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Abstract degli articoli
Saggi

STEFANO BASTIANON

La vittoria dello sport sui fanatismi religiosi

In this judgment the European Court of Human Rights was asked to decide whether mandatory genders mixed swimming for girls against the will of their Muslim parents who objected on religious grounds violated Article 9 of the European Convention on Human Rights on religious freedom. In its judgment the European Court held that there had been no violation of Article 9 (freedom of thought, conscience and religion) of the Convention, finding that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the Swiss authorities had not exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

PAOLO GARRAFFA

Il mandato sportivo, tra «deregulation» dell'ordinamento sportivo, normativa statale e ordinamento comunitario

This work was inspired by two last rulings of Court of Cassation, which, following consolidated juridical opinion, have focused on the issue related to the contract of sports mandate. This has allowed the author to launch a broad debate about it. More particularly, a greater focus on some aspects regarding the relation with the general and the sports sector legislation and its invalidity, without silencing the contract categorisation in the case-law. In addition, a careful examination about the figure of Sports Agent, in the light of the new Regulation, looking at the case in which the mandate was given to a lawyer and its critical elements.

MARIO VIGNA

Attenuanti e responsabilità oggettiva delle società nei casi di match-fixing: stiamo sbagliando strada? Analisi dei casi Novara e Pro Patria

This article offers an overview on two match fixing scandals involving criminal organizations, soccer players and team managers. These cases, also known as Novara Calcio and Pro Patria, offer unique case studies to understand, in case of match fixing, the need of a better regulation regarding extenuating circumstances applicable in case of objective liability. The purpose of this essay is, at first, to analyze sporting rules on strict liability; secondly, illustrate how FIGC has handled the issue in the above-mentioned judgments, which raised doubts on the adopted approach; finally, describe the possible

reverberations that an indulgent jurisprudential approach might have on fighting match fixing. Particular emphasis is put on how to detect and prevent future episodes of match fixing, considering that sport frauds have not been eradicated yet.

MASSIMO PROTO

Elezione alla presidenza federale successiva al secondo mandato: norme e criteri interpretativi

The article 7.2 of the CONI Fundamental Principles states, on one hand, that «the Federal President, even in the event of a second ballot, is elected by an absolute majority of the votes of the present»; and, on the other hand, that «In the case provided by art. 16, paragraph 4 «of the Melandri Decree as amended by the Pescante Decree (Legislative Decree 15/2004) – that means in the case of candidacy for president beyond the second consecutive term – the Federal President must be elected «At the first vote the quorum of fifty-five percent of the valid votes cast.» What does «absolute majority of the votes of the present» mean, necessary for the election of the first or second term? And what does it mean (and how to interpret) «fifty-five percent of the valid votes» needed for the election beyond the second term? The only interpretation of the art. 7.2 of the Fundamental Principles, which allows not frustrate the intention of the legislator (which, with the Pescante decree, intends to foresee, for the President who intends to remain at the helm of a Federation over a period of time, a particularly wide consensus and anyway greater of those elected for the first or second time) and at the same time, maintain the effectiveness of the regulatory autonomy of the CONI is that according to which the president (who is a candidate in the first, second or further mandates), in order to be elected, must in any case get half plus one of the votes expressed by the present; moreover, the one who is already president and who is elected beyond the second mandate, to be confirmed, must also obtain a majority of not less than 55% of the validly cast votes.

FRANCESCO SAVERIO VERGA

L'iscrizione al CONI è la condizione necessaria per la tassazione agevolata dei compensi erogati dalle associazioni e società sportive dilettantistiche

This article proposes to give further details about remunerations, allocated by Amateur Sports Clubs, and their treatment for tax purpose. They can benefit from the facilitated tax treatment if they pursue amateur sports purposes and if they are recognized by CONI through enrollment in the register of sports clubs; furthermore, remunerations must be paid for the direct exercise of amateur sports activities. After all, the special tax treatment is justified by the social role performed by Amateur Sports Clubs, which allows to impose the criterion of different income's taxation.

FEDERICO SPANICCIATI

L'edificazione di nuovi impianti sportivi come chiave del rilancio del settore: obiettivi e risultati ottenuti dalla c.d. legge sugli stadi

This paper analyses the edification of sports facilities, focusing its attention on the aims and results contemplated by art. 1, co. 303-306, Law n. 147/2013 (“Stadium law”) and by the Decret Law n. 50/2017.

VALENTINA PORZIA

Gli impianti sportivi pubblici

This article deals with Italian public sports center. The author focuses on the classification of structures and management methods, highlighting in the case of «agreement management», typical relationship between the public and private operator. The author focuses attention on the subject of responsibility and exerts a distinction between the liability of sports center’s owner and same structure’s manager. The division of tasks among such persons, resulting in liability’s profile changes according to the type and the management contracts’ duration. For this reason, Highlights on the usefulness of the current rise in long-term management, a reliance procedure that allows a better division of roles and the burden on the administration of the structure. Finally, after speaking of «naming right». The author talks about the frequent intervention of the Sports Institute, a public office and important resource especially for Southern Italy and areas affected by earthquakes and other natural disasters.

ALBERTO MARIA GAMBINO

Principi e prassi dell’arbitrato sportivo

This work deals with the main topic related to the sports arbitration, specifically focusing on the case in which it takes place before the Court for Sports Arbitration. To this purpose, the main features and functions of CAS were examined, every individual proceeding and, for each of them, the procedural and substantive rules. All this, considering the legislative and jurisprudential developments the CAS operate within and in the light of the applicable lex sportiva.

PIERO SANDULLI

Osservazioni sui limiti della giustizia sportiva rispetto alla giurisdizione statale

The Tar Lazio sentence deals with the issue of the limits in Sports Justice in respect to State Justice. The Judges consider that claims for damages to athletes caused by illegitimate disciplinary sanctions are admissible in the administrative courts. The court declares that claims for compensation for damages are not admissible in Sports Justice. Thus the gymnastics federation was right in presenting its case for damages to the State Court.

DAI YOKOMIZO – GIORGIO FABIO COLOMBO

La giustizia sportiva in Giappone

As the internationalization and commercialization of sports further develop, disputes with regard to sports are increasing in number worldwide, and Japan is not an exception to this trend. The main outlet for sport disputes in Japan is the Japan Sports Arbitration Agency (JSAA), established in 2003 with this specific purpose. There, however, are institutions other than the JSAA for resolving sports disputes: national courts and dispute resolution bodies within sports associations. The Japanese situation is quite interesting in comparative terms, because in the country there are still doubts about whether a sport-related dispute may be considered as a «legal dispute» under the Court Law. In the second part of this paper, case decisions in national courts with regard to disputes between an athlete and a sports association will be analyzed, and confirmed that courts have often considered a dispute with regard to decisions by an association as a legal dispute, and that it cannot be said that national courts are closed for an athlete to seek the nullification of a decision by a sports association. Finally, this paper offers some comparative remarks about the Italian system of sport justice, to which Japanese observers are looking with increasing interest.

Giurisprudenza commentata

*Collegio di Garanzia dello Sport, Sez. Un., decisione n. 25/2017, prot. n. 305/2017, con nota di MARIA PIA PIGNALOSA, *Questioni al vaglio delle Sezioni Unite del Collegio di Garanzia dello Sport: natura e decorrenza del termine di cui all'art. 32-ter, comma 4, del Codice della Giustizia Sportiva FIGC nel procedimento disciplinare di deferimento con pluralità di indagati, e* MATTEO ANNUNZIATA, *Decorrenza e natura del termine previsto dal Codice di Giustizia sportiva per l'esercizio dell'azione disciplinare**

The decision tackles the controversial issue on the time limits provided under Article 32-ter, paragraph 4 of the Code of Sporting Justice – Italian Football Federation and further decides on the limitation period to initiate the disciplinary action after notification of the charges in proceedings with multiple suspects, each one being notified at different times of the closing of investigations.

It is examined the issue of the nature – peremptory or not – of deadline by art.34 ter, IV comma, of Codice di Giustizia sportiva FIGC and of the identification of dies a quo, date from which the time-limit is calculated, in case of multiple suspects on the basis of which the timeliness of arraignment can be assessed. While TFN and CFA are in contrast, the Chambers of Guaranty Committee borrow the solution from the procedural and national accounting law where, in case of several invitations to deduct, the deadline for the Act of

referring starts to run when the notification for last invited to deduct has been finalized. This for the needs of concentrating different opinions in a unique trial.

Corte Federale d'appello – Federazione Italiana Bocce, decisione n. 1/2017 del Collegio di Garanzia dello Sport, Sez. Un., decisione n. 66/2017, prot. n. 744/2017, con nota di VITTORIO OCCORSIO, Il rapporto di tesseramento nel diritto sportivo. Tra documento e status

This work is inspired by two last rulings of Sport Justice, respectively the Guarantee Committee of CONI and the Federal Court of Appeal FIB, that, although related to different aspects, have concentrated on the specificities of the «status» of registered and membership. In one case, the matter related to the possibility of submitting the n registered athlete to the federal justice bodies has been addressed, whereas, in the other, sports judges questioned about the consequences of the participation of an athlete registered to a different federation in a sport event. To this purpose, judges appropriately specified conditions and effects of membership, highlighting the differences with the quality of «practically registered» and the documental element represented by the card.

Storia dello sport
a cura di Francesco Bonini

ANTONIO CAPPUCCIO

La Rivista di diritto sportivo nella temperie culturale dell'Italia repubblicana

Multiplicity of legal systems, compensation of damages for the breach of right to credit, qualification of the Totocalcio contract, but also construction of sports facilities, participation in the Olympics, guidelines for professional sport events both locally and nationally: the interdisciplinary debate on these and many other issues merged in CONI's «Rivista di diritto sportivo», founded by Giulio Onesti in 1949. In constitutional, post-WWII Italy, sports law begun to claim a certain independence: this essay aims to shed light on the way it settled its legislative, doctrinal and jurisprudential autonomy between the 1940s and 50s, through perusal of the material published in the aforementioned journal.