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Abstract degli articoli
Saggi

LEONARDO FERRARA – FEDERICO ORSO

Il Codice di giustizia del CONI tra omogeneizzazione procedurale e autonomia federale

With the Justice Code, the CONI has developed for the first time an organic framework of the sports judicial procedure. The goal was to develop a unique Code of Sports Justice valid for all the federations and able to give definitive effect to the Decree Pescante, which prescribes the CONI to establish "criteria and procedures for the implementation of controls on the federations" and to adapt sports processes to the canons of the fair trial. The first part of the article will evaluate the controls of external legality of the Committee of Guarantee and of the Attorney General. Subsequently, attention will be paid to the organization and operation of the legal system of the federations and the adjustment of sports procedures to the canons of the fair trial. It will finally focus on the mechanisms of activation of the federal justice and, especially, the founding function of the protection recognizable under art. 6 of the Code.

ANDREA PANZAROLA

Sui principi del processo sportivo (riflessioni a margine dell'art. 2 del codice di giustizia sportiva)

This paper focuses on Art. 2 of the Code of Sports Justice of CONI and the relation it implies with the principles and general rules of civil procedure: the fair trial and its attempt to coordinate the sources and procedure models; the search for a balance between security and effectiveness. In case of gaps, principles can offer remedy to uncertainty, allowing the part not only to predict the course of the trial but to influence its performance. The principle may dilate the discretion of the court but, at the same time, it can represent a tool to curb the excesses of arbitrary.

ELENA ZUCCONI GALLI FONSECA

Quel che resta dell'arbitrato sportivo (dopo il nuovo codice della giustizia sportiva 2014)

This article examines the role of arbitration in sport disputes, after the CONI's new code of justice. Due to the creation of the new Court «Collegio di garanzia», which acts as a Supreme court against the decisions of sport judges, arbitration seems to have disappeared. It remains in labor disputes. Notwithstanding, the statutes of some national

federations continue to provide for arbitration in all the disputes concernin sport activities.

SERGIO FIDANZA- GIORGIA SANGIUOLO

La rinnovata autonomia della giustizia sportiva all'indomani del nuovo codice. Un commento all'art. 4 del codice di giustizia sportiva

This work is a comment to article 4 of the Code of Sports Justice about the renewed autonomy of the judiciary organs. Through this process of reorganization and homogenization of the sports justice system, in the wake of the civil law models, sports law seems to strongly reaffirm its own specialty, completeness and complexity. The evolution in the sense of autonomy of the sports system is evidenced by the deep change of view within the law over the last century. The introduction of the new Code of Sports Justice appears, therefore, as a further evolution of a natural process of simplification, efficiency and effectiveness of sports justice.

MASSIMO PROTO

Su autonomia e indipendenza dei “nuovi” organi di giustizia

This paper explores the autonomy and independence of the new bodies of justice, as a result of the recent reform approved by the CONI. Strictly speaking, the character of autonomy should follow the internal structure of the legal system and define itself in the allocation of the power of judicial administration to the same bodies of justice or to different officials from those who exercise the power of sports management. The characte of independence should instead relate to the exercise of judicial function, called to take place without interference from those who hold other roles and, more generally, by any federal subject: while exercising his function every judge must be subject only to (the law the statute and regulations, in an exclusive and direct way).

ANIELLO MERONE

Nomina dei giudici sportivi e federali. Terzietà, autonomia e indipendenza

This article, according to the new Code of Sports Justice, focuses on the new balance between the informal character of sport justice procedures and the respect of sports judges impartiality and independence. While in the past assessment on such principles was made in a rather strict way, the new discipline seems to ensure higher care and consistency. However, the author points some critical insights, highlighting more space that should be granted to the institution of recusal.

MARCO FARINA

Il Collegio di Garanzia dello Sport: competenze e procedimenti. Note a prima lettura

This article focuses on the Council of Sports Guarantee considering its role and procedure. First, there is a study of the competences distinguishing them in ordinary, special and transitory ones. Second, the author analyses the role of the Council as a superior Court deciding only on points of law (as the Italian Supreme Court) and the procedural rules (including litigation ones). Then, the outcome of the decision of this judiciary body.

ULRICH HAAS – DANIELE BOCCUCCI
Il Codice Mondiale Anti-Doping 2015

The World Anti-Doping Code (WADC) is the backbone of the world-wide fight against doping in sports. The WADC seeks to harmonize and coordinate the fight against doping between the international stakeholders. The 2015 edition of the Code – the third revision after 2003 and 2007 – was adopted in November 2013 in Johannesburg, South Africa following the World Anti-Doping conference. The WADC 2015 is the product of three rounds of open consultations, managed by a commission appointed by the World Anti-Doping Agency. The WADC 2015 is a logical continuation and further development of the practices developed and employed in the previous editions of the WADC. The stakeholders rejected “radical” reform proposals during the consultation process. The purpose of the following article is to examine some of the solutions that emerged from the numerous contributions which were adopted or rejected in the Code review process.

ALESSIO BONAFINE
La giurisdizione statale e quella sportiva: il sistema di riparto alla luce della sentenza del Consiglio di Stato n. 3958/2014

The author studies the decision of “Consiglio di Stato” n. 3958/2014 in order to evaluate the division of roles between ordinary jurisdiction and sports jurisdiction. There is the need to balance two different views: on the one hand, the autonomy of sports system and, on the other one, the role of the state law. This approach is developed through the case-study with the relative impact on the criterion of division of judiciary competences.

STEFANO BASTIANON
Calcio professionistico e discriminazioni fondate sulle tendenze sessuali

In the context of EU law the special nature of sport (the so-called specificity of sport) represents one of the most complex and debated issue. It is common opinion that sport is “special” and therefore must be treated differently from any other activity; however any debate on the specificity of sport has to deal with the basic problem represented by the lack of a “workable” definition of the special nature of sport. If we try to translate this

concept in a definition to be applied in concrete cases the result is that it is impossible to find a common benchmark. To this regard it is not surprising that the Court of Justice has never defined the notion of specificity. Without a real definition the special nature of sport risks to be a concept in search of itself. The vagueness of the concept of specificity is also reflected in the way this concept is applied by the Court of Justice. Following the 2006 Meca-Medina case any sporting rule is now subject to EU law. Therefore in order to assess the compatibility with EU law of any sporting rule we must apply the Wouters test or the Gebhard test depending on the specific EU principles (free competition, free movement) at issue. However these two tests apply to any other sector of the economy. This means that if the specificity of sport is taken into account on the basis of the same rules and the same exceptions provided for any other type of economic activity, it follows that the sport is no more special. We say that sport is special, but we treat it as any other economic activity. This amounts to a policy at war with itself.

GIORDANA STRAZZA

L'obbligo di comunicazione di avvio del procedimento in caso di d.a.spo.

The Decree Law n. 119/2014, subsequently converted into Law n. 146/2014, has reshaped the discipline regarding access denials to sporting venues (the so-called d.a.spo.), under the intention of repressing violence when sporting events occur. Having identified the most important innovations introduced by the Decree and having elucidated the main aspects of the restrictive order taken into account, this paper analyses the relation existing between the measure and the notification requirements regarding the initiation of the legal proceedings, contemplated by Law n. 241/1990.

Giurisprudenza commentata

Corte di Cassazione, sez. III, 19 dicembre 2014, n. 26901, co nota di ROSARIA GIORDANO, Sulla responsabilità del gestore dello stadio

In this judgement brought before the "Corte di Cassazione", the damaged person, while watching a football game, had been hit by an object thrown by an upper ring of the stadium suffering personal injury. The person asked the guardian (society) of the stadium compensation for personal injury and sued its responsibilities under articles 2043 and 2051 cc. Substantially, the decision under review rejected the appeal sharing the view of the lower court which did not welcome the claim for compensation under both the articles 2043 cc and 2051 cc. The Court believes that the organizer of the sporting event has to attribute to the public, following the payment of the ticket, the guarantee of practicability of the place and to protect the public from the risk of predictable violence and vandalism. The failure to adopt such measures in favor of the spectators implies both non-contractual liability under art. 2050 cc and contractual liability in accordance with art. 1228 cc.

Storia dello sport
a cura di Francesco Bonini

ENRICO LANDONI

CONI e federazioni sportive nel dibattito politico parlamentare del dopoguerra

This paper analyses the relationship between sports and politics in Italy, focusing attention on the strong ideological and cultural obstacles that have often prevented political leaders to fully understand the importance of physical activity. The reasons for the reluctance is shown throughout the history of republican parties to intervene, except in a limited cases or merely for reasons of urgency, in the field of sports and in particular on technical and internal structure of the federations and then on their relations wit CONI. The work addresses the evolution of the relation between sports and politics in Italy by giving a critical overview from the 40ies to nowadays.