



## **CONSTITUTIONAL COMMISSION**

### **REPORT TO THE GENERAL ASSEMBLY - SEPTEMBER 2024**

In occasion of the 2024 FIDE Congress, the Constitutional Commission held a meeting, with the following agenda:

- Proposals of reform of the FIDE Charter.
- Proposals of reform of the Ethics and Disciplinary Code and of the EDC Procedural Rules.
- Other relevant issues inserted in the agenda of the Council and of the General Assembly.
- Recommendation made by the Appeal Chamber of the Ethics and Disciplinary Commission in paragraph 22.12 of their decision in the case n. 11/2023.
- Request of verification of the compatibility with FIDE rules of the statutes of some Member Federations.
- Request of a statement about the inclusion among “chess activities” of activities related to chess variants and online chess.
- “Legacy” of the 2018/2024 Constitutional Commission.
- Any other business.

The meeting was attended by all members of the Commission: Roberto Rivello (chairman), Ivy Claire Amoko, Daniel Florea, Marouane Tabti and Ian Wilkinson (members), by the delegates of some Member Federations and by some members of the Management Board.

### **PROPOSALS OF REFORM OF THE FIDE CHARTER, THE ETHICS AND DISCIPLINARY CODE AND THE EDC PROCEDURAL RULES**

The FIDE Council, after having received and examined Member Federations' proposals for inclusion in the agenda of the 2024 General Assembly, conferred to the Constitutional Commission (hereafter CC) the mandate to draft the text of possible changes to FIDE rules, in order to incorporate the proposals submitted by the Cyprus Chess Federation and to clarify the competences of the Ethics and Disciplinary

Commission, taking the occasion also to enlarge the number of cases in which a faster proceedings is admitted, regarding minor violations of the Ethics and Disciplinary Code.

With the report issued on the 9<sup>th</sup> of August 2024, the CC fulfilled its mandate, proposing the text of possible changes.

The Council, in its next meetings, discussed the proposal and approved it with some changes: it is now submitted to the discussion and the vote of the General Assembly.

The CC has no additional comments, only observes that an alternative possibility for art. 13.1.e of the Ethics and Disciplinary Code could be to add, after “in the next FIDE General Assembly”, the words “**or in one or more FIDE events other than sports**”.

### **AGENDA OF THE 2024 GENERAL ASSEMBLY - ADVISORY OPINIONS REGARDING THE REQUESTS OF SOME FEDERATIONS**

The Council also asked the CC to provide an advisory opinion regarding:

- the letter of the Kyrgyz Chess Union (“on whether the issues raised by the Member Federation are within the competence of the General Assembly, and whether the suggestions of the Chess Union should be included into the GA agenda; on further actions in case CC comes to the conclusion that the issues are raised incorrectly and the Member Federation refuses to rectify their proposals; on suggestions regarding rectification of the proposals of the Kyrgyz Chess Union, if CC finds it possible”);
- the complaint of the Chess Federation of Russia (CFR) as of June 2024: (“on whether the issues raised by CFR are within the competence of the General Assembly, and whether the CFR request should be included into the GA agenda; - on further actions in case CC comes to the conclusion that the issues are raised incorrectly; on suggestions of any change to the CFR request, if CC finds it possible”);
- the proposals of the Kosovo Chess Federation: (“to confirm that they are within the competence of the FIDE General Assembly and that such proposals should be included into the agenda”);
- the request of the Serbian Chess Federation “to suspend the Kosovo Chess Federation” (“on whether the request was submitted on time and whether it should be included into the GA agenda consequently; what is the general order for this and further similar proposals (if any) to be included into the GA agenda; - other suggestions and remarks with reference to the situation, if any”);

- the application of the Saharawi Chess Federation to be admitted as an affiliated organisation (“opinion in general; - whether it is obligatory to include the issue of the application on the agenda, taking into consideration the letter of the Algerian Chess Federation; - whether the application complies with obligatory demands to the affiliated organisations as specified in the FIDE Charter).

All these items regard their inclusion in the agenda of the 2024 General Assembly.

The CC expressed the following opinions:

#### REQUEST OF THE KYRGYZ CHESS UNION

The text of the request of the Kyrgyz Chess Union seems to mix some different legal aspects.

They write that the suspension and the expulsion of a Member Federation fall into the competence of the GA. That is fully correct, but then they demand “*to restore the full membership rights of the Russian Chess Federation and of the Belarus Chess Federation*”. However, the Russian Chess Federation and the Belarus Chess Federation have never been suspended nor expelled pursuant to art. 13 of the FIDE Charter.

On the occasion of the extraordinary meeting held on the 27<sup>th</sup> of February 2022, regarding “*the current situation and the urgent measures to be taken after the military action launched by Russia in Ukraine*”, among other measures the Council, “*following the call from IOC*”, decided that “*no Russian and Belarusian national flag be displayed or anthem be played in all FIDE-rated international chess events*” and “*suspended Russia and Belarus teams from FIDE competitions*”.

As already highlighted on a previous occasion, the measures taken by the Council must be interpreted in close connection with the International Olympic Committee (IOC) resolutions, which are expressly referred to in the text of the FIDE decision.

On 24 and 25 February 2022, the Executive Board of the IOC, after having noted that “*the current war in Ukraine puts the Olympic Movement in a dilemma ... which cannot be solved*”, and that Belarus “*has abetted Russia's invasion by allowing its territory to be used to station troops and launch military attacks*”, “*with a heavy heart*” issued the following resolution: “*in order to protect the integrity of global sports competitions and for the safety of all the participants, the IOC Executive Board recommends that International Sports Federations and sports event organisers not invite or allow the participation of Russian and Belarusian athletes and officials in international competitions*”, “*wherever this is not possible on short notice for organisational or legal reasons, the IOC Executive Board strongly urges International Sports Federations and organisers of sports events worldwide to do everything in their*

*power to ensure that no athlete or sports official from Russia or Belarus be allowed to take part under the name of Russia or Belarus. Russian or Belarusian nationals, be it as individuals or teams, should be accepted only as neutral athletes or neutral teams. No national symbols, colours, flags or anthems should be displayed”, “wherever, in very extreme circumstances, even this is not possible on short notice for organisational or legal reasons, the IOC EB leaves it to the relevant organisation to find its own way to effectively address the dilemma described above”.*

The IOC, in the following months, many times clarified that this decision did not impose sanctions against Russian and Belarusian athletes and teams, but took measures considered as appropriate exclusively *“in order to protect the integrity of global sports competitions and for the safety of all the participants”*.

It is the same for the FIDE decision. The Council did not suspend the Russian and the Belarus Chess Federation, whose representatives have been able to regularly attend FIDE Congresses. The Council did not impose “sanctions” against Russian and Belarusian players and teams, at least *stricto sensu*, but just followed IOC indications - choosing the relatively less imposing restriction for Russian and Belarusian chess players, among the suggested ones- with the same aim, to protect the integrity of chess competitions and for the safety of all the participants.

It has also to be reminded that, in accordance with the Charter, FIDE is recognised by the International Olympic Committee as the international federation in the domain of chess and that the interpretation of FIDE rules and regulations must be in conformity with the Olympic Charter.

For these reasons, the measures taken by the Council on the 27th of February 2022, for sure *“with a heavy heart”* as well, also if they impose restriction about competitions, cannot be considered as a restriction of *“membership rights of the Russian Chess Federation and of the Belarus Chess Federation”* and, even more, cannot be considered as the equivalent of a suspension of these Member Federations.

More recently, the Ethics and Disciplinary Commission (EDC), with a decision of their First Instance Chamber issued on the 7th of June 2024, in the case n. 11/2023, sanctioned the Russian Chess Federation (and not the Belarus Chess Federation, that was not involved in the case) by a temporary exclusion of membership in FIDE for a period of 2 years. However, from one side, the GA, on the basis of the current rules, has no competences regarding EDC decisions, from another side, the Appeal Chamber of the EDC, on the 2<sup>nd</sup> of August 2024, in accordance with Articles 12.1 and 17.6 of the FIDE Ethics and Disciplinary Code, ruled that the implementation of the above mentioned sanction *“will be stayed for the time being and the stay will lapse simultaneously with the publication of the final decision of the Appeal Chamber in Case 11/2023”* and then, with its final decision, imposed a different sanction.

Therefore, as it is, the request of the Kyrgyz Chess Union cannot be submitted to the vote of the GA.

However, the intention of the Kyrgyz Chess Union was probably to raise the question if, more than two years after the decision of the Council issued in February 2022, there are still reasons to confirm the above-mentioned restrictions.

The GA has no competence to decide on this issue, the decision is reserved to the Council (and appealed to the GA, eventually), the GA can only “express general guidance on FIDE activities”. This also answers the request, submitted by the Council to the CC, to suggest possible “rectifications of the proposals of the Kyrgyz Chess Union”: the GA can be requested to express “general guidance” on this question.

The Council, in its next meetings, discussed the point and took a position that the CC considers fully in accordance with its advisory opinion.

#### COMPLAINT OF THE CHESS FEDERATION OF RUSSIA

The Russian Chess Federation submitted to the GA a complaint against the decisions taken by the Council on the 27<sup>th</sup> of February 2022 (the same decision already mentioned above) and on the 15<sup>th</sup> of March 2022, “*regarding banning athletes from Russia and Belarus from competing under their national flags and anthems, as well as regarding Russian and Belarusian national teams from participating in official FIDE tournaments*”.

Appeals must respect some time limits.

Art. 35.5 of the FIDE Charter establishes that “*the time limit for appeal is twenty-one days from receipt by the appellant of the decision appealed against or, in the case of a decision by FIDE General Assembly, twenty-one days from the close of the General Assembly. The time-limit for appeal against decisions of the Electoral Commission is twenty-one days from the close of the elective General Assembly*”.

The CC believes that art. 35.5 is specifically applicable to the appeals to CAS but, in any case, it establishes a relevant parameter.

Art. 8.2 of the Charter specifies that “*when textual, systematic and teleological interpretation are not sufficient to give a solution to a specific case or issue, general principles of law can be applied*” and, on the basis of general principles of law, an appeal must respect some reasonable time limits.

In this case, the complaint has been submitted more than two years after the appealed decision and during all this long period the Council’s decisions have been regularly applied, in many events and tournaments. Also if not of 21 days, a time limit longer than one or two months has to be considered as unreasonable.

Therefore, the CC believes that the complaint is not admissible.

About the request concerning possible “further actions in case CC comes to the conclusion that the issues are raised incorrectly”: the Russian Chess Federation could request the Council to reconsider its decision, and, of course, as already above mentioned, the GA can be requested to “express general guidance” on this issue.

The Council, in its next meetings, discussed the point and took a position that the CC considers fully in accordance with its advisory opinion.

#### OTHER REQUESTS OF THE CHESS FEDERATION OF RUSSIA

The Russian Chess Federation submitted two other requests:

- one of them concerns a proposal of amendment to art. 13.1. of the FIDE Ethics and Disciplinary Code: it is admissible, its content is similar to the proposal submitted by the Cyprus Chess Federation, for this reason may be considered as having been superseded by the more structured and comprehensive reform proposed by the Council;

- another one, regarding the FIDE Ethics & Disciplinary Commission, was considered inadmissible by the CC, anyway it was then withdrawn by the Russian Chess Federation.

#### REQUEST OF THE KOSOVO CHESS FEDERATION

The Kosovo Chess Federation asks “*to remove the asterisks (footnote) placed after the name*” of this Federation.

The GA is not directly competent on this issue, the Council is competent. The GA could be competent in case of an appeal against a decision of the Council, but currently can only “express general guidance” on this subject matter, in case of a reformulated request (for instance, about the necessity or not to follow UN indications on the point).

The Council, in its next meetings, discussed the issue and, in accordance with this advisory opinion, decided to ask for a “recommendation” by the GA. The CC only observes that this “recommendation” will just constitute a “general guidance” for the Council.

#### REQUEST OF THE SERBIAN CHESS FEDERATION

The request of the Serbian chess federation was received by the FIDE Offices on Monday 22<sup>nd</sup> of July 2024. This was the first working day after the established deadline, expired on Sunday. Therefore, the request is within the time period.

However, the GA currently is not competent to deal with this request.

The Serbian Chess Federation mentions an alleged “*mistreatment of Serbian chess players in Kosovo*” and requests FIDE “*to send a delegation to the southern Serbian province to conduct an investigation*”, indicating that “*for years there have been*

*numerous incidents where Serbian players faced harassment and discrimination, including being denied entry to tournaments, being subjected to biased officiating, and experiencing hostile environments that compromise their safety and well-being”, and concludes asking to “consider the suspension” of the Chess Federation of Kosovo “until these issues are thoroughly investigated and resolved”.*

Harassment and discrimination are types of behaviour that could be the object of a complaint or a report to be addressed to the EDC.

Severe violations of its duties by a Member Federation could be the reason for a suspension pursuant to art. 13 of the Charter, but it has to be decided by the Council, and thereafter submitted to the confirmation of the GA, following an advisory opinion by the Constitutional Commission.

The Council, in its next meetings, discussed the point and took a position that the CC considers fully in accordance with its advisory opinion.

#### APPLICATION OF THE SAHARAWI CHESS FEDERATION AND REQUEST OF THE ALGERIAN CHESS FEDERATION

The Saharawi Chess Federation, with various documents sent months in advance, requested to become a FIDE Affiliated Organisation.

On 18<sup>th</sup> of July 2024 the Algerian Chess Federation formally requested to insert this proposal in the agenda of next GA meeting.

The relevant provision is art. 17.11 of the Charter, which states as follows: *“Proposals from Member Federations or Affiliated Organisations, about items to be included in the agenda of the Ordinary General Assembly, should reach the FIDE Offices not later than two months before the opening date of the General Assembly, together with the reasons for them. Proposals submitted within this time limit must be included in the agenda”.*

The deadline for the receiving of the proposals was on 21<sup>st</sup> of July 2024. The proposal of the Algerian Chess Federation was made within the required time. This proposal, therefore, must be included in the agenda of the meeting of the GA, due to be held on 21<sup>st</sup> of September 2024.

About the question whether the application complies with obligatory demands to the affiliated organisations, the relevant provision is art. 14 of the Charter which states as follows: *“The General Assembly, following an advisory opinion of the Council, can admit as Affiliated Organisations:*

- a) organisations grouping Member Federations;*
- b) associations or organisations which represent some regions or transnational territories;*

*c) associations or other organisations representing people with a common ground or with same interests on some specific chess activities”.*

It has to be mentioned that, in 2023, the Council approved FIDE Regulations on Affiliated Members, to attribute the title of Affiliated Member to some Affiliated Organisations. However, these regulations are not relevant in this case, because the Saharawi Chess Federation has only requested to be recognised as an Affiliated Organisation, nor it would be applicable, because it seems that the Saharawi Chess Federation does not present itself as a representative of “a specific territory located within no more than one Member Federation”, that it is the first condition requested by the Council to attribute the title of Affiliated Member.

The Saharawi Chess Federation is an association which represents some regions or transnational territories and regularly organises chess activities.

Anyway, to admit or not the Saharawi Chess Federation as an Affiliated Organisation is a discretionary decision of the GA, following an advisory opinion of the Council.

It is well known that the situation of the Western Sahara was, especially some decades ago, but still partially is, quite debated.

The Algerian Chess Federation expressed its opinion, favourable to the admission of this new Affiliated organisation.

On the contrary, the Moroccan Chess Federations expressed its full opposition to this admission.

The request has been inserted in the agenda and the Council expressed its advisory opinion.

The CC has nothing else to observe.

**RECOMMENDATION MADE BY THE APPEAL CHAMBER OF THE ETHICS AND DISCIPLINARY COMMISSION IN PARAGRAPH 22.12 OF THEIR DECISION IN THE CASE N. 11/2023**

In paragraph 22.12 of its decision in the case n. 11/2023, the Appeal Chamber of the Ethics and Disciplinary Commission wrote what follows: *“the problem of the non-compliance with FIDE’s principles in the instance of these territorial disputes is a reality and cannot be ignored. **The Appeal Chamber recommends that the FIDE Council prepares and adopts a set of general regulations dealing with the governance and organisation of chess activities in occupied territories** as well as the need for FIDE’s approval and monitoring of the situations that exist or may arise in this context. Given the urgency of the matter, as the CFR remains in default of its obligations under the Charter in relation to the occupied Ukrainian territories, **the***



**Appeal Chamber would suggest that a period of 3 (three) months from the date of this decision would be a reasonable period to prepare and adopt such regulations.** In future, cases of the alleged breach of these regulations could be brought to the EDC or the FIDE Council may take alternative actions to enforce compliance with the regulations”. In the following paragraph 22.13 also added that “such regulations would support FIDE’s mission in the diffusion and development of chess, promotion of close international cooperation of chess devotees and to improve harmony and promote peace among all people of the world and to eradicate or at least limit the influence of politics in sport. It would also protect the chess communities in occupied territories to exercise their rights to practice sport and remain active participants in the chess world, regardless of geo-political problems”.

The CC observes that the “occupation law”, that was for the first time regulated by The Hague Conventions of 1907, then by the Fourth Geneva Convention 1949 and by the Protocol I additional to the Geneva Conventions 197, constitutes one of the main contemporary challenges to International humanitarian law.

To regulate sport, in our case chess, activities in occupied territories, can be a little bit less complicated, but for sure it is still not an easy task.

Anyway, the CC is fully available to contribute to draft a proposal, if requested by the Council.

### **REQUEST OF VERIFICATION OF THE COMPATIBILITY WITH FIDE RULES OF THE STATUTES OF SOME MEMBER FEDERATIONS**

Nigel Short, as a member of the Management Board, raised the question about the compatibility with FIDE rules of the statutes of some Member Federations.

The CC preliminary clarified that it is currently competent to deal with this subject matters only in general terms and not about some specific cases.

From one side, the CC observes that, in accordance with art. 11 of the FIDE Charter, all Member Federations must “communicate a copy of their current statutes to FIDE Offices, adding a translation into English, if written in a different language”, as well as “any change of their statutes, not later than two months after their entry into force”. If some Member Federations still have not complied with this obligation, they can be sanctioned for this. Therefore, it would be advisable that FIDE Offices remind them about this.

From another side, all these statutes must preview a full respect of FIDE rules and principles. Verifying this, also to help Member Federations that can have difficulties on some legal aspects, could be an important task, that FIDE organs can consider undertaking.

**REQUEST OF A STATEMENT ABOUT THE INCLUSION AMONG “CHESS ACTIVITIES” OF ACTIVITIES RELATED TO CHESS VARIANTS AND ONLINE CHESS**

A Member Federation asked about the possibility to include in its statute the aim to regulate, promote and disseminate the game of chess “in all its ramifications, including online chess and Chess960”.

FIDE Charter, especially in art. 2 and art. 3, specifies that FIDE mission, role and competences regard chess activities “in all their forms, including competitions on internet and regarding variations of the traditional game of chess (as Fischer random - chess960, blindfold chess, etc.)”.

Therefore, in the CC opinion, there are no obstacles to the proposed inclusion.

**“LEGACY” OF THE 2018/2024 CONSTITUTIONAL COMMISSION**

The electoral mandate of this CC lasted from 2018 to 2024.

Marouane Tabti, Ian Wilkinson and me, we were elected in Batumi, 2018, together with Kezzie Msukwa.

Ivy Claire Amoko and Daniel Florea joined the commission in 2022.

In those years a new Charter was drafted and approved, as well as new Electoral Rules and many others. They are, we could say, our “legacy”.

It was a privilege and a great honour to try to give a contribution to improve the quality of the system of FIDE regulations and the respect of the rule of law in FIDE, for which we have to thank all FIDE Members and I, in particular, would like to thank all members of the Commission.

Turin – Budapest, September 2024

Roberto Rivello

