

Compulsory internal dispute resolution process prior to judicial or arbitration proceedings

Madrid, December 2020

The Spanish Supreme Court (SC) has ruled that the by-laws of a federation or an association may obligate their members to try an internal dispute resolution process (IDRP) prior to bringing a judicial action challenging a resolution of the former¹.

The Lyons Club of Gijón (the Club), a member of the Federation of Lyons Clubs of Spain (the Federation) and, indirectly, of the International Association of Lyons Clubs (the Association), challenged certain resolutions passed by the Federation before a judicial court, rather than trying the statutory IDRP first. The Association warned the Club that it would be expelled in case it did not withdraw the judicial claim, for that constituted a breach of its obligation to submit the dispute to the IDRP set forth in the by-laws of the Federation and the Association. The Club maintained its judicial action and was expelled from both the Association and the Federation.

The Club then filed another judicial action seeking the nullity of its expulsion, among other reasons, because of an alleged breach of article 21.d of the Organic Act on the Right of Association (OARA), pursuant to which the members of an association are entitled to "*challenge the association's bodies' resolutions*".

The first instance court and the Gijón Court of Appeals (GCA) dismissed the claim on different grounds, and the GCA in particular found that the expulsion of the Club was justified by its failure to comply with the IDRP provided for in the by-laws.

The Club challenged the GCA judgment before the SC, which dismissed the challenge and ruled² that the by-laws of a federation or an association cannot prevent its members from bringing judicial proceedings challenging the resolutions passed by the former, but may, nevertheless, provide for a compulsory prior IDRP.

The SC noted that, although the Federation's and the Association's by-laws set forth a mandatory prior IDRP, they did not prevent their members from eventually filing a judicial action.

The SC further pointed out that (i) associations are free to provide for a compulsory IDPR to save the time and money that any court proceedings entail and to avoid, to the extent possible, that internal disputes transcend the association's ambit, (ii) the decisions taken by an IDRP board are in any case capable of being challenged before the judicial courts, and (iii) the Club was expelled from the Federation and the Association not because it had challenged in court certain resolutions, but because it breached the obligation to first try the statutory IDRP.

Although this Supreme Court judgment refers to (i) the by-laws of a federation and an association and (ii) judicial proceedings, we do not see any reason why its arguments should not apply also to (i) companies in general and (ii) arbitration.

¹ SC judgment nº 434/2020, dated 15 July 2020.