA meetings”.

Therefore, on the basis of a systematic interpretation, the CC considers that the principle is applicable for the counting of valid votes regarding decisions on expulsion. It means that the two third majority must be counted without considering abstentions.

If, for instance, the result of the vote would be: 67 votes for, 33 against, 73 abstentions, the expulsion would be approved.

#### **4) ISSUES RELATED TO THE REQUESTS OF ADMISSION OF NEW MEMBER FEDERATIONS**

The CC has no competence about the merits of the requests of admission of new Member Federations. The CC will be competent, in the future, about the right to vote of new federations, their respect of the obligations listed in art. 11 of the FIDE Charter, as well as in case of future disputes, if any, but not about their admission, except for what concerns procedural issues.

About that, the CC has just to remind that, in accordance with art. 9 of the FIDE Charter, the Council is competent to examine the preconditions for admittance, and its conclusions, of course, have to be communicated to the General Assembly. The CC can also observe that, for what concerns Bulgaria, given that two different associations (“Bulgarian Chess Federation 64” and “Bulgarian Chess Federation 2022”) submitted requests of admission, it would be fair to guarantee, to one delegate for each one of the two associations, the right to take the floor, during the meeting of the General Assembly, for a maximum time limit of 10 minutes, to present their request.

#### **5) ISSUES RELATED TO THE REQUESTS OF ADMISSION OF NEW AFFILIATED ORGANISATIONS**

Similarly, about the requests of admission of new Affiliated Organisations, the CC has no competence about the merits.

However, the CC has to note that the “Saharawi Chess Federation”, already on the 14<sup>th</sup> of October 2023, submitted a timely request to be admitted as a new Affiliated

Organisation. For some reasons, probably just for a misunderstanding, their request was not added nor in the agenda of the Council, nor in the agenda of the General Assembly.

The agenda of the next meeting of the Council could be updated, however the deadline for updating the agenda of the General Assembly is expired.

The CC advises the Council to examine and decide about the preconditions for admittance of the “Saharawi Chess Federation” as a new Affiliated Organisation, in accordance with art. 12.1 of the Charter.

#### **6) APPEAL IN FRONT OF THE GENERAL ASSEMBLY AGAINST DECISIONS OF THE COUNCIL OR OF OTHER FIDE ORGANS: PROPOSALS TO THE GA REGARDING THE PROCEEDINGS**

In the last report on this subject, submitted by the CC to the Council in May 2023, we wrote what follows: “the CC was informed of the suspension of the South African Chess Federation by the South African Olympic Committee and of the delay in organising the previewed new internal elections. The CC is really concerned by the situation of this Member Federation and advises the Council to deal with these issues in a short term”.

In May 2023, the Council decided to nominate a “reverse delegate” for this Member Federation and to appoint a “task force for conflict resolution”, giving to this task force a mandate also about the respect of some principles concerning the organisation of new internal elections; in October 2023 the Council extended the mandate of the “reverse delegate”.

All decisions of the Council are not “final”, in accordance with art. 35 of the FIDE Charter, which establishes that: “the decisions of the General Assembly and of the Electoral Commission, relating to matters falling within their respective competencies, and the decisions that conclude the proceedings in front of the Ethics and Disciplinary Commission are final. The decisions of other FIDE organs may be challenged by an internal appeal to the General Assembly”, “except if otherwise provided in this Charter, any final decision taken by a FIDE organ may be challenged exclusively by way of appeal before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, which will resolve the dispute in a final and binding manner in accordance with the Code of Sports-related Arbitration”, “an appeal before the CAS may only be brought after FIDE’s internal procedures and remedies have been exhausted”.

The South African Chess Federation submitted an appeal against the decision of the Council, on the 17<sup>th</sup> of November 2023, supplemented on the 1<sup>st</sup> of December 2023.

Until now, there are no specific procedural rules about appeals to be decided by the General Assembly.

Internal rules of the GA are applicable, among them especially the following ones: “art. 1. Chairing the Meeting - 1.1 The GA is chaired by the FIDE President, if not otherwise provided by the Electoral Rules. The FIDE President may temporarily appoint another FIDE Official to chair the meeting for the part of GA session if necessary. 1.2 The Chairman: 1.2.1 Shall grant permission to speak. No one may take the floor without having previously obtained the permission of the Chairman. 1.2.2 May remind a speaker that the speech and remarks must be, and remain, relevant to the subject under discussion. 1.2.3 May decide to limit the time to be allowed to a speaker and the number of times each speaker may speak on any one item. If necessary, he / she may grant the right to speak on an item only once”; “art. 5. Motions. 5.1 Motions of order (for example, closing of the discussion, adjournment of the agenda point, removing the point from the agenda) may be made at any time on a point under discussion by a Member Federation. The President shall consider the motions and shall either pass them to the GA to make a decision or decline the motions”.

However, these rules are not sufficiently specific, for what concerns an appeal, especially an appeal against a decision of the Council, taking into account that the FIDE President also presides over meetings of the Council.

General principles of law can be considered as applicable and, on their basis, the CC advises the GA to apply the following rules, that could also become, in the future, a possible additional part of the GA internal rules:

- in case of appeals against decisions of the Council, FIDE President has to evaluate the opportunity to temporarily appoint another FIDE Official to chair the meeting, for the part of the GA session dedicated to the decision on the appeal;
- the Appellant has the right to appoint a delegate (who can be a lawyer, a jurist or anyone else) charged to present to the GA the reasons of the appeal and the requests of the Appellant;
- the Council, against whose decision the appeal has been submitted, has the right to appoint a delegate (one of its members, or a lawyer, or a jurist or anyone else), charged to present to the GA the reasons of the appealed decision, to raise procedural exceptions and to present defences against the submitted appeal, as well as to submit its conclusions (among them, of course, to reject the appeal, confirming the appealed decision, but also, for instance, to confirm just a part or to modify the appealed decision);
- to each one of the above mentioned “delegates”, it has to be guaranteed the right to submit, in writing, a brief exposition of their defences (without new additional documents), to be sent to FIDE Offices the latest 48 hours before the opening of the meeting of the GA, as well as the right to take the floor, for

- a time limit of a maximum of 10 minutes (the Appellant for first), and the right to reply, for a time limit of a maximum of 5 minutes;
- the Chairperson, and only the Chairperson, can raise questions to the parties;
  - participants in the GA having the right to vote -and no one else- can ask to intervene to expose their considerations; the Chairperson can limit the time to be allowed to each one of these interventions; the “delegates” of the parties have no additional right to reply; however, if necessary, the Chairperson can ask them to answer some additional questions;
  - after the discussion, the GA will vote, by simple majority, to accept or reject the appeal, and/or about the different conclusions proposed by the parties, if any.

#### **7) PROPOSED CHANGES OF THE CHARTER AND VOTING PROCEDURE IN CASE OF PROPOSALS OF CHANGES CONCERNING THE SAME ARTICLE OF THE CHARTER**

The CC is competent to review and to recommend proposed changes of the FIDE Charter.

The Lesotho Chess Federation submitted a proposal regarding art. 17.6 of the FIDE Charter. The CC has just to observe that art. 3.5 of the Electoral Rules, approved in 2021, already rules (specifying the content of art. 17.6 of the Charter) 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, such as President, Deputy President, Vice President, General Secretary, main board member, director of the Member Federation. They must also be elected or appointed by the appropriate body of that Member Federation”. Therefore, it seems that the current wording of art. 17.6 of the FIDE Charter could be considered sufficient to avoid the risk, represented by the Lesotho Chess Federation, to open “the backdoor whereby foreign actors, with little or no connection to a federation, may infiltrate and hijack the vote”. However, of course, the CC has no competences about the merits of the proposal.

FIDE Council submitted a proposal regarding art. 13.7 of the FIDE Charter. This proposal is fully in accordance with the interpretation already given by the CC to art. 13 and specifies the limits and the content of this interpretation. In the future, if useful, additional rules on the same subject could be added also approving some by-laws.

Many proposals, by 21 different Member Federations, have been submitted regarding the same art. 18.12 of the FIDE Charter. The case of different proposals concerning a same article is a new one, therefore the CC has the task to advise the GA about how to vote on these proposals.



First of all, it seems, if there are no objections from the proposing Federations, that some of these proposals have the same content and they can be grouped as follows:

- The Member Federations of Andorra, Brazil, Chile, Colombia, El Salvador, Guatemala, Jordan, Libya, Mexico, Nicaragua, Palestine, Paraguay, Peru, Puerto Rico, Sudan, Syria, Uruguay, Yemen and Kenya, propose to delete art. 18.12 of the FIDE Charter (“A person cannot serve as FIDE President for more than two terms of four years. Terms may be consecutive or non-consecutive”);
- The Member Federation of Bolivia proposes to modify art. 18.12 of the FIDE Charter changing the words “two terms” with the words “three terms”, or with the words “four terms”;
- The Member Federation of Costa Rica proposes to modify art. 18.12 of the FIDE Charter as follows: “A person can serve as FIDE President for over two terms of four years. Terms may be consecutive or non-consecutive. To be elected as FIDE President for a third or more term, the candidate must be elected by at least 75% of the votes present at the General Assembly”.

Therefore, there are currently four different proposals (two from the Bolivian Chess Federation). Of course, in any moment a Member Federation can withdraw its proposal.

These proposals have to be voted separately. The CC does not deem possible to express “preferences”. They can be voted at the same time, but each one of them as a different proposal.

If more than one of these four proposals will be approved, with a majority of two thirds of valid votes of those Members Federations present, without considering abstentions, a new vote must be requested, again with separate votes, but only regarding the previously “approved” proposals; and so on, until only one of these proposals will receive a majority of two thirds of valid votes. After any new vote, the proposals that will receive less than a majority of two thirds of valid votes will be considered as rejected.

#### **8) LIMITS OF THE COMPETENCES OF THE GENERAL ASSEMBLY REGARDING PROPOSALS OF AMENDMENTS CONCERNING RULES AND REGULATIONS APPROVED BY THE COUNCIL**

The Norway Chess Federation submitted a proposal (listed in the agenda as point 7.1) of amendments of the Regulations, approved by the Council, concerning changing gender in the FIDE registry. This request does not constitute an appeal against a decision of the Council, but a proposal of changes.

The CC must observe that the Council, exercising its “legislative functions”, has the exclusive competence to approve and modify this kind of Regulations. The GA is the

highest authority of FIDE but does not have this competence. Therefore, this proposal, as it is, cannot be decided by the GA.

However, the GA can “expresse general guidance on FIDE activities”, therefore the Norway Chess Federation could reformulate the proposal in these terms, asking to approve some general principles. In alternative, this proposal can be considered as addressed to the Council.

Turin, 11 December 2023

Roberto Rivello

A handwritten signature in black ink, appearing to read 'Roberto Rivello', written in a cursive style.