

Annex n. 30 bis



## **FIDE CONSTITUTIONAL COMMISSION**

### **REPORT TO THE FIDE GENERAL ASSEMBLY**

#### **BAKU - AZERBAIJAN - SEPTEMBER 2016**

The Constitutional Commission (hereafter CC), with the following composition (chairman: Mr Roberto Rivello (ITA); members: Mr Casto Abundo (PHI), Mr Willy Iclicki (LIE), Mr David Jarrett (ENG) –present- and Mr Pedro Dominguez Brito (DOM) –absent for justified reasons) held its first meeting in Baku, during the 87<sup>th</sup> FIDE Congress, on 8<sup>th</sup> of September 2016, in a public session from 9.00 to 13.45, with the presence of various observers: I. Amarnath (IND), I. Dobroteanu (ROM), N. Faulks (BER), M. Khodarkovsky (USA), N. Freeman (FIDE), H. Hamers (NED), J.C. Moingt, M. Sand, A. Schuering (NED), R. Smith, F. Strydom (RSA), S.S. Uddin (BAN), G. Wastell (AUS), and a second meeting in a session restricted only to the members, without observers, on 9<sup>th</sup> of September 2016, evening.

The following points were inserted in the agenda:

1) Advisory opinions or decisions related to items inserted in 2016 General Assembly's Agenda:

- 1.1) Proposed changes to Chapter 04 and 13 of FIDE Statutes (General Assembly - Jurisdiction clause);
- 1.2) Proposed changes to Chapter 08 of FIDE Statutes (Commissions of FIDE - Amendments regarding elected commissions);

- 1.3) Proposed changes to Chapter 03 (FIDE Officials and organs - Proposed amendment to current Article 10 of Chapter 03);
- 1.4) Proposed changes in the Electoral Regulations;
- Other issues and proposals concerning and by delegates and organs. Among them 3 questions were submitted to the attention of the CC (by previous written communications or orally):
- 1.5) Confirmation of full membership of Kosovo chess federation (by the Serbian chess federation);
- 1.6) Identification of the current delegate of the Croatian chess federation (by the FIDE Secretariat);
- 1.7) Motion to be inserted in the agenda (by the Jamaica chess federation)
- 2) Anti-cheating: organs and rules.
- 2) FIDE Handbook and consolidated texts.
- 3) Reform of the Code of Ethics.
- 4) Interpretative questions on:
  - 4.1) Non-elected commissions – Membership and proceedings;
  - 4.2) Relationships among FIDE Ethics Commission and corresponding organs and rules of continental bodies.
- 5) Statutes of Member Federations and Affiliated Organisations.
- 6) Any other business.

All these issues were discussed during the meetings, reaching the following conclusions.

**1) ADVISORY OPINIONS OR DECISIONS RELATED TO ITEMS INSERTED IN 2016 GENERAL ASSEMBLY'S AGENDA:**

**1.1) PROPOSED CHANGES TO CHAPTER 04 AND 13 OF FIDE STATUTES (GENERAL ASSEMBLY - JURISDICTION CLAUSE)**

Proposed changes seem to be aimed to achieve three main results:

- Specify once more which decisions of FIDE are final and underline already in Chapter 4 (currently the same words are used in Chapter 13) the “appeal”

competence of the FIDE General Assembly (unless otherwise provided). It is probably considered useful, as a consequence of some doubts expressed by a complainant in a recent CAS case against FIDE.

- Delete the arbitration clause inserted in 2012 as a condition for CAS competence (*13.5 Any member federation or affiliated organisation suing FIDE: shall disclose the source of their funding in any proceedings; and shall be obliged to provide as security for costs a bank guarantee drawn on a bank suitable to FIDE's bankers, in an acceptable form and in a reasonable amount to be determined by the CAS or relevant court as the case may be but, in any event, limited to a maximum of €200,000. The amount fixed for the security for costs shall be without prejudice to the final decision on costs pursuant to section 13.6 below. The requirements in (i) and (ii) are mandatory conditions for an appeal before CAS. 13.6 In case FIDE is sued before the CAS on the basis of the abovementioned arbitration clauses, then in the event they are unsuccessful, the losing claimant, by way of derogation from Art. R64.5 and R 65.3 of the CAS Code (or any provisions that the CAS may subsequently enact in lieu of these provisions), shall be held liable for all reasonable expenses incurred by FIDE in defending the case in proportion to the degree of the success of FIDE and the compensation shall hence not be limited to a mere contribution towards legal fees and expenses. The questions whether expenses are reasonable will be assessed in light of all circumstances in particular of the expenses of the claimant party. For purposes of making a decision on costs, the Panel shall determine the relative success of the parties on their claims and counterclaims. The same liability will apply in case FIDE initiates and loses a CAS arbitration based on the abovementioned arbitration clauses*), probably given that the CAS, in a decision, considered this clause as not applicable.
- Change from the Canton of Vaud to Lausanne the territorial competence of the ordinary court competent for the cases to be judged in Switzerland and not to be included in the jurisdiction of CAS, redrafting the wording of the distinction between competences of CAS and ordinary courts.

For what concerns the first objective, in the opinion of the CC, the notion of “final decision” is already sufficiently clear and, if it is not, it does not seem to be better clarified anticipating in Chapter 4 some of the rules concerning appeal to CAS, currently inserted in Chapter 13. It seems also unlikely to be the best option

to repeat more than once, in different parties of the Statutes, the same principle and/or to not concentrate in the Chapter 13 all rules concerning Settlement of disputes. However, for what regards the substance of these rules, in the submitted proposal there are no relevant changes. Therefore, it is probably only a different point of view on legislative techniques.

About the arbitration clause inserted in 2012: after deleting the existing one, it is possible that the number of appeals to CAS will augment. This does not seem in accordance with the will expressed by the General Assembly in previous occasions. However, it is certainly understandable the aim to act fully in accordance with CAS decisions, also if it has to be noted that the related decision seemed mainly based on a different argument. Therefore, there are no objections, but it can be suggested to study and propose, for the next GA, the possibility to adding again an arbitration clause, with a different wording that could be considered in accordance with CAS jurisprudence.

For what concerns the third point. There are no problems about the change of the forum from the Canton of Vaud to Lausanne. On the contrary, the proposed redrafting of the distinction between competences does not seem immune to possible criticisms. It seems less clear than before. In 13.1 it is proposed to add a subtitle (Appeals against FIDE decisions) and to start with the words “Notwithstanding any provisions to the contrary in these Statutes, any final decision taken by a FIDE organ ...”, and in 13.5, after the subtitle “Other disputes”, the wording “The ordinary courts in Lausanne, Switzerland, shall have exclusive jurisdiction to resolve any dispute between FIDE and third parties, including ... member federations, ... players, arbiters, FIDE officials”. From one side it is difficult to understand which dispute, in concrete, could be originated without involving a “final decision taken by a FIDE organ”: it could be argued that all competences are attributed to CAS. From another side, the expression “the ordinary courts shall have exclusive jurisdiction” could be considered as a case where it is previewed something in contrast with 13.1: it could be wrongly argued that all competences are attributed to ordinary courts.

Given that redrafting the proposal during this Congress would be too complicated, the CC just advise the GA to modify the proposal as follows:

- deleting the subtitles “Appeals against FIDE decisions” and “Other disputes”;

- adding the word “other” in 13.5, after the words “exclusive jurisdiction to resolve any”.

It is just a minor change, that probably not solve all possible problems, but it seems an improvement. Other changes can be studied for next GA.

#### **1.2) PROPOSED CHANGE TO CHAPTER 08 OF FIDE STATUTES. THE COMMISSIONS OF FIDE - AMENDMENT REGARDING ELECTED COMMISSIONS;**

It is fully correct that there is a contrast between the general rule in 3.10 and the specific rules concerning EC, CC, and Verification Commission.

The proposed solution is a good one; of course, also the opposite solution -to modify 3.10- could be possible.

#### **1.3) PROPOSED CHANGE TO CHAPTER 03. FIDE OFFICIALS AND ORGANS - PROPOSED AMENDMENT TO CURRENT ARTICLE 10 OF CHAPTER 03;**

The proposed change simply corrects an initial error.

#### **1.4) PROPOSED CHANGE IN THE ELECTORAL REGULATIONS;**

The request change does not imply technical problems, just discretionary choices.

#### **1.5) CONFIRMATION OF FULL MEMBERSHIP OF KOSOVO CHESS FEDERATION**

In 2014, the IOC granted full membership to the Kosovo Olympic Committee.

FIDE Secretariat has clarified, during the CC meeting, that FIDE follows the practice of the majority of international organisations (as the Council of Europe and the European Union) and mentions Kosovo, in official documents, adding an asterisk with the note: “All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo”.

Therefore, the CC believes that there are no obstacles to the confirmation of full membership of Kosovo chess federation.

## **1.6) IDENTIFICATION OF THE DELEGATE OF THE CROATIAN CHESS FEDERATION (BY THE FIDE SECRETARIAT).**

The question has been submitted by the FIDE Secretariat.

In accordance with Electoral Regulations, in the years when there are no Presidential elections, “Any disagreement as to who is entitled to vote at the General Assembly is referred to the Constitutional Commission for final decision”. In the Baku GA a member of the Verification Commission will be elected, but this rule is applicable in general, for all votes at the General Assembly.

Therefore, on this issue, CC has to deliver a final decision and not only an advisory opinion. No specific procedural rules are previewed but the decision has to concern the right to vote. On the contrary, an advisory opinion can be expressed about a possible authorisation to attend the GA without right to vote.

The following elements have been submitted to the attention of the CC, listed in a chronological order:

- Until April 2016 the President of the Croatian Chess Federation (hereafter CF) was Mr. Josip LEKO and Mr. Alojzije JANKOVIC was the Secretary General.
- Following the vote in a General Assembly of the CF, on 18<sup>th</sup> of June 2016, Mr. Milan BRIGLJEVIC was elected as a new President of the CF. The other candidates were Mr. Branimir JUKIC and Mr. Mirko LJUBICIC. Mr LEKO was not a candidate in this election.
- Acting as a President of CF and sending the documents related to the above mentioned Assembly, Mr. Milan BRIGLJEVIC asked FIDE Secretariat to update data concerning CF, adding his name as President and indicating Mr. Zlatko KLARIC as delegate. There were no new indications about Secretary General, therefore Mr. Alojzije JANKOVIC was confirmed as Secretary General.
- The name of Mr. Zlatko KLARIC was inserted by FIDE Secretariat in the list of delegates for Baku General Assembly. The list was then published and sent to all FIDE members.
- On 2<sup>nd</sup> and 3<sup>rd</sup> of August 2016 Mr. Alojzije JANKOVIC, acting as Secretary General of the CF, tried to register himself as participant in Baku Conference as possible “Helper of the Delegate” and the name of Mr. Mirko LJUBICIC was indicated as delegate. FIDE Secretariat asked him to clarify his position with the President of CF. In the same days Mr. BRIGLJEVIC,

- answering a request of the CC addressed to all FIDE members and not only to CF, sent a copy of the Statute of the CF in Croatian language and then a translation into English of the document.
- On 3<sup>rd</sup> of September 2016 Mr. Alojzije JANKOVIC communicated FIDE Secretariat that “Mr. Brigljevic was not confirmed by the government so technically speaking he never was Croatian Chess Federation president. There is 15 days period for complaint, but I repeat he was never a president, he can only try to force a new assembly. Mr. Leko was resolved on General assembly 23th of April, but since on that assembly new president was not elected for government he is still president since his mandate is valid till 15.12.2016 and Federation cannot be without president”; “All Brigljevic's acts were not legal so as decision that Mr. Zlatko Klaric is a delegate and Mr. Srdjan Sale head of delegation. Mr. Klaric cannot represent Croatia at the FIDE congress so please remove him from the delegate list and accept Mr. Leko”. This communication was forwarded by the FIDE Secretariat to the CC, on the same day.
  - FIDE Congress started on 5<sup>th</sup> of September 2016. Mr KLARIC was present in Baku and was informed about the request received from Mr. JANKOVIC.
  - On 6<sup>th</sup> of September Mr BRIGLJEVIC communicated FIDE that he “suspended the secretary Alojzije Janković” (the decision is published on CF website - <http://www.crochess.com/?p=10117->, including a translation into English. The following is the text: “The secretary of the Croatian chess federation, Janković persistently deceives FIDE, overwhelms it with false information. First he sent a letter signed by five members of the Executive committee (out of nine) that claims that Mirko Ljubičić was chosen as a delegate at the Executive committee session, which was immediately denied by signature by one of the five signatories Nenad Levar. Now he has written to FIDE that the Government annulled the Assembly session that took place on the 18th of June, even though it was not the government, but the city office in question. The Assembly session was not annulled, only the presidential election. The decision is not final. He lied about the fact that the Government now considers Leko to be the president. There are not any documents to support that claim. That is Mr. Janković’s lie. It is clearly said in the City Administration’s decision that at the Assembly session on the 23rd of March all the bodies, and thereby the president have been dismissed and new election has been announced. Mr. Leko didn’t even take part in the

new election. The combinatorics by which Mr. Janković puts the dismissed president before the elected one is fantastic. Due to all these reasons, I am suspending the secretary Alojzije Janković, and will report him to the Croatian Olympic Committee and investigative bodies of the Republic of Croatia, because he damaged the reputation of the Republic of Croatia with his behavior, and committed a serious violation of working duty and abused his position and authorities. Despite the first-instance decision of the City Administration, I Milan Brigljević am still the only legal president of the Croatian chess federation, until my complaint to the Ministry of Public Administration is resolved”) and that “You can see for yourselves about the half-truths. He mentions that the Government challenged the Assembly, and it was the City Office that did so. The whole Assembly was not challenged, but only the election of the president. That it was the City Office and not the Government can also be seen in the header of the translation sent to you by Mr. Janković. Also, it can be seen in the same document that Mr. Leko has been dismissed on the Assembly on the 23rd April 2016. After his dismissal, new elections have been held on the 18th June 2016, which Mr. Leko did not take part in. I was chosen and the City Office challenged my election, for which I have a period of 15 days to complain. It is not stated anywhere that the decision is final, which means that, by the will of the Croatian Chess Federation Assembly, I am still the President”.

- On 7<sup>th</sup> of September Mr KLARIC sent CC a note with some attachments, arguing as follows: “Croatian Chess Federation is currently under research of state control in order to examine financial management. The new president mr. Milan Brigljevic and a new Executive Comittee have found financial lack of around 55 000 € although in September last year we had European Youth Chess Championship with about 16 000 overnight stays. Earnings per day were about 20€ which means that revenues should be around 300 000€. Expenditures were far smaller than that number. The organization in Poreč was led by Mr. Josip Leko who did not submit a financial statement for 2015. and because of that he lost the confidence of the delegates in the Assembly and was dismissed on 23.04.2016. Financial investigations progress slowly because documentation of the championship in Poreč is mostly missing. Mr. Leko has appointed current secretary Mr. Alojzije Janković. About 4/5 delegates in the Assembly of the Croatian Chess Federation agree for his departure from the post of the Secretary. Mr Janković has unscrupulously deceived you with his notes. First he collected

five signatures of the nine members of the Board (attachment nr. 1), and then said to the members that this is a statement, and to you that it is the letter of the Board (attachment nr. 2). Some of the five signatories did not know English. Mr Levar provided a written statement that no delegate was chosen at the first (and only) meeting of the Board. (Attachment nr. 3). After he falsely wrote that Mirko Ljubičić was chosen for the delegate at the meeting at the Board, he sent another fraud. He wrote to you that the Government invalidated the election of President Milan Brigljević by a decree (attachment nr. 4). This is not true, it is a decision of the city administration, which can be seen on the documents themselves. (attachment nr. 5). City administration did not issue a decree but a decision. Even the translator was involved in the fraud. (attachment nr. 6). Mr. Janković is lying when he says that the Government still considers mr. Leko a president (attachment nr.7). The government is not involved in this, but the City office, and it clearly states, in the Decision that you have, that all bodies were dismissed at the Assembly on 23. 04. (Attachment nr. 8). The court decision says that mr. Brigljević has a right to appeal within 15 days (attachment nr. 9), which means that he remains the President by the Assembly Resolution of 18.06. 2016, until the validity of the court decision. I am attaching the minutes of the Assembly (attachment nr. 10). The Secretary cannot dismiss the President who was elected by the Assembly on 18.06.2016. and appoint for President the person who was relieved of his duties by the Assembly on 23.04.2016. On FIDE's websites I am a delegate, and there is no document that denies it. The Secretary cannot annul the President's choice of the delegate. City office did not issue any final decision, and until the final verdict all decisions of the President remain in force. I would also like to mention that the City office made its decision due to the bad work of the Secretary Mr. Janković. We cannot know if he deliberately made mistakes during verification of the votes or not. I am asking you to accept me as a legally elected delegate, and to help our Chess Federation in the fight against corruption. That would be in accordance with the efforts of FIDE in fight against corruption”.

- On 8<sup>th</sup> of September, during CC meeting, Mr. KLARIC was present and asked to be confirmed as delegate of the CF.
- In the afternoon of the same day, Mr JANKOVIC sent FIDE Secretariat a new document, of the Croatian Olympic Committee, where it is written that: “At the request Croatian Chess Federation's representatives, hereby the

Croatian Olympic Committee certifies that the competent registration body for sports associations in the Republic Of Croatia established that the persons authorized to represent the Croatian Chess Federation are: Mr Josip Leko, President and Mr Alojzije Jankovic, Secretary General. These information are recorded in the pertaining official register: Register of Associations of the Republic of Croatia. The status of the persons authorized to represent the Croatian Chess Federation has been verified by the competent registration body, City Office for General Administration, after passing the decree dated 29 August 2016, by which the decision on the election of Mr Milan Brigljevic as President at the Croatian Chess Federation Assembly held on 18 June 2016 is declared null and void. It should be mentioned that the decree of 29 August 2016 is not final because a complaint can be lodged against it. But in the meantime, the competent registration body recognizes Mr Josip Leko as President and Mr Alojzije Jankovic as Secretary General of the Croatian Chess Federation". On the basis of this document Mr JANKOVIC asks to "accept the president of Croatian Chess Federation Mr. Josip Leko for General assembly and general secretary Alojzije Jankovic for his assistant during Congress".

- Finally, on 9th of September, Mr KLARIC noted by e-mail that "Croatian Olympic Committee is not authorized to interpret decisions of the city. You have the Decision of the city which clearly states that all bodies were dismissed at the Assembly on April 23, including the president. Croatian Olympic Committee is not authorized to interpret decisions of the city. You have the Decision of the city which clearly states that all bodies were dismissed at the Assembly on April 23, including the president".

FIDE Statutes rule that: Chapter 02 – Membership, "2.2. The admission of a national chess federation as a member is effected through an application. ... The application for admission shall be accompanied by the official questionnaire of FIDE approved by the General Assembly, completely filled out, together with a copy of the statutes of the federation, approved or recognised by the authorities of the country, if the country's law so requires. 2.4 ... Each member is required to send to the Secretariat at the latest by April 1st of each year a report containing the following information: ... the name and email address of the President; the name and email address of the General Secretary; the name and email address of the officer who is the intermediary between the member and FIDE (the Delegate); ...

Each member federation is required to send to the Secretariat any changes in its address or officers within one month of such change”.

Chapter 04 – General Assembly “4.2 The General Assembly is composed of: the representatives of the member-federations and their counsellors. 4.3. A member federation shall be represented at the General Assembly by its delegate (who may surrender his voting power to the President of the federation in accordance with the Electoral Regulations) or the holder of the irrevocable proxy of the federation that has been validly and timely granted in accordance with Electoral Regulations. A delegate may be aided by one counsellor or the President of the federation. Only delegates, Presidents of federations or members of the Presidential Board have the right to speak in the General Assembly”.

In addition, Electoral Regulations, that for what concerns delegates are applicable both in Presidential Election years and in the other years (cfr. paragraphs 5.A and 5.B) specify that:

- At the latest eight weeks before the opening session of the General Assembly, the FIDE Secretariat shall send to all member federations, and publish on its website, a complete list of the delegates registered on the FIDE website. At the latest five weeks before the opening session of the General Assembly, the President of each member federation shall inform the FIDE Secretariat in writing of any changes to be made to this list. If there has been no such notification by this deadline, and there is no delegate on the list that was published on the FIDE website, the delegate shall be the President of the federation. Immediately after this deadline, the Electoral Commission/Constitutional Commission shall verify the list of delegates and notify the FIDE Secretariat of the final list of delegates in time to allow the FIDE Secretariat to send this list to all member federations, and publish it on its website, at the latest four weeks before the opening session of the General Assembly.

On the basis of FIDE rules, the CC has not to decide who is, today, the legitimate President of the CF, nor if there are other organs of the CF legitimated to indicate the name of CF FIDE delegate.

It is clear that a case is pending in front of the competent Croatian authorities and there are discussions on various arguments between two different parties.

It could be noted that, in accordance with their Statute (art. 5), the CF has the quality of a legal person and it is registered with the register of Associations of the Republic of Croatia, but there are no rules that subordinate to an approval of an

administrative body the decisions of the CF and, in any case, it is the quality of association member of FIDE and not the quality of Croatian legal person that matters for FIDE.

It could be noted that CF is a full member of the Croatian Olympic Committee (art. 10 CF Statute), but it seems that the Olympic Committee can just express advisory opinions on the amendments of the Statute and has no direct functions linked to legitimacy of a decision of the CF.

It could be noted that both the President (who “represents the Federation nationally and internationally”) and the Executive Board (who appoints “representatives in other organisations”) (art. 35 and 40 CF Statute) can be involved in the appointment of the CF FIDE delegate.

It could also be noted that the Secretary General (who “takes care of the Federation cooperation with related sports organisations”) has some tasks as well on this subject matter and can be dismissed only by the Executive Board of the CF (art. 48 and 49 CF Statute).

Therefore, it would be possible to conclude that not all affirmations, addressed to FIDE from both parties, seem to correspond to what emerges from the documents. But this is not really relevant.

What has to be decided by the CC is if there is a representative of the CF who can vote in occasion of the Baku GA.

The conclusion is negative.

In the last days Mr. JANKOVIC requested that Mr. LEKO could represent the CF in the GA. However, not only he was dismissed as a President by the General Assembly of the CF held on April 2016 and was not a candidate in the following elections held in June 2016, but his name has not been communicated to FIDE as a President nor as a delegate following the alleged annulment of the June 2016 elections -as requested by Chapter 2 of FIDE Statutes- and, in addition, in the expired time limits indicated by Electoral regulations, Mr. JANKOVIC mentioned not his name, but the name of Mr LJUBICIC as a delegate of CF for Baku GA.

It does not seem that Mr LJUBICIC has personally requested to attend the GA as delegate of the CF. In any case, his name was communicated only by the Secretary General and not by the President of the CF and after the communication of the name of another person by the President of the same Federation and without appealing against this communication. In addition, on 3<sup>rd</sup> of September, when Mr

JANKOVIC asked to remove from the list the name of Mr KLARIC as delegate of Croatia, he named Mr LEKO as a representative of the CF in the Baku GA.

Mr. KLARIC was indicated as a delegate of CF in accordance with FIDE rules and legitimately attended the Congress in Baku, following an invitation of FIDE. However, on 3<sup>rd</sup> of September his right to vote has been challenged and, on the basis of the documents received, there are doubts or at least it is not clear if, the day when it was appointed by the President of the CF, Mr. Milan BRIGLJEVIC could exercise or not presidential functions, especially functions exceeding ordinary administration.

As a conclusion, the CC decides that no right to vote has to be granted to a representative of the CF during Baku GA.

However, given the complexity of the situation, the CC advises the GA to authorise the presence both of Mr. Klaric and of Mr Leko at the GA, as observers, of course without any right to vote.

#### **1.7) MOTION TO BE INSERTED IN THE AGENDA (BY THE JAMAICA CHESS FEDERATION)**

On 6<sup>th</sup> of August 2016 Jamaica Chess Federation (hereafter JF) submitted to FIDE Secretariat a document, dated 15 July 2016, titled “Motion to remove FIDE President”. In the motion it is proposed that “delegates or members of FIDE gathered at the Congress/General Assembly in Baku, Azerbaijan in September, 2016 call on the FIDE President to resign immediately as President of FIDE”, that “if the FIDE President fails, neglects or refuses to resign as President of FIDE the delegates or members of FIDE gathered at the Congress/ General Assembly in Baku, Azerbaijan in September, 2016 vote to remove the FIDE President as President of FIDE” and subsequently “take the necessary steps to ensure that a new President of FIDE is elected as quickly as possible”.

FIDE Secretariat did not insert the motion in the Agenda of the GA, given that “it missed the June deadline”. In the opinion of the JF other matters that missed the deadline, on the contrary, “have been placed on the Agenda”.

CC can deliver an advisory opinion about this issue.

First of all, it is necessary to remind the relevant rules of the FIDE Statutes:

“4.11. Proposals of members or FIDE officials or organisations, or affiliated international organisations admitted under Art. 2.8, which are to be included in the agenda for the General Assembly, should reach the Secretariat not later than three months before the beginning of the General Assembly, together with the reasons for the proposals.

Proposals submitted within this time limit must be included in the agenda for the General Assembly.

4.12. The regular General Assembly is held every Olympiad year. It is convened by the President. The invitations shall be sent out at the latest four months prior to the opening date of the General Assembly. Invitations can be sent by email. The Secretariat shall send the participants the complete agenda and the relevant documents at the latest six weeks prior to the opening of the General Assembly (or be published on the official website of FIDE).

No other item may be discussed except in an emergency situation where evidence must be established and with the approval by a two thirds majority vote of those present, including proxies.

4.4. Each member-federation represented in the General Assembly has one vote. The other participants in the General Assembly have a consultative voice only.

Motions of order (closing of the discussion, adjournment of the agenda point, removing the point from the agenda, etc.) may be made at any time on a point under discussion by the delegate of any member federation. The Chairman of the meeting must have these motions considered and decided upon at once by the General Assembly in so far as they do not entail an interruption of the session.

The same applies to objections because of violation of the statutes. Proposals regarding amendments or supplementary proposals will be treated only if they are seconded by another voting member.

Chapter 12 - Removal from Office. 12.1. Any elected or appointed official in FIDE can be removed from his position for cause. Cause is defined as being contrary to the spirit and text of the statutes and regulations of their office. The action must have the agreement of the Ethics Committee and requires a two third vote of the Executive Board or a majority in the General Assembly. In such cases the General Assembly or the Executive Board can set up a committee of three

persons to investigate and examine an offence (or an act against the principles of FIDE); the committee shall report to the General Assembly or Executive Board”.

These rules are fully clear.

All members of FIDE and FIDE officials and organisations, and affiliated international organisations can submit proposals to FIDE Secretariat, asking for their inclusion in the agenda for the GA, but they have to reach the Secretariat not later than three months before the beginning of the General Assembly, together with the reasons for the proposals.

The rationale is evident: given that the Secretariat shall send the participants or publish the complete agenda and the relevant documents at the latest six weeks prior to the opening of the General Assembly, it will be on the basis of the received agenda that FIDE members will decide if they are interested or not to participate in the GA and they have to know on what they have to discuss and vote.

There is an exception: other items may be discussed in an emergency situation where evidence must be established and with the approval by a two thirds majority vote of those present, including proxies.

However, this is not possible in the case of a request of removal from office, given that chapter 12 establishes different proceedings for that: preliminary, it is necessary to request the agreement of the Ethics Commission.

Therefore, it is possible to conclude as follows:

- The JF submitted a motion after the deadline of 3 months before the opening of the GA.
- FIDE Secretariat acted correctly, not inserting the motion in the Agenda of the GA, in accordance with the general rule.
- If there is “an emergency situation where evidence must be established”, as an exception it is possible to insert a new item in the agenda, if the request is approved by a two thirds majority vote of the present.
- However, a motion of removal from office cannot be directly submitted to the GA, without following the proceedings previewed in Chapter 12.
- The motion proposed by the JF, as it is, is clearly a motion of removal from office: this is its title and also its content, therefore cannot be added in the agenda.
- It has to be noted that nothing would change if the motion was called “motion for a vote of confidence”, given that no vote of confidence is

previewed in the Statutes and, in any case, in its substance, the motion would be a sort of request of removal.

- On the contrary, different conclusions could be reached if the JF or another chess federation would had submitted or submit a different proposal, for example to discuss a situation considered as “an emergency situation where evidence must be established”, in this case it would be possible to request the GA to insert the item in the agenda and the request can be approved by a two thirds majority vote of the present.

## **2) ANTI-CHEATING: ORGANS AND RULES.**

In Abu Dhabi 2015 Congress in was already clarified that:

- the Anti Cheating Committee, during the 2014 FIDE Congress in Tromso, submitted to the attention of the General Assembly an articulated document titled “Anti-Cheating Guidelines”. The document could not be approved in that occasion, missing the necessary quorum; however, it was then approved by the Presidential Board, during the meeting held in Sochi in November 2014, as a report of the Committee. In the same occasion, the Presidential Board also approved some changes of the FIDE Code of Ethics together with a report submitted in Tromso by the Ethics Commission (EC) concerning as well, directly or indirectly, anti-cheating rules.
- Anti-Cheating Guidelines, self-defined as “recommendations”, contain a plurality of suggestions, proposals and recommendations, but no applicable rules, with the exception of some guidelines for arbiters and organisers.

A temporary solution was then approved, throughout a systematic use of the investigating chambers of the Ethics Commission.

However, it is necessary to institute an Anti-Cheating Commission (hereafter ACC) as a in organ of FIDE.

The CC was charged to draft a proposal for the GA.

Following a meeting in Athens, in May 2016, organised jointly with the Ethics Commission, the CC drafted the proposal submitted as Annex 30 in the Agenda.

In the meetings in Baku, following a strict and very useful co-operation with the members of the Anti Cheating Committee (still not an organ of FIDE), some

minor changes of the proposal have been agreed (the new version is attached as Annex 30 ter).

If the GA will approve the institution of the ACC, the CC advises the President and the Presidential Board to immediately appoint the Chairman and the members of the new commission, informing the GA about their decision.

Other activities are needed and agreed in accordance with the members of the Anti-Cheating Committee.

First of all, as already suggested in Abu Dhabi, to avoid confusions and misunderstandings, 2014 “Guidelines” have to be removed from the FIDE website, where there are still currently published in the erroneous collocation as a part of FIDE Handbook, that they are not. Waiting for a new version, as specified hereafter, the document can be moved somewhere else, if necessary, for instance in the part of the website that will be dedicated to the ACC.

Then, the 2014 “Guidelines” proposed some changes in the Laws of Chess concerning anti-cheating: the Rules Commission is proposing some changes of the Laws of Chess in this GA, so they could take this into account. Changes of the Competition rules were proposed as well, of course related to anti-cheating. The Rules Commission has started to study them: they will continue, co-operating with the ACC. The CC is also available to help, if requested. If the GA agrees, some changes, if agreed among the above mentioned organs and then by the Presidential Board, could be approved as temporary measures and inserted as appendix to Competition Rules, and eventually ratified by next GA.

New rules on sanctions, as already mentioned, were already inserted in the Code of Ethics, in 2014, as general rules: therefore, nothing is necessary about that.

The ACC will have the possibility to draft Internal Procedural Rules: for their approval it will be sufficient a decision of the Presidential Board.

As specified in Abu Dhabi, some parties of Section II, III, IV and VI and Appendix A-B-C-D of 2014 “Guidelines”, containing recommendations to the arbiters, are already applicable, exactly -and exclusively- as guidelines. The ACC will have the possibility to draft a new version of them, to be addressed to arbiters, organisers and players. For their approval it will be sufficient a decision of the Presidential Board.

### **3) FIDE HANDBOOK AND CONSOLIDATED TEXTS.**

The CC underlines the importance to make available a printed version of the FIDE Handbook, at least every two years, and to indicate the exact date of each decision to change a rule and by which FIDE organ the decision has been taken.

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, created many difficulties. For instance, it has already been mentioned the incorrect collocation of “Anti-cheating Guidelines”, another example is given by the difficulties expressed by EC members to identify the starting day of applicability of new sanctions introduced in the Code of Ethics and to find the official text of the old version of the same rules.

### **4) REFORM OF THE CODE OF ETHICS.**

The CC has already stressed many times the importance of updating and reforming the Code of Ethics and the procedural rules of the EC. In full accordance with the EC, the CC has started to work on that, during a joint meeting held in Athens in May 2016, and is carrying out a preliminary study, comparing similar rules of other international sport federations. Hopefully, a first draft will be prepared for next FIDE Congress.

### **5) INTERPRETATIVE QUESTIONS ON:**

#### **5.1) NON-ELECTED COMMISSIONS – MEMBERSHIP AND PROCEEDINGS;**

Following a request of the Arbiters’ Commission, it has been clarified that, in accordance with chapter 2 of the FIDE Handbook, “Non-Elected Commissions”:

- the total number of members of a commission cannot exceed 15 (a Chairman, appointed by the FIDE President; a Secretary and up to 3 members appointed by the Chairman of the Commission; 8 members with consultative status: 4 to be appointed by the Chairman of the Commission and 1 each nominated by the Continental Presidents; 2 women members appointed by the Commission Chairman);
- among them- 8 have just consultative status, this means they cannot vote;

- the two women members appointed by the Commission Chairman have full status of members, therefore they can vote; however, it is not clear if this was the intended result, given that they are listed after the member with consultative status only. It is suggested to modify the text, or listing these 2 members before the other 8 or adding that these 2 members too have just consultative status.

## **5.2) RELATIONSHIPS AMONG FIDE ETHICS COMMISSION AND CORRESPONDING ORGANS AND RULES OF CONTINENTAL BODIES.**

Some continental bodies are planning to institute continental Ethics Commissions. The CC underlines that, bearing in mind the already very complicated relationships among different organs (CAS, FIDE EC, national ethics commissions, national courts), it would be advisable to agree on the same rules for all continents and to attribute an appeal competence to FIDE EC.

## **6) STATUTES OF MEMBER FEDERATIONS AND AFFILIATED ORGANISATIONS.**

Following a specific request of the CC, and in accordance with FIDE Statutes, the FIDE Secretariat has requested member federations and affiliated organisations to send copies of their Statutes and of their translation into English.

Many federations have positively answered, but not all of them.

The CC recommends GA to request FIDE Secretariat to collect all Statutes and to publish them on the FIDE website.

## **7) ANY OTHER BUSINESS.**

Mr. Faulks, during the meeting in the public session, observed critically that, in his opinion, has frequently happened that the Presidential Board approves changes of rules, without having the requested competence.

The CC agrees that, in accordance with Chapter 4.1 of FIDE Statutes, the GA has an exclusive competence to take decisions on changes to regulations of Qualification Commission, Rules and Tournaments Commission, Electoral Rules and, of course, Statutes.

Baku, 10 September 2016

The Chairman of the Constitutional Commission  
Roberto Rivello



## **FIDE CONSTITUTIONAL COMMISSION**

### **PROPOSAL TO INSTITUTE AN ANTI-CHEATING COMMISSION**

The Constitutional Commission proposes to introduce in the Chapter 0.2 Non Elected commissions of the FIDE Handbook the following changes:

#### “1. Membership and proceedings

The following membership conditions and proceedings shall apply to all Commissions with the exception of the elected Commissions, the Anti-Cheating Commission and the Commission for World Championships and Olympiads.”

To insert as new Section 4 the following one, renumbering section 4 to 5.

#### “4 Anti-Cheating Commission (ACC)

##### **Aims**

4.1 The ACC shall be responsible **for analysing and designing** measures and tools aimed to prevent cheating in chess.

**4.2 The ACC shall oversee the general implementation of anti-cheating related provisions. The ACC, FIDE officials, FIDE members, arbiters, organisers and players are required to cooperate together.**

4.3 The ACC shall make recommendations to other FIDE organs and members on topics related to anti-cheating measures.

4.4 The ACC shall act as a permanent Investigatory Chamber of the Ethics Commission, in accordance with Chapter A-01/08/2.5 of the Statutes.

4.5 The ACC shall carry out independent investigations on violations of the Code of Ethics concerning cheating and shall have the possibility to submit motivated reports to the Ethics Commission or to national competent bodies, when relevant. Motivated reports must include factual disclosures, technical expertise and all results of the instigated investigations.

4.6. The ACC shall contribute in the training of relevant officials on anti-cheating measures.

### **Membership**

4.7 The ACC shall consist of **a maximum of 9** members.

4.8 The Chairman of the Commission is appointed by the FIDE President.

4.9 The other members are appointed by the Presidential Board and **should preferably** not belong to the same Federation of the Ethics Commission members: at least one of them has to be a technical expert in the area of computer-assisted cheating and at least one of them has to have a legal background.

4.10 The Chairman nominates one of the members as Secretary of the ACC.

4.11 The Chairman of the ACC, following a rotation system, select three of the other members, except the Secretary, which would constitute the Investigatory Chamber of the Ethics Commission, case by case.

4.12 The period of appointment shall be 4 years commencing right after the session of the GA devoted also to the elections of FIDE Officials.

### **Proceedings**

4.13 The Chairman of the ACC shall report and make recommendations to the GA, the EB and, whenever a need arises, to the PB.

4.14 The decision to submit a motivated report to the Ethics Commission must be approved by the majority of the members of the ACC.

4.15 When acting as an Investigatory Chamber of the Ethics Commission, the relevant members of the ACC will be subject to the directions of the Chairman of the Ethics Commission.

4.16 A budget of the Commission shall be prepared for submission to the Treasurer.