

Annex n.



## **CONSTITUTIONAL COMMISSION**

### **REPORT TO THE FIDE COUNCIL – 10 JULY 2022**

The Constitutional Commission (hereafter CC) held an on-line meeting on 10<sup>th</sup> of July 2022.

The meeting was attended by three of the current four members of the CC: Roberto Rivello (chairman), Marouane Tabti and Ian Wilkinson.

The following points were inserted in the agenda, discussed, and decided by the CC.

#### **I) Advisory opinions about the proposed changes of the FIDE Charter**

In accordance with its competences (“to review ... changes of the FIDE Charter ...”, and “to ensure that proposed changes of FIDE Charter ... occur in conformity with the established procedural rules”), the CC examined the proposals of changes of the FIDE Charter included in the agenda, especially points 6.1.2, 6.1.3, expressing the following opinions:

- **Proposal of Papua New Guinea Member Federation to modify art. 9.4 of the FIDE Charter (Annex 6.1.3b)**

Current art. 9.4 rules that: “For new members, the country of the federation must be a country recognised by the United Nations and the International Olympic Committee (IOC)”

Papua New Guinea Member Federation proposes to delete the word “new” and to add the word “or” after the word “and”, as follows: “For **new** members, the country of the federation must be a country recognised by the United Nations and **or** the International Olympic Committee (IOC)”.

The first change seems aimed to avoid possible misunderstandings regarding current Member Federations, the second is a discretionary choice that is not in contrast with other FIDE rules.

The CC has no objection to submitting this proposal to the FIDE Council and the General Assembly for their respective consideration.

- Proposal of English Member Federation to modify art. 9.4 of the FIDE Charter (Annex 6.1.2)

English Member Federation proposes a very similar change of art 9.4: to delete the word “and” and to add the word “or” after the word “Nations”, as follows: “For new members, the country of the federation must be a country recognised by the United Nations ~~and~~ **or** the International Olympic Committee (IOC)”.

It could be considered absorbed by the decision that will be taken by the General Assembly about the above mentioned one.

The CC has no objection to submitting this proposal to the FIDE Council and the General Assembly for their respective consideration.

- Proposal of English Member Federation to modify art. 17.6 of the FIDE Charter (Annex 6.1.2)

Current art. 17.6 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”.

English Federation proposes to delete one of the two requirements requested to act as Presidents or delegates of a Member Federation, as follows: “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”.

It’s a discretionary choice of the General Assembly. The CC has no objection to submitting this proposal to the FIDE Council and the General Assembly for their respective consideration.

- Proposal of Papua New Guinea Member Federation to introduce “Associate Member Federations” (Annex 6.1.3a)

Last year Papua New Guinea Chess Federation advanced the same or a very similar proposal, not approved by the General Assembly.

The institution of a new kind of membership, for “Associate Member Federations”, would constitute a real revolution, for FIDE.

These “Associate Members” would have the same powers of the Member Federations, it means of the full members. This could be considered in contrast with IOC rules and with the same art. 9.4 of the FIDE Charter.

The aims that are probably at the basis of this proposal seem already satisfied by the institute of “Affiliated organisation” (art. 14 of the FIDE Charter).

The CC must object against the approval of this proposal.

## **II) Interim elections of members of the Ethics and Disciplinary Commission and of the Constitutional Commission and state of activity of their current members**

In accordance with art. 25.2 of the FIDE Electoral Rules, “if a member” (of tan elective commission) “is inactive for a period of 6 months or longer, without due justifications, following a decision of the other members of the Commission, ratified by the Council, he or she is considered lapsed from office, and new elections will be organised for that position in the next General Assembly”.

Unfortunately, Honourable Kezzie Msukwa, Member of this Constitutional Commission, has been inactive for a period at least longer of 7 months and it is a duty of the Commission to verify the activity of its members.

Therefore, the CC, by unanimity, recognises that Mr. Kezzie Msukwa has to be considered lapsed from office and asks the Council to ratify this decision and to organise an interim election of two members of the Constitutional Commission.

## **III) Competence regarding regularity of Continental Elections – Art. of the FIDE Charter.**

Mr. Mario A. Ramírez Barajas, a candidate to the position of President of FIDE Continent America, addressed to the CC a complaint concerning many alleged violations of FIDE and American FIDE Continent rules regarding 2022 continental elections, asking to “declare illegal the change of date of the CCA election to October. Realize the election of the election in Chennai in the framework of the World Chess Olympic and the General Assembly of FIDE, with the resolution of the General Secretariat of the origin of challenging the ticket of Mr. José Carrillo Pujol, as the CCAA statute mandate. Full respect for the Secretary-General's positions as head of the CCA Secretariat”, adding that “FIDE must be a guarantor of compliance with the statutes of continental federations and organizations and not allow members to be left in a state of defenselessness in a situation that seriously affects an electoral process and the rights and obligations of the participants”.

As already specified by the Electoral Commission, about its competences, also the CC must remind that, in accordance with art. 27 of the Electoral Rules, Continental elections shall be organised directly by the FIDE Continents, in accordance with their internal rules, therefore the CC has no competence about interpretation of continental electoral rules.

On the contrary, the CC has competence about interpretation of all other FIDE rules, and there are no doubts that, in accordance with the same art. 27 of the Electoral Rules “FIDE Continents shall take place during the FIDE Congress, on a quadrennial basis. These elections must be organised and concluded before the opening of the electoral meeting of the General Assembly”.

Therefore, the decision to convene continental elections after the opening of the electoral meeting of the GA constitutes a violation of FIDE Rules, if not taken for a valid reason. However, at the present moment, the CC cannot decide or evaluate this aspect of the matter as the CC does not have all the relevant information, including the specific reason or reasons for the proposed changing of the date of the elections to October 2022. These reasons should be provided by the Continental President Jorge Vega or the General Secretary Russell Smith or by the executive of the FIDE Continent.

After the elections -and not before them-, again in accordance with art. 27 of the Electoral Rules, if they are organised without respecting the general principles listed under art. 2 of the Electoral Rules (that include, for instance, “carrying out all electoral activities by an impartial and effective administration”), “the Council, following an advisory opinion of the Constitutional Commission, can decide to not recognise their results”. It is a risk that the American FIDE Continent must ponder attentively, but no decisions can be taken before elections.

A violation of FIDE rules, by one or more persons, could also constitute a violation of the Ethics and Disciplinary Code, but the CC has no competence about that as well.

As a consequence of all this, the CC cannot make a final determination of this issue, at least now, without additional information, particularly from the CCA executive which made the decision to postpone the elections to October 2022.

Cagliari, 10 July 2022

Roberto Rivello

