



## **FIDE CONSTITUTIONAL COMMISSION**

### **REPORT TO THE FIDE EXECUTIVE BOARD**

### **GOYNUK-ANTALYA, TURKEY- OCTOBER 2017**

The Constitutional Commission (hereafter CC), with the following composition (chairman: Mr Roberto Rivello (ITA); members: Mr Casto Abundo (PHI), Mr Willy Icklicki (LIE), Mr David Jarrett (ENG) –present- and Mr Pedro Dominguez Brito (DOM) –absent for justified reasons) held its first meeting in Goynuk, during the 88<sup>th</sup> FIDE Congress, on 11<sup>th</sup> of October 2017, in a public session from 9.00 to 13.00, with the presence of various observers: N. Freeman (FIDE), I. Gelfer (ISR), S. Tserendorj (MGL), K. Turdialiev (UZB), S. Escafre (FRA), G. Borg (FIDE), B. Balgabaev (FIDE), A. Ozolins (LAT), B. Quinn, S. Haiff, N. Ottavi (ITA), G. Pagnoncelli (ITA), T. Karatekin (TUR), A. Schuering (NED), G. Wastell (AUS), L. Ncube (ZAM), I. Dobronauteanu (ROU), M. Khodarkovsky (USA), R. Haring (USA), L. Mazouz (ALG), F. Strydom (RSA), M. Thabano (BOT), M. Huba (SVK); and a second meeting in a session restricted only to the members, without observers, on 11<sup>th</sup> of October 2017, from 16.15 to 18.30. During the second session, Mr. Willy Icklicki asked to be excused to take part in any discussion and decision concerning FIDE President, given his incompatible position of Adviser of the FIDE President. His abstention was accepted by the Chairman.

The following points were inserted in the agenda:

- 1) Issues related to the 2018 FIDE Elections:
  - Electoral rights;
  - Membership: Bulgaria;
  - Membership: Pakistan;

- Any other question or suggestion.
- 2) FIDE Handbook and consolidated texts (including FIDE Code of Ethics): updating and methodology.
- 3) Request by the Russian Chess Federation of an advisory opinion about the interpretation of Section A.9.5 of the FIDE Statutes.
- 4) Advisory opinions related to 2017 Executive Board's Agenda:
  - Interpretation of Sections 9 and 12 of FIDE Statutes
  - Any other issue and proposal concerning the agenda and/or submitted by delegates and organs.
- 6) Any other business.

## **1) ISSUES RELATED TO THE 2018 FIDE ELECTIONS.**

The CC has primarily the institutional competence to review any statutes changes, to ensure that statutes changes occur in conformity with the procedural rules mentioned in the statutes and to ensure that the legality of FIDE statutes is fully respected.

2018 will be an electoral year and the Electoral Commission, chaired by the chairman of the Constitutional Commission, will have to be in charge, in accordance with the Statutes and the Electoral Regulations, to decide on eligibility and electoral rights. Therefore, this congress constitutes the last occasion, before the elections, to deal with some general questions and, at the same time, with some specific issues that are already known about electoral rights.

### **- ACTIVE ELECTORAL RIGHTS**

In the FIDE Statutes there are just a few specific rules on active electoral rights, mainly in Chapter 2:

*2.1. Members of FIDE are national chess federations which have principal authority over chess activities in their own countries and which have been admitted to FIDE as member-federations if they acknowledge the FIDE Statutes and develop activities not contrary to those statutes. Only one federation of each country can be affiliated to FIDE. In addition FIDE can grant the status of provisional member to chess federations, in accord with Article 2.7.*

*For new members, the country of the federation (with the same boundaries) must be a country or territory that is a member of the International Olympic Committee. ....*

2.2. .... *Decisions on the final admission of new federations shall be made before any other order of business, except elections.*

2.3. *Each member federation has one vote in the General Assembly ...*

2.4. *The members must acknowledge and observe the statutes, regulations, resolutions and decisions of FIDE. They are also obliged to pay the membership fees and the other FIDE contributions fixed by the General Assembly at the designated time. Moreover, they are obliged to support FIDE actively in all chess activities. ....*

2.5. *Members not fulfilling the duties mentioned in art. 2.4 may be temporarily excluded from FIDE by a decision of the General Assembly/Executive Board/Presidential Board and permanently excluded from FIDE by a decision of the General Assembly.*

*A temporary exclusion made by the Presidential Board or Executive Board shall be submitted to the next General Assembly, which will decide on the permanent exclusion of the negligent federation. This must be an agenda item prior to any election. ...*

*In other matters a permanent exclusion can be ruled by the General Assembly only if the member is guilty of a severe offence against the statutes, regulations, resolutions or decisions, or acts against the principles of FIDE, taking into account the opinion of the Ethics Commission. This must be an agenda item prior to any election.*

At the same time, Electoral Regulations rule *that the Electoral Commission reports on the complete list of those entitled to vote and answers any questions and comments before the beginning of the General Assembly.*

When there are no specific rules, Electoral Commission can follow general principles of law, in accordance with regulations of the IOC and of the Swiss national legal order, if any, deciding case by case.

### **- MEMBERSHIP: BULGARIA**

On September 2016, the European Chess Union (ECU) decided to expel the Bulgarian chess federation from the ECU. An appeal to the Court of Arbitration for Sport (CAS) against this decision was dismissed by the CAS on June 2017. Following this decision, the Bulgarian Ministry of Youth and Sports decided, on August 2017, to not renew a necessary national licence to the Bulgarian Chess Federation.

Therefore, it is possible that the Executive Board will decide for a temporary exclusion from FIDE of the Bulgarian Chess Federation. If the Bulgarian chess federation will be temporarily excluded in 2017 but, before 2018 elections, their licence will be renewed, or if a different Bulgarian association will submit a request of membership, it will be necessary to decide about the nature of this request.

If it is a request of membership from a new federation, the General Assembly will decide after the elections and the federation will have no right to vote. If it is a request from the same federation, there are two possibilities. Or the Presidential Board will decide that there are no more reasons for the temporary exclusion -as a consequence, there will be no specific problems- or the decision will have to be taken by the General Assembly. In this case, there is a difference of rules comparing the Statute (the General Assembly has to decide before the elections) and the Electoral regulations (Electoral Commission has to decide before the General Assembly). However, it seems that the Statute is introducing, for this exceptional case, a derogation to ordinary rules, therefore it seems possible that,

in this case, the Electoral Commission can decide on the right to vote after the decision of the General Assembly to revoke or not the temporary exclusion.

#### **- MEMBERSHIP: PAKISTAN**

Currently, two different associations are debating about their authority over chess activities in Pakistan and a case is pending in front of the competent national Court. At the same time, a mediation to find a compromise between the same parties is also pending and the FIDE Executive Director expressed is optimism about a positive solution of this dispute.

The case will be decided at a national level and if the mediation will be successful in the next months this will avoid all possible problems related to 2018 elections.

#### **- PASSIVE ELECTORAL RIGHTS**

In the FIDE Statutes there are no general rules on passive electoral rights, except a couple of very specific incompatibilities. Therefore, there are no limits to passive electoral rights, except in the case of limits introduced, if applicable, by IOC regulations or Swiss national legal order.

The participants in the public session of the meeting raised no other questions or suggestions about electoral matters.

## **2) FIDE HANDBOOK AND CONSOLIDATED TEXTS (INCLUDING FIDE CODE OF ETHICS): UPDATING AND METHODOLOGY.**

The CC has been informed that the Central Board of Commissions discussed the updating of the FIDE Handbook by assigning proper sections to relevant commissions for reviewing.

Updating of the FIDE Handbook is a very important task and also the CC suggested this in previous occasion.

At the same time, the CC underlines the importance to make available a printed version of the FIDE Handbook, at least every two years, and in any case to indicate the exact date of each decision to change a rule and by which FIDE organ the decision has been taken or ratified and when exactly.

The current situation, with the publication of the Handbook only on FIDE website, without paying attention to the exact hierarchy of the different sources of rules, and simply deleting previous versions, has created in past occasions and is still creating many difficulties.

If a printed version is impossible, because too expensive, at least one version of the FIDE Handbook should be saved every year as the official one and has to be made available on the website, given to everybody the possibility to know which rules must be applied in relationship to a given period of time.

The CC is available to advise and help in the updating procedures.

### **3) REQUEST BY THE RUSSIAN CHESS FEDERATION OF AN ADVISORY OPINION ABOUT THE INTERPRETATION OF SECTION A.9.5 OF THE FIDE STATUTES.**

On 2<sup>nd</sup> of October 2017, the Russian Chess Federation submitted to the CC a request for an advisory opinion.

The Russian Chess Federation asked if the CC could confirm their “interpretation of Section A.9.5 of the FIDE Statutes, i.e . that as per FIDE Statutes a full delegation of the president' s powers may occur only if the president duly authorises such delegation or is unable to act”.

The relevant rules about “delegation” by FIDE President can be found in Chapter 9 of the FIDE Statute:

#### *Chapter 09 - The President and Deputy President*

*9.1. The President represents FIDE officially and can solely sign for FIDE. All contracts signed by the President shall be subject to prior approval or subsequent ratification by the Presidential Board. Any contract that commits FIDE to an obligation or exposes FIDE to a potential liability of more than €100,000 must be submitted for ratification by the Executive Board or General Assembly.*

*9.2. The President presides over the meetings of the General Assembly, the Executive Board and the Presidential Board.*

*9.3. The President presents an annual report to the General Assembly.*

*9.4. The President's decisions may be appealed to the General Assembly, Executive Board or Presidential Board.*

*9.5. If the President is unable to act or if he duly authorises, then he can be represented by the Deputy President who shall exercise the powers of the President. The Deputy President can thus represent FIDE officially and can solely sign for FIDE.*

*9.6. In certain cases the FIDE President can also delegate specific tasks to other persons; this includes authorising in writing other FIDE officials to sign contracts on his behalf.*

Preliminary, the CC observes that there is a wording difference between article 9.5, where the exercise of “powers” is the object of the delegation, and article 9.6, that concerns the delegation of “specific tasks”.

From another side, 9.5 concerns delegation to the Deputy President and 9.6 delegation to “other persons”: it could be interpreted as not including the Deputy President, but it is unlikely that the rationale of the rule is to make impossible for the President to delegate only some specific tasks to the Deputy President.

Therefore, in the opinion of the CC, in accordance with the joint rules of 9.5 and 9.6, the President can delegate the full exercise of all his powers only to the Deputy President and not to other persons, but the President can delegate some specific tasks both to the Deputy President and to other persons.

Anyway, for what concerns delegation under article 9.5, about “how” the delegation can be possible, the rule is fully clear and does not seem controversial: this can happen only in two cases. Or when the President is “unable to act” -it means, as a consequence of a factual situation-, or if the President “duly authorises”.

Therefore, the interpretation given by the Russian Chess Federation is correct and can be confirmed.

#### **4) ADVISORY OPINIONS RELATED TO 2017 EXECUTIVE BOARD’S AGENDA: INTERPRETATION OF SECTIONS 9 AND 12 OF FIDE STATUTES.**

The request of an advisory opinion submitted by the Russian Chess Federation was limited to the question answered above. However, it seems clear, both from some arguments listed in the same request of the Russian Chess Federation and from some recent exchanges of letters between the FIDE President and the FIDE Secretariat, that there are very different opinions about the delegation of powers to the FIDE Deputy President decided in December 2015 and confirmed in April 2017. This is a different question.

The CC has no competence to decide about facts or to settle a dispute between parties, especially in a case that concerns, it seems, the interpretation of the will expressed both by the President and by the Presidential Board.

What the CC can and must do is only to advise on the correct interpretation of FIDE Statutes. It will be to other competent FIDE organs to apply these rules to the specific case.

During the public meeting of the CC, participants expressed many different opinions about the legal nature of this “delegation”: for some of them it has been an agreement between the President and the Presidential Board, subjected to some conditions regarding limits of time and object; for others it has been an agreement not subjected to any condition; some participants expressed the idea that the Presidential Board had competence to take a decision about that; for somebody else it has been just a voluntary decision, not limited by conditions, for others limited by conditions, and so on.

In addition, this is clearly a legal question, and it is necessary to bear in mind that nor the President nor the members of the Presidential Board have necessarily a specific expertise on legal matters, therefore it is possible that the expression, *in bona fede*, of their will, was not exactly defined by the name given to their acts.

For the CC only some of the above mentioned opinions can be considered as fully in accordance with FIDE Statutes.

Under Article 9.5 it is necessary to make a clear distinction between two cases.

The first one: the President “is unable to act”. This is a factual situation, that has to be verified. The Presidential Board can surely take a decision about that, following general rules about Presidential Board procedure, the same for the Executive Board and the General Assembly, that can take a final decision, if necessary.

The second one: the President “duly authorises”. This is a unilateral act, that can be subject to conditions -if this is the intention of the President -. It cannot be an agreement, nor with the Presidential Board, neither with somebody else. The Presidential Board has no competence about that and can just take notice of the unilateral act and make it public. Given that it is not a real decision, there are no procedural rules that the Presidential Board has to follow.

Therefore, it seems that the 2015-2017 “delegation” can be interpreted only in three different possible ways, in accordance with FIDE Statutes:

- or it follows a decision by the Presidential Board, ratified by the General Assembly, and an inability to act of the President has been considered as an existing factual situation;
- or the delegation is the consequence of a unilateral decision of the President, in that case it has to be considered if the unilateral act was or was not submitted to

conditions, both for what concerns powers (all powers or some powers) and especially for what concerns time limits (has it been the intention of the President to delegate his powers “till when” his position, in connection with the November 2015 decision of the US Department of the Treasury, will be clarified -and not before- or not ?).

To be able to decide among these three options it is necessary to evaluate the facts and the real will of the parties, but this is not the competence of the CC, as already mentioned before.

It is clear that the conclusion that will be reached about this issue implies many consequences, first of all about who has to chair next Executive Board meeting.

The Executive Board can and probably has to take a decision about who has to chair the meeting (if the Deputy President or the President), but before that it will be necessary to chair a preliminary part of the meeting (the roll-call, the possibility to give the floor to the parties about their different positions, and so on, before voting the motion of order). General principles about the organisation of meetings and, even more, our principle *Gens una sumus*, in addition to the necessity to avoid situations that can only be unpleasant for the majority of participants and for the chess world, suggest that a third person, whose name can be jointly indicated by the President and the Deputy President and who can have the *consensus* of the Executive Board members, could be called to chair this very first part of the Executive Board meeting.

During the public meeting of the CC, participants raised no other questions about interpretation of Chapter 9 and 12, nor about any other issue.

The Chairman of the Constitutional Commission

Roberto Rivello

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