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Abstract degli articoli
Saggi

FILIPPO VARI

Profili costituzionali del c.d. ius soli sportivo: il tesseramento dei minori stranieri tra disciplina legislativa e drittwirkung dei diritti fondamentali

The article deals with the new Italian law (n° 12, 20.1.2016), that puts on the same footing, with regard to the registration procedures for sport associations, Italian and foreign children, provided that they had been living in Italy before their tenth birthday. The essay analyses the new legislation from a constitutional point of view and focuses in particular on the fundamental rights involved (freedom of association, the practice of sport as a human right, right to work, freedom of enterprise). These constitutional guarantees request to give a flexible interpretation of the limits set by the law, when it comes to situation where the higher interest of the child is not at stake.

LAURA SANTORO

La legge 20 gennaio 2016, n. 12: un'occasione perduta

This article explains how the statute 20 January 2016, n. 12 want to make innovations in federal rules about foreigner athletes' membership: this one carry out the purpose of social and cultural integration, according to the principle of equality and equal opportunities while taking part in sport activities. Even before that statute, the federal rules subordinated sport membership only to the Italian residence. Sport Federations could even impose other rules: they can set the highest number of foreigner athletes that could get a sport membership card; they decide if foreigner athletes could take part in a competition of national championship or not. Some of these kind of rules are imposed by the international Federation that one belongs to. After all, the scope of the statute 20 January 2016, n. 12 could be extended to the sport clubs and sport associations that do not belong to the institutionalized sport's legal system.

GIUSEPPE LIOTTA

Il tesseramento nei rapporti tra ordinamento sportivo e ordinamento statale

This article explains the theme about the sport membership, which is aimed to be an act for sport citizenship, represents a connecting point between sport's legal system (traditionally autonomous) and state's legal system. The law about sport's ius soli affects a status, which is designed to operate in another legal system: it allows foreigner minors to become part of sport's legal system, thanks to the recognition of the right to apply for membership of a sport club or sport association as well as their temporaries. The sport's legal system will decide whether to comply with the rules established by the lawmaker or to impose its rules through its strong persuasion.

FEDERICO DINELLI

Tesseramento sportivo e acquisto della cittadinanza italiana

The paper deals with the relationship between membership in sports and national citizenship, examining the following three aspects: the relevance of citizenship for the purpose of membership; judicial protection in respect of denial of membership for reasons related to citizenship; the incidence and possible implications of the new provision of Article. 1, l. n. 12/2016 for the general discipline of citizenship. The discussion concludes with the hope that the practice of sport by the foreign children can be enhanced by the administration and judges for the granting of Italian citizenship, in order to become an effective instrument of integration

STEFANO BASTAINON

Prime riflessioni sulla legge 20 gennaio 2016, n. 12 e dintorni: tesseramento, vincolo e cittadinanza sportiva (con uno sguardo particolare al nuoto)

This paper analyses the recent Italian law dated 20 January 2016, No. 12 concerning the measures to promote social integration of foreign children (aged less than 18 years) residing in Italy through admission in sports clubs. The author analyses the basic provisions of the new law in the wider framework of the Italian discipline of sporting activities with its own peculiarities, namely the dichotomy between professional sport and amatorial sport and the right of a national federation to allow the transfer of athletes only after a very long period of time. The author underlines the importance of the new law to promote social integration of foreign children through sport, but underlines that the main problems to be solved arise not only from the rules governing the membership to a given federation, but also from the rules governing the possibility to field foreign players.

ELENA ZUCCONI GALLI FONSECA

Arbitrato dello sport: una better alternative

After a brief introduction about the current condition of the sport arbitration in Italy after the sport justice system's reform, this article highlights the main problems related to the need of consensus (formal or substantial) in the arbitration. The analysis is realized also in an international perspective linked to the activity of the Court of Arbitration for Sport. In the sport sector there could be several imbalances between the parties, firstly between athletes and clubs. Moreover, public interests become prominent, so that it is crucial to guarantee an "arbitration technique" that can balance the parties' interests and the public community's ones. Indeed, the central thesis of this work is that arbitration can be considered not just one different option from the State's justice system, but it can offer to all the legal subjects involved a "better alternative". An alternative which could fully satisfy all the interests that come into play, but only if some conditions are respected, namely: the arbitrators' independence and neutrality; access to justice also for

disadvantaged parties; jurisdictional control on arbitrations; a detailed discipline of the procedure to follow.

LAURA VASSELLI

Arbitrato sportivo, clausola compromissoria e vincolo di giustizia: profili di sintesi

This article examines the national dispute resolution system. In particular, the paper is concerned with sport arbitration and justice restriction (vincolo di giustizia sportiva), according to which appeal against the decision of a federation, association or sports-related body may be filed with sport justice authorities.

ALESSANDRO BENINCAMPI

Autonomia e indipendenza della giustizia sportiva endofederale e ruolo della Commissione federale di garanzia

The reform of sport justice, wanted for overcoming the restriction of the pre-existing system, has deeply innovated as much the discipline of sport judges and prosecutors as the safeguards system of judicial settlement, making guarantees still unknown to the sport justice. The basis of such renovated construction are the different concepts of autonomy and independency. The first invokes the attribution of the administrative power of the judging body to the same justice bodies.

The second, that affects the activity of the “ius dicere” of judges and the investigating activity of prosecutors, requires the judges being guided exclusively by the source of “Sports Law” (o Sports Right).

STEFANO PAPA

Riflessioni sulla prova nel processo sportivo

To extend the guarantees of a fair trial in the field of Sport Justice according to the CONI legislation of Code of Sporting Justice 1.7.2014 and in accordance with Article 111 of the Constitution, has produced innovative effects on the main institutes of sporting trial, above all on the proceduralization of the pre-trial investigation phase and in terms of proof.

An examination of the provisions contained in above mentioned Code, verify if the homogenization of the sportive Justice, wanted by the National Olympic Committee, and the new institutes, keypoints of this trial, have effectively improved the functionality of judicial system, according to its reference.

ETTORE BATTELLI

Formazione e invalidità del contratto sportivo tra pluralismo delle fonti e unità del sistema normativo

This paper focuses on the employment contract between the professional athlete and

the sports club. This topic requires a detailed analysis about the relationship between the different sources of law that regulate the same contract. First of all, this article analyzes the Law n. 91 of March 23, 1981, “Rules on relationship between sports club and sports professionals”. This Law sets the fixed-term employment contract as “contract type” and governing the main aspect of it as the legal form and its procedure of contract formation.

The author, then, examines the contractual autonomy as regards the limits and checks carried by sports federations.

Lastly, the paper analyzes the “pathological” aspects of the employment contract paying specific attention to how their effects concern both sports law and national procedural law.

MARCO LACCHINI - MATTEO PALMACCIO

Profili critici del requisito di solidità finanziaria nell’acquisizione delle partecipazioni societari in ambito calcistico

This article seeks to analyze the issue of the regulation of the financial solvency requirement of Italian professional football teams.

The article is divided into two parts. The first part offers a critical overview of the Italian legislation regarding solvency requirement and concerning the funding of professional football team. The second part examines the leading case of Parma football team bankruptcy’s, focusing especially on the decision adopted by the FIGC to deal with the financial imbalance of this football society. In the conclusions, the authors provide some critical remarks about the rules concerning the certification of the financial solvency of the professional football teams.

ENRICO SPAGNOLELLO

Il Financial Fair Play alla prova del diritto antitrust dell’Unione europea

This work highlights how the economic dimension of sport involves several issues on relationship between the “sporting rules” and the European Union law. That requires that “sporting rules” of sport governing bodies which have an economic impact and could be contrasting with competition law can only be justified if shown to be a proportionate response to relevant need for the sport.

An important test bench for this conformity assessment could be represented by the Financial Fair Play Regulation by UEFA.

This Regulation is introduced “to decrease pressure on salaries and transfer fees and limit inflationary effect [...] to encourage long-term investments in the youth sector and infrastructure”. It provides that football clubs, as a condition for taking part in the most lucrative sports competition globally (the UEFA Champions League), face a new limit on the amount they can invest in their largest item of expenditure, namely purchasing, and paying the wages of, players. Under the ‘break-even’ rule, clubs can

not spend more than their income derived from football activities, and equity investment from rich benefactors can not be counted as part of the club's income.

All this certainly has a significant impact for the business in the European football market and could affect its competitive dynamics. The second, that affects the activity of the "ius dicere" of judges and the investigating activity of prosecutors, requires the judges being guided exclusively by the source of "Sports Law" (o Sports Right).

ALBERTO BUONFINO

Diritto sovranazionale e lotta al doping. L'assunzione di sostanze dopanti tra sistema del Consiglio d'Europa e ordinamento euro-comunitario

This article is structured as follows. The first part provides a framework of the different type of EU intervention concerning doping. The second part offers a critical analysis relating its effectiveness, especially, after that Lisbon Treaty provides the EU with an independent competence in the field of Sport.

Giurisprudenza commentata

Corte di Cassazione, Sez. III civ., 8 aprile 2016, n. 6844, con nota di ALESSANDRO DI MAJO, Attività scolastica e responsabilità civile

This article is structured as follows. The first part provides a framework of the different type of EU intervention concerning doping. The second part offers a critical analysis relating its effectiveness, especially after that Lisbon Treaty provides the EU with an independent competence in the field of Sport.

Tribunale amministrativo regionale per il Lazio, sez. I ter, 10 novembre 2016, n. 11146, con nota di VALERIO TURCHINI, Sanzioni disciplinari, risarcimento del danno e lealtà sportiva: alla ricerca di un difficile equilibrio

The Tar Lazio sentences the FGI and the CONI to a compensation in favor of a member of the gymnastics federation who has been subjected to two unjustified disciplinary sanctions related to the sportsmanship principle's violation. The administrative judge considers himself competent to decide on these type of sanctions' legitimacy, but just in order to determine if a reparation is due or not. A proper exercise of the constitutional right to defense, in the judge's view, cannot be considered conflicting with the general principles ruling the sport system. Even though this right is realized appealing to the administrative jurisdiction. In this very case, two consecutive appeals to the administrative judge were justified by the partial defeat suffered by a federation's member in the sport courts. After demonstrating the administration's negligence, the Tar considers jointly liable both the membership organization and the CONI. Effectively, the Collegio di garanzia per lo sport should be considered as an organ of the Italian Olympic

committee, with the purpose to impute the damages produced by its judgments directly to the CONI.

Corte di Cassazione, sez. III, 23 settembre 2015, n. 18807, con nota di CRISTIANO NOVAZIO, nullità del mandato sportivo per violazione di regole formali e sostanziali dell'ordinamento sportivo

The case involves the activities of sports agents or intermediaries with particular reference to the requirements imposed by Italian sports regulation. The judge, recognizing the autonomy of sport organization, observed that the set of rules of the Federation, providing formal and substantial elements that the intermediaries must duly respect, are valid also in front of state courts and a mandate received by an agent in violation of those rules is irremediably invalid.

The case is of interest from a legal perspective also because the plaintiff is a lawyer and this category is not part of the sport system. This fact could also obstruct its subjection to rules different from its own professional regulation.

Tribunale di Milano, sez. Lav., 29 settembre 2016, n. 2535, con nota di MICHELA MORGESE, L'applicabilità della clausola compromissoria dopo il fallimento della società di calcio

This work is inspired by the last ruling on the merits of case-law, about the relationship between the arbitration clauses, contained in the individual agreements concluded between the soccer player and his club and its bankruptcy. After analysing the legal framework concerning the employment relationship between the soccer player and his company, that leads to widen the definition of breach of sport-employment contract, we should wonder whether there are limits to the application of previous clauses, in particular if the bankruptcy of the society and its revocation from the federation shall be considered obstructive. In order to adequately answer such question, it is not sufficient to simply stick to mere normative data, but it seems dutiful to consider the solutions offered by recent prevailing jurisprudence. Therefore, the aim of reflection is to illustrate the way in which the decision is placed over prevailing reviews of jurisprudence, notably in light of the last position taken by the United Sections, without neglecting the opinions of the most authoritative doctrine on the subject. The judgement reaches a positive conclusion in order to the applicability of such clauses concluded by the bankrupt against the trustee intervening in the contract, taking, as well, a view that most arguments lead undoubtedly to share.

Pronuncia del Giurì, 8 luglio 2014, n. 52, con nota di SAVERIO SICILIA, Il fenomeno dell'ambush marketing e la sua disciplina tra sfruttamento dei diritti di immagine e la tutela dei segni distintivi dello sport caratterizzanti i grandi eventi sportivi

A communication campaign that suggests, falsely, that a public figure is sponsor of an event, can be a case of “Ambush Marketing” evaluated in the light of the IAP code. In the case examined, the use of the image of the famous football player Fabio Cannavaro, former world football champion, in some commercial communications (distributed through audio-visual, on- line newspapers, product displays, Internet and social networks) in order to advertise crisps brand “Lay’s” undeniably creates an illegal reminder to the Italian National football team. The Lay’s company, through an illegitimate connection to the Italian National football team, can be accredited to the consumers as an official sponsor and jeopardize the right of Unichips as exclusive Italian National football team sponsor in sector of chips and snacks. The commercial communication of companies that suggests that they are accredited as official sponsor represent a case of misleading commercial communication pursuant to art. 2 CA. However, the Jury of advertising self-regulation authority pointed out that, in the above mentioned case, the athletic’s interest to the exploitation of its sporting image must be balanced with company’s interest exploitation to the sports events.

Subsequently, the Jury underlined that the reputation of a public figure accredited for professional/sporting merits, can not prevent to use his image rights in favor any kind of product, if the procedures adopted are appropriate to avoid confusion with regard to other sponsorship and to avoid an illegal connection to the notoriety of third party sanctioned in accordance with art. 13, paragraph 2, CA.

The use as a testimonial of a famous athlete can not be considered as distinctive sign of the company because the famous athlete retains its identity and its own reputation.

Nevertheless, it is important to repress by any means the ambush marketing in order to provide appropriate protection to the sponsors which are financing major sporting events.

Tribunale di Trento, sezione distaccata di Cavalese, sentenza 29 aprile 2013- 1° luglio 2013, n. 32; Corte d’appello di Trento, 26 novembre 2014 – 12 dicembre 2014, n. 394; Corte di Cassazione, sez VI, 8 settembre 2015 – 18 aprile 2016, n. 15957, con nota di STEFANIA ROSSI, Esercizio abusivo della professione di maestro di sci: tra esigenze di tutela e libertà di circolazione intra comunitaria

In this legal essay it is analysed the entire penal proceedings regarding the improper exercise of the profession of ski instructor. The author focused the Italian national and local law which rules the recognition of the ski instructor professional title obtained abroad and the connections between the infringements of the national rules and the penal responsibility regarding the improper exercise of the profession of ski instructor. In the final chapter of the essay it is also examined the decision of the Italian Supreme Court n. 15957/2016 which has absolved the accused of improper exercise of the profession of ski instructor stating that the crime could be configured if the typical improper exercise of the profession has been committed as professionally executed.

ANTONIO LOMBARDO

Onesti e lo sport scolastico nell'Italia del dopoguerra

The article is structured as follows. The first part analyzes the current inadequacy of the system of physical education in schools, in connection with the situation after World War II and the proposals of the Olympic Committee over the years. The second part comes in the specific historical, tracing as proposed by the two main leaders of CONI, Giulio Onesti and Bruno Zauli. The third part explores the result of these proposals, with the flourishing of school groups Sport, but also all opposition to the intervention of CONI in school, up to the wear out of the results obtained.

Recensioni

Doping in sport and the law, a cura di U. Haas e D. Healey, Hart Publishing, Oxford – Portland, 2016, pp. XI – 2018, di LUIGI FUMAGALLI.

The volume, which sets out the contributions of several Authors, analyzes the rules designed to counter the phenomenon of doping, as laid down by the World Anti-Doping Code (WADC), taking into account the objectives pursued, strictly related to the sport value of fair competition. Firstly, the work questions the WADC capability to ensure a “level playing field”, which appears a largely unachievable dream. Secondly, it addresses the issue of the relations between anti-doping regulations and other areas of law, such as fundamental rights and the law of contracts. The conclusion is that the anti-doping regulation laid down by the WADC is not to be considered as a sufficient tool in the fight against doping, if taken alone, but has to be examined in a broader regulatory context.