

.02

2019



olympialex review

ISSN 2611-9749

DIREZIONE SCIENTIFICA: FABIO IUDICA - ANGELA BUSACCA

olympialex review

RIVISTA DI DIRITTO DELLO SPORT

NUMERO

02

ANNO

2019

SITO DI RIFERIMENTO

www.olympialex.com

LUOGO DI PUBBLICAZIONE

Milano (MI)

REDAZIONE

Nomosportiva S.r.l.
Via Olona 7 - 20123 Milano (IT)
P.IVA/VAT IT08876680961
www.olympialex.com
info@olympialex.com

PROPRIETARIO

Nomosportiva S.r.l.

EDITORE

Nomosportiva S.r.l.

PROVIDER

Aruba S.p.A.
Via San Clemente 53 - 24036 Ponte San Pietro (BG)
www.aruba.it

TESTATA REGISTRATA PRESSO

Tribunale di Milano n. 174 del 13/06/2018

DIRETTORE RESPONSABILE

Fabio Iudica

DIREZIONE SCIENTIFICA

Fabio Iudica
Angela Busacca

olympialex

review

REDAZIONE

DIRETTORE RESPONSABILE

DIREZIONE SCIENTIFICA

COMITATO SCIENTIFICO

Fabio Iudica

Angela Busacca
Fabio Iudica

Roberto Amagliani
Vittorio Bachelet
Maria Bravo Bosch
Angela Busacca
Salvatore Civale
Michele Colucci
Giovanni D'Amico
Matteo De Bernardi
Paco D'Onofrio
Tommaso Edoardo Frosini
Alberto Maria Gambino
Fulvio Gigliotti
Attilio Gorassini
Inès Iglesias Canle
Fabio Iudica
Giuseppe Liotta
Daniele Maffeis
Francesco Manganaro
Lina Musumarra
Margherita Pittalis
Francesca Pulitanò
Vincenzo Putorti
Francesco Rende
Laura Santoro
Dario Scarpa
Fabio Signorelli
Mario Tenore
Jacopo Tognon
Filippo Vari

**COMITATO DI VALUTAZIONE
SCIENTIFICA**

Maria Bravo Bosch
Lucio Camaldo
Stefano Carabetta
Massimo Finocchiaro Castro
Eugenia Franciosi
Antonio Gorgoni
Inès Iglesias Canle
Emanuele La Rosa
Sara Landini
Arturo Maniaci
Renato Rolli
Filippo Romeo
Federica Tescione
Giuseppe Tropea

RESPONSABILE EDITORIALE

Angela Busacca

DIREZIONE REDAZIONALE

Anna Cusimano
Cristina Varano

COMITATO REDAZIONALE

Armando Argano
Alessandro Benincampi
Federica De Stefani
Alessandro Narciso
Stella Riberti
Carlo Rombolà
Giulia Vigna

RESPONSABILE EDITING

Antonio Carmine Zoccali

EDITING

Mariasole Mascia
Veronica Moschino
Claudio Parlagreco
Antonio Rocca
Francesco Sciortino
Laura Scolaro

RESPONSABILE IT

Lorenzo De Meo

RESPONSABILE COMUNICAZIONE

Sara Messina

RELAZIONI INTERNAZIONALI

Federico Venturi Ferriolo

EDITORE

Nomosportiva S.r.l.

olympialex review

BLIND REFEREE

I contributi inviati alla Redazione vengono sottoposti a un controllo e inviati, in forma anonima, a due referee, scelti tra i membri del Comitato Scientifico e del Comitato per la Valutazione Scientifica.

I referee indicano se il contributo sia pubblicabile, pubblicabile con modifiche o debba essere sottoposto a sostanziali revisioni prima di essere nuovamente valutato per la pubblicazione.

Ogni modifica indicata dai referee dovrà in ogni caso essere effettuata dall'autore o di concerto con l'autore.

Dell'esito della procedura di referaggio viene data tempestiva comunicazione agli autori.



A NEW SET OF RULES FOR ITALIAN SPORT SYSTEM: DOES THE GOVERNMENT WANT THE GOVERNANCE OF SPORT?*

Angela Busacca²

Abstract: L'estate del 2018 sarà ricordata come una delle più caotiche e frenetiche nella storia dell'ordinamento sportivo italiano: per circa quattro mesi, infatti, le corti di giustizia sportiva e quelle statali si sono confrontate e, per molti versi, affrontate su alcune questioni riguardanti la *governance* delle federazioni sportive nazionali e la divisione di competenze tra ordinamento sportivo ed ordinamento statale, fino a determinare un intervento del legislatore che potrebbe porre in serio dubbio l'autonomia dell'ordinamento sportivo.

Le questioni controverse riguardavano principalmente la validità di alcuni provvedimenti, emanati dal Commissario Straordinario della Federazione Italiana Gioco Calcio in relazione al format del campionato di serie B. La situazione di confusione ha determinato non soltanto un danno per le società sportive direttamente interessate ed un ritardo nell'avvio dei campionati, ma ha determinato un intervento da parte del governo, indirizzato ad avocare la competenza sulle questioni relative alla partecipazione ai campionati professionistici ed a porre, accanto al CONI, una fondazione, di nomina governativa, con compiti esecutivi. Con questi provvedimenti, inseriti nella legge di bilancio 2018, approvata nello scorso mese di dicembre, il governo italiano pone una serie di misure che, se non opportunamente calibrate, rischiano di porre in dubbio la stessa autonomia dell'ordinamento sportivo e di minare il riparto di competenze degli organi di giustizia.

Il paper proposto, dopo aver analizzato le modifiche apportate dalla nuova legge, cercherà di valutare quale possa essere il reale impatto delle riforme e quali le misure per garantire una governarce del sistema sportivo indipendente ed al contempo efficiente ed autonoma.

The summer of 2018 will be remembered as one of the most chaotic and frenetic in the history of the Italian sports system: for about four months the courts of sports justice and state courts clashed on many issues concerning the governance of national sports federations and the division of competences between sports organization and the state system. In the end, Government intervention in the unsolved issued posed seriously questions about the autonomy of sports system.

* Contributo sottoposto a procedura di referaggio *double blind*.

1 Il testo riproduce la relazione tenuta nell'ambito del XIV Convegno Internazionale "Sport&EU" (Malta, 27-28 giugno 2019), nel panel "Sport Governance". Mantenendo il tono colloquiale della oral presentation, si è ritenuto opportuno aggiungere sono alcune note bibliografiche.

2 Ricercatore di diritto privato e docente di diritto sportivo presso l'Università Mediterranea di Reggio Calabria. Presidente della Corte Appello Federale FiWuK.



The controversial issues concerned the validity of some decisions adopted by the Extraordinary Commissioner of the Italian Football Federation regarding the format of the Serie B championship. The resulting confusion has not only caused damage to the clubs directly involved and a delay in the start of the championships but has also led to an intervention by the government, taking on itself issues related to participation in professional leagues, establishing a foundation alongside CONI, under government control, with executive tasks. With these measures, approved at the end of December, the Italian government has initiated a series of reforms that, if not properly calibrated, risks the autonomy of the sports system, undermining the attribution of competence of the organs of justice.

The paper will analyze the reforms and try to assess what the real impact could be. The question now is how to guarantee efficient and autonomous governance of a sports system, which will not be in contrast with European regulations.

Keywords: Ordinamento sportivo – Governance - Nuove regole statali – Autonomia dell'ordinamento sportivo

Sports (legal) System – Governance – New set of (statal) rules - Autonomy of sports system

The last sporting seasons have not been lacking in satisfaction for Italian national teams: the results of the Rio Olympics, the victories in women's Volleyball and the excellent results in women's football, and in men's soccer with the under-20 and under-21 teams.

Behind the showcase of victories in the field, however, the Italian sports system has been experiencing some very troubled seasons, characterized by general uncertainty and particularly critical situations within the Football Federation (undoubtedly the most important and representative of all the federations). At the same time, the current government has been implementing some modifications and reforms, which are distorting structures of the national sporting system, as regulated by Law 242, 1999³; effectively, it is questioning the very autonomy of the national sporting system.

In my presentation, I would like to share some considerations on the guidelines and new system of rules, which, since last December, has characterized the governance of Italian sport. I will also talk about the most important aspects of the new laws, some of which are currently under discussion in Parliament, which aim to attribute a series of subordinate legislation to the Government to enact laws and decrees to reform many sectors of sport in Italy.

3 Without claiming to be exhaustive, within the numerous bibliography only some reference : C. ALVISI, *Autonomia privata ed autodisciplina sportiva. Il CONI e la regolamentazione dello sport*, Milano, 2000; L. COLANTUONI, *Diritto sportivo*, 2009; AA.VV., *Fenomeno sportivo ed ordinamento giuridico, atti del III Convegno Nazionale Sisdic*, Napoli, 2010; L. DI NELLA, *Manuale di diritto sportivo*, Napoli, 2010; G. VALORI, *Il Diritto nello sport*, Torino, 2016; A. MAIETTA, *Lineamenti di diritto dello sport*, Torino, 2016; E. LUBRANO – L. MUSUMARRA, *Diritto dello sport*, Roma, 2017; G. LIOTTA - L. SANTORO, *Lezioni di diritto sportivo*, Milano, 2018; M. PITTALIS, *L'attività sportiva tra performance e vita quotidiana*, Padova, 2019.



It should be pointed out clearly at this stage that the Football Federation, since around 2000, has been in disarray. There were many justifications for a total renovation of the sports system, but this renovation should have come from within the Federations themselves, and specifically from the Football Federation. This is the first wrong. Government intervention undermines the autonomy of the sports justice system. And this is the second wrong: and we all know that two wrongs do not make a right.

It is, it should be premised, a situation that derives from the current structure of the Italian Government and from a series of centripetal thrusts that characterize the mode of operation of the new political forces in Parliament. Leaving aside, however, any consideration on the value and on the ideas that the new political forces represent (it is a topic that goes beyond the scope of present considerations) I will limit myself to analyzing the reforms, both those already implemented and those in discussion, only with reference to the impact on the autonomy of the sports justice system.

The starting point is, of course, the current state of the relationship between the state justice system and the sports justice system, the latter recognized as an autonomous, original and sectorial system. The main national sports body is the National Olympic Committee (CONI) which is a non-economic public body under the supervision of the Presidency of the Council of Ministers (note: vigilance, not control!); CONI also represents the confederation of National Sports Federations and Associated Sports Disciplines (that concern non-Olympic sports).

CONI has the task of taking care of and promoting the organization of sport in Italy, representing also the Olympic values and organizing the selection of the representative teams for the Olympic Games. Functions regarding the economic organization of sports, sports facilities and the various profiles linked to the “market” area of sport are instead assigned to CONI Servizi spa, a joint-stock company controlled by directors appointed by CONI and created ad-hoc in 2002 to deal with the financial crisis in the sports sector.

Another point to be underlined: in Italy, no general law on sport has ever been enacted, probably due to a lack of interest by the state legislator regarding the sports phenomenon and also due to a consideration of sport, at least until the 1970s, as a recreational activity, more than an economically and legally relevant activity.

The Italian sport justice system is self-regulatory and has drawn up a set of statutes and regulations addressed to all the different aspects of the organization of sporting activities, always in respect of its autonomy and of its system of law sources. Interventions on the part of the state legislator were, throughout the second half of the twentieth century, only occasional, dictated by individual circumstances or by the need to solve particular problems. This is the case of the law on professional sports in 1981, the law on fraud and corruption in sport of 1989, the law on the re-organization of CONI in 1999 and the law on doping in 2000.

The regulatory framework in the 2000s appears, therefore, truly fragmented, especially considering the growing importance of the sports phenomenon as an economic phenomenon, with particular reference to football and cycling and considering the jurisdictional contrasts between the sports justice system and the state justice system. In the absence of a rule governing the division of jurisdictions and in the presence of increasingly significant economic interests related to participation in championships and rights on sporting events (in terms of organization, transmission, economic exploitation), between 2000 and 2002 there was the first season of bitter disputes and



trials, with interventions by the territorial administrative judges (TAR) in contrast with the measures taken by the Sports Federations and by CONI. In practice, TAR postponed the beginning of the "Serie B" football championship and contested the criteria for admission and registration for sports clubs, bringing about not only an "invasion onto the field" in the prerogative areas of the sports organization, but also some damage, both in economic terms and in loss of image. The Federations were challenged in their own prerogatives by the territorial administrative judges and, moreover, with the possibility that different territorial judges would have been able to adopt different decisions and increase the chaos.

The intervention of the national legislator was realized with law n.280, October 17, 2003, that, at least in the intention, should have delimited the areas of competence between the sports justice system and the state justice system avoiding new chaotic situations like the previous ones⁴.

In art. 1 we can read "The Republic recognizes and favors the autonomy of the national sports justice system, as an articulation of the international sports system under the International Olympic Committee" (note that the very choice of the terms "recognizes" and "favors" indicates how autonomy is not a creation or concession of the state justice system, but represents an intrinsic character of the sports system), and in the following art. 2 "Relationships are governed according to the principle of autonomy, except in cases of relevance to the juridical order of the Republic of subjective juridical situations connected with the sport justice system". This latter is undoubtedly an ambiguous affirmation, as it does not specify what the relevant situations or the criteria for defining this relevance are. In subsequent norms, indeed, we find the definition of an exclusive jurisdiction/competence of sports justice with reference to technical issues and the possibility to appeal against state jurisdiction in the case of situations relevant to the state system, but only after having gone through the so called "sports ruling", that is, the sporting procedure in all three degrees of Italian sports justice. Of note - the only state administrative court with competence in the sports area is the court of Lazio. There being only one with competence, the lengthy delays which have ensued can only be imagined, not to mention the more than one contrasting ruling that has been handed down from diverse sections of the court.

Although the intentions were good, it must be said that law n.280/2003 was not able to solve the problems related to state interference in the sports justice system and the occurrence of some illicit events, involving several athletes and managers and with a wide media coverage, highlighted the need of a reform, starting from within the sports organization itself.

4 G. MANFREDI, Ordinamento statale e ordinamento sportivo. Tra pluralismo giuridico e diritto globale, in *Diritto amministrativo*, 2012 fasc. 3, p. 299; R. PARDOLESI La legge 17 ottobre 2003, n. 280 e la questione delle situazioni soggettive connesse con l'ordinamento sportivo, in *Rassegna di diritto ed economia dello sport*, 2011 fasc. 3, p. 509; M. SFERRAZZA Il riparto di giurisdizione in materia sportiva, in *Diritto e lavoro nelle Marche*, 2010 p. 302; R. COLAGRANDE, Disposizioni urgenti in materia di giustizia sportiva (l. 17 ottobre 2003, n. 280 "Conversione in legge, con modificazioni, del decreto legge 19 agosto 2003, n. 220"), in *Le Nuove leggi civili commentate*, 2004 p. 705; A. BONOMI, Giustizia sportiva e giustizia statale. Qualche riflessione sulla legittimità costituzionale della legge 17 ottobre 2003, n. 280, in *Rivista di Diritto Costituzionale*, 2004 p. 171; P. SANDULLI La Legge 17 ottobre 2003, n. 280, ovvero una nuova giurisdizione esclusiva in materia di Diritto sportivo, in *Temi romana*, 2003, p. 182 – 192.



The phenomena related to various hypotheses of sports corruption and slow judicial resolution of issues, as well as the lack of decision by the governance of the CONI have determined the continuation of the chaotic situation. This reached a climax in 2018, with a long season of trials and contrasting sentences between sports justice and state justice and a continuous uncertainty about the starting date of the soccer championships of the minor series (serie B and Lega pro), not to mention the enormous financial losses both for the companies involved and for CONI and the Federations.

On this premise, and with the intention of proposing some remedies for all that was considered inefficient in the sports justice system, the current Italian Government, immediately started a reform policy, aimed at introducing more stringent governmental and institutional controls into the sporting system, centralizing the economic aspects into the hands of a new joint stock company, imposing the principle of direct jurisdiction of administrative judges on questions regarding registration and attendance to championships.

The first attempt implemented with the so called decree on sports justice, of 4 October 2018, was not successful, since the text of the decree law was not converted in time and, consequently, lapsed. In the text, a direct administrative judge jurisdiction for the registration to the professional championships was affirmed and some simplifications of trials for other topics related to athletes and teams, for which there would have no longer been three degrees of (sports) judgment but only a single trial at the Collegio di Garanzia dello Sport (Supreme body of Sports Justice) before being able to appeal to the state judge.

After spending two months (in vain) for the conversion of the law decrees into law and dismissing the justice system reform requests, the Government made a decisive and highly invasive move: with a series of provisions contained in the so called Budget Law (Law of December 30, 2018, n.145, Article 1 Section 629 et seq⁵) the company CONI Servizi Spa was replaced with a new joint-stock company, called "Sport & Salute", with directors and president nominated by the government and centralization of economic functions and deliberations, for the organization of all sports activities, sport facilities and all aspects related to the exercise, in an organized form, of sport.

The creation of the "Sport & Salute" company represented a true revolution in the Italian sporting system, because not only has the new company been awarded a series of functions previously recognized to CONI, but above all, considering how the organization and the board of directors are under direct government control. It has, effectively, relegated CONI itself to an almost secondary position, creating what appears to be, to all intents and purposes, an exclusion from all decisions on patrimonial and economically importance issues.

Likewise, competence for the nomination of the company's top management passes from CONI to the Government (the president, as well as the CEO, is nominated by "the Competent Government Authority for Sport" and the members of the board of directors by the Ministry of Health and the Ministry of Education and University in agreement with the Ministry of Finance after having heard

5 Legge 27.2.2017, n. 205 (www.finanze.it/opencms/it/fiscalita-nazionale/Manovra-di-Bilancio/Manovra-di-Bilancio-2018/Legge-di-Bilancio-2018); E. Lubrano, La nuove disposizioni per lo sport previste nella legge di bilancio 2018: un importante riconoscimento per lo sport come valore positivo per la collettività nazionale, in RDES, 2018.



the opinion of parliamentary committees). Maybe these choices were dictated by economic efficiency or managerial guidelines (maybe ...) completely omitting the assessment of competences or experiences in the field of sport or sporting systems.

On the occasion of the presentation of the new company, the Government Ministers expressed their interest in carrying out a reform that would improve the potential of the Italian sports justice system and that would allow CONI to use the "Sport & Salute" company to operate at its best, to increase those sectors that already function well and create an Olympic elite; in the very words of the representatives of the government: "activity at a high level must be managed by CONI and can be expanded even more (...) the extra resources can also be destined to staff for the Olympic preparation to become even more elite (...) It is not an emptying of CONI that will go on to make use of "Sport & Salute" to develop assets which are the competence of CONI". These are the words spoken during a ceremony, but what of the written text of a Statute?

The change, indeed the true revolution, is already clear on reading the first provisions of the new company statute and making a comparison with the previous statute of CONI Servizi Spa.

In fact, in the Statute of CONI Servizi Spa, art. 4 established that "*in accordance with the resolutions and guidelines of the International Olympic Committee, the Company carries out all the practical activities for the implementation of the tasks of the public body of the Italian National Olympic Committee (CONI) (...). To this end, on the basis of the service contract (...) the Company provides services and goods for the purpose of pursuing the institutional tasks of CONI and in particular the preparation of means and structures necessary for the performance of sporting events and activities and associated events, as well as the management of sports facilities*". References to the guidelines of international sports organizations and functional relationships with the activities organized, coordinated and implemented by CONI are clear.

However, article 4 of the "Sport & Salute" Statute eliminates any direct reference to CONI activity and, in paragraph I, provides a generic "production of activity and provision of services" of general interest in favor of sport, "*according to the directives and guidelines of the Government's competent authority for sport*", to then propose a series of specifications regarding the activities carried out by the company. As we shall see, CONI disappears as the subject dictating the course of action and reappears in letter a) only as recipient of the activities and services provided by the company.

A first reflection is now necessary: as mentioned, there were many negative features that required a reform of the sports system, even if mainly referable only to one or, at most, to a couple of National Federations. Moreover, the inertia of the sports justice system, which should have had the strength and ability to reform itself in a sign of greater transparency, did not constitute a good signal in the eyes of society and the government took the opportunity to carry out a reform project that appears to many as a "colonization" of the sports justice system.

Yet again in art. 4, we can read: "*the company will act as the operating structure of the Government Authority competent for sport and, in this quality, will be able to carry out any other connected initiatives (...) at least eighty percent of the activities must be carried out in the performance of the*



tasks entrusted by the competent authority for sport". No reference to the international sports justice system, no reference to the national sports justice system is to be found: indeed, it seems quite difficult to coordinate what was said with the already mentioned art. 1 of law n.280/2003 which "*recognizes and favors the autonomy of the sports justice system*". It is difficult to consider a system as autonomous that receives directions and tasks from the State Authority that is competent for sport and that has had its functions and capacity of actions (also in the economic field) restricted by the decisions of a State Authority.

Article 4 (of the Statute) proposes a list of tasks of the company. We find all these economic activities related to the performance of sports activities outlined in seven points. In particular, based on the service contract (already provided for in the 2002 law, establishing CONI Servizi Spa) "it provides services to CONI to make it possible to perform its institutional tasks expressly assigned to it by law", and continues "on the basis of specific agreements" (whose legal nature and form are not better specified in any detail) "provides services in support of National Sports Federations, Associated Sports Disciplines, Sports Promotion Bodies, Military Sportsmen Groups, Civilian Corps of the State and Meritorious Associations". As far as subjects of the sports justice system are concerned, therefore, they must all refer to the new state controlled company.

Regarding tasks, "Sport & Salute" pursuant to article 4 lett. c): "*provides services and carries out activities in the field of sport, including, for example, the promotion and organization of events, the management of sports centers and facilities in favor of public and private entities operating in the field of sport and health and develops and supports the practice of sports, projects and other initiatives aimed at carrying out activities in favor of sport, health and the development of sports culture*" and again under letter d): "*it is the subject responsible for implementing the public sports policy choices, with particular reference to the provision of contributions for sports activities to be allocated to National Sports Federations*". For the Federations, the change is truly remarkable: in some ways the relationship with CONI seems to have been loosened and instead a direct relationship with the "Sport & Salute" company has been established, and therefore (a direct relationship) with the State Authority.

Other tasks and functions, which I cannot dwell on here, include the management of real estate assets, marketing, training and consultancy on sports, the possibility of operating as an "engineering company" for the implementation of various projects connected to the construction and maintenance of sports facilities, as well as participating in other companies, groups and consortia for the implementation of activities that fall within their "corporate purpose".

In support of all these activities, the minimum annual funding threshold for Italian sport is fixed: an assessment of about €408 million with a subdivision that leaves no doubt about the forces in the field (368 million to "Sport & Salute" and 40 million to CONI).

At this point it is legitimate to ask "what remains of CONI?" especially if, as it appears, the new company will have a leading role in the management of economic activities and in the management of sports facilities.



First and foremost, the role of the top organ of the Italian sports system, promoter of the spirit and values of Olympism, as well as organizer of the national representation remains unchallenged; and thus, CONI still holds, and it could not be otherwise, ownership of the sporting banner par excellence, that is the symbol of the five Olympic circles. Therefore, there is no doubt that CONI remains, in any case, the custodian and promoter of the social value of sport even in the presence of a government intervention that mainly addresses the economic aspects and the management linked to the market area.

It seems appropriate to ask whether this choice will be able to achieve the desired positive results, managing to pass even the results achieved in recent years by CONI Servizi Spa and realizing the hoped-for "managerial management". At the same time, it will be precisely the passage of time which will show if and to what extent the choice of a managerial management supported by government indications can better respond to the needs of reorganization of the sports justice system and not only turn out to be an operation of control.

In addition, measures currently being discussed in Parliament are moving in the wake of profound government intervention. In February 2019, a bill was presented aimed at reorganizing various aspects of the sports justice system and regulations related to sporting activity. Bill n.1603⁶, which joins a previous bill presented in autumn 2018, proposes a series of subordinated legislation to the Government for the adoption of multiple legislative decrees on various topics: from provisions on the prevention of violence at sporting events to the definition of "sports worker" (overcoming the current uncertainties of the law on professional sports), from provisions on school sports centers to the relationships between athletes and societies and sports agents, and even to the competences and relationships between CONI and Federations.

The multiplicity of topics considered, not united by any unitary guideline, has brought about the subdivision of the original single provision into two distinct bills that will follow different procedures, also because of their different impacts on the existing situation.

In particular, bill n.1603-ter addresses the implementation of safeguarding against the occurrence of violence and extends the hypothesis of DASPO (prohibition of access to sporting events) also for episodes of violence against referees, for behavior of incitement or praise of violence and also in the case of conduct of sports fans abroad. This provision, which fully falls within the jurisdiction of the government, will probably have a faster passage through Parliament, compared to bill n.1602-bis which instead concerns subordinate legislation regarding the legislative decrees on sports justice system and on the prerogatives and competences of the sports institutions associated with the sports justice system.

6 DDL 1603-bis di iniziativa del Governo: "Deleghe al Governo e altre disposizioni in materia di ordinamento sportivo, di professioni sportive nonché di semplificazione" (Testo risultante dallo stralcio disposto dal Presidente della Camera ai sensi dell'articolo 123-bis, comma 1, del Regolamento, e comunicato all'Assemblea il 12 marzo 2019, degli articoli da 6 a 11 del disegno di legge n. 1603); www.camera.it/leg18/126?tab=&leg=18&idDocumento=1603-bis



Bill n.1602-bis, whose parliamentary procedure began on Thursday 20th June this year, with the first discussion in the Chamber of Deputies, foresees that the Government should issue (within 12 months) legislative decrees aimed at the reorganization of the legislative provisions in sport matters and a redefinition of competences and relationships within the sports system.

In particular, CONI is confirmed as having “*the task of the general power of determination and dissemination of fundamental principles for the discipline of sporting activities, for the fight against all forms of discrimination and violence in sport and for the promotion and development of sport*” and is also recognized as “*a power of control and intervention towards the national sporting federations*” and towards the other bodies of the sports justice system but “*only when serious violations of the sports justice system are ascertained by the federal organs and the regular start and progress of sports competitions are not guaranteed or the impossibility of the functioning of the concerned federal bodies is established*”. With reference to the Federations, the intention appears to support full managerial and accounting autonomy with respect to CONI.

The intent is therefore to enact an overall reform that, even without being able to resort to an instrument such as “organic law” (present in the Spanish legal system but not provided for in the Italian one), draws up a new map of the sports justice system according to government indications and forecasts.

Again, alongside aspects relating to the bodies and institutions of both the sports system and sports justice system, a point of considerable importance, which probably would have deserved an independent discussion also in consideration of the transversal character of the topic, is that relating to arts. 4 and 5, regarding sports work and the profession of sports agent. On this topic, indeed, the Italian situation, also in comparison with the principles of EU law, presents several critical points, due to the limited qualification of “professional worker” which is possible only with a formal qualification requirement on the part of the Federations (and in Italy only 4 National Federations recognize professionalism, 5 considering a hybrid situation regarding boxing) and with total exclusion of female athletes (all Federal Statutes that recognize professionalism, for example, FICG and FIB, foresee professionalism only for male athletes and male coaches, so even our excellent female football players, from this point of view, are, for the purposes of professional qualification, only “non-professionals”). The new bill instead provides for a single figure, “sports worker”, to which, despite the specificity of sports work, a whole series of protections and guarantees must be recognized, both in terms of economic treatment, and protection of health and physical integrity. In particular, letter b) provides for “*the recognition of the principle of specificity of sport and of the sporting work relationship as defined at national level and at the level of the European Union*”.

This is really one of the most important aspects, as, for some years, the Italian qualification of sports work did not appear entirely in line with the principles of the EU, also in consideration of regulations against discrimination but above all for different profiles linked to the figure (created by the courts) of the “de facto professional”. The need to create this “hybrid” figure was determined, on several occasions, by problems and controversies in the hypothesis of international transfers of athletes belonging to Federations which, in Italy, do not contemplate professional sport. The issue of the qualification of sports work and the recognition of workers in a legal way capable of bringing



balance, also in comparison with other European situations and in reference to the EU rules on the protection and movement of workers, represents a positive point in the law.

Against this, however, there remains the feeling that also this bill represents a new "move" on the part of the government to take on ever greater functions and decision-making powers with respect to the sports justice system.

The idea of reducing the area of influence and control of CONI on Federations distorts the traditional configuration of relationships between the bodies of the sports justice system and, in fact, denies the role of CONI supremacy as "confederation of federations". It is almost like wanting to create a system that is no longer centripetal but centrifugal, with the risk of taking on the autonomy of the Federations. That could be considered a good result for the few big Federations, but could also create various critical situations, especially for smaller Federations.

At the moment it is decidedly difficult to make forecasts on the timing and approval of the law that is currently in Parliament, and at the same time, if this law is approved, make a forecast on the timing and methods of drafting and implementing the legislative decrees that the Government has to issue. At this time, perhaps, it is difficult to even make a prediction on the duration of the Government itself and hypothesize that a different Government, with problems related to the situation of the economy and the labor market, will even resume this project to carry it forward.

It is certain that if the bill were to become law, which decrees would then follow, it is easy to hypothesize various disputes linked to the constitutional legitimacy of the provision (under the profile of the so-called over-delegation) and to the contrast with provisions that support the autonomy of the sports justice system (first of all, art.1 of law n.280/2003). It is also easy to hypothesize a more decisive stance by the representatives of the sports justice system itself, which, in this first phase, has shown a spirit of collaboration (sometimes very close to good-natured acquiescence) aimed at not creating conflicts with state authorities.

The changes already established (with the creation of the company "Sport & Salute") and those under discussion would lead to determining a new model of governance, largely in favor of government control, which however could not reject the contribution of athletes and managers who work in the sports world and even of those coming from non-professional sports and working far from the business of sport and the market area, promoting the social value of sport.

The new governance will have to be efficient and will have to propose and impose itself as efficient not only in managerial terms or in the implementation of resources, but as "*good governance*". With regard to this, we can recall, as a paradigmatic value, the words of the Group of EU experts on "Good governance", which, in 2013, developed their own version of the Principles of Good Governance in Sport and gave this definition: *Good governance is "the framework and culture within which a sports body defines policies, establishes strategic objectives, interacts with various stakeholders, monitors performance, assesses and manages risks and reports to its members about its activities and progress, including the definition of effective, adequate and sustainable sports policies and regulations"*



Good Governance is the set of principles of transparency (of action and reporting), of democratic procedures and representation of the various interests (referring to different categories of subjects), of control and supervisory mechanisms, but also and, above all, it is the translation of the principles of solidarity of sport integrity, protection of values that come from the tradition of Olympism and from the Charter of Rights of the international sports justice system.

Good governance of sport can rarely be built and imposed from outside, disregarding the principle of autonomy and the protection of the bodies and subjects of the sporting world itself, rather it should be built through negotiation dynamics and relationships of collaboration, in awareness of the greater efficiency of collaborative dynamics than of conflicting or adversary dynamics.

In the title of this presentation I have deliberately used a generic term but on the basis of what is currently under discussion the question is further articulated: if the government wants to take the governance of the world of Italian sport, what kind of governance does it want to take? A collaborative 'good governance', respectful (at least in part) of the autonomy and principles of the sports justice system or a self-referential governance that would not only question the autonomy of the sports justice system, but above all the organization, credibility and tradition of the entire "world of Italian sport". If the time of choice comes, let us hope it will be a good choice for the sports system, but above all for sports people.