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**SPORTS JUSTICE AND WINTER SPORTS: THE CONTRADICTIONS AND
THE INCONSISTENCIES IN VIEW OF LAW No. 280/2003**

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1) **Introduction: the sports justice system in the Italian order**

Our brief intervention, far from wishing to be exhaustive, has the purpose to verify if, beyond a substantive law on snow (which at least in Italy has its actual benchmarks on law No. 363/2003 and subsequent decrees), there is an actual “lawfulness” of the rights subtended to the various relations that can be established among the various subjects who, by various title, concur in performing and practicing winter sports.

A preamble of methodological character is necessary before entering into dealing with the discussion, and which cannot but concern the general principles of Sports Justice.

Even if the excellent work of Professor Luiso on this subject is still valid (it is now 1975), it is worthwhile mentioning the quadripartite theory of the judicial system¹, as it results, moreover, from a systematic reading of Law Decree No. 220/2003, converted by the modifications of law No. 280/2003, better known to the general public as the law on “sports justice” that in the last 4 years - for various reasons it does not seem necessary to recall in this document – has filled the pages of newspapers with scandals (the last of which of a really remarkable extent) that occurred in the world of football.

Our brief analysis must start from that which, through law and doctrine really accepted, is defined as **technical justice**, in view of which no doubts are present (*rectius*: there should not be any doubt) on the complete indifference of the State (read as absolute lack of jurisdiction) and on the exclusive jurisdiction of endo-associative justice bodies.

This category includes both “field” justice, regulated by umpires and game officials and also justice relative to matches for which – as previously observed – no State interference is present since this subject is of competence of federal bodies.

In particular, it was previously mentioned that the “on the field” technical justice bodies adopt unquestionable² decisions regarding interpretations of the regulations of the game, while control over them is entrusted to federal justice bodies (official or party initiative) when they involve not exclusively technical criteria (think, for example, to the suspension of a game decided by the referee or umpire for repeated fear of incidents and of own and spectators’ safe-being).

¹ Many authors, especially after the coming into effect of law No. 280/2003, abrogating L.D. 220/2003, are inclined towards the inexistence of sports and “administrative justice”. In this case, see DE SILVESTRI, in Sports Law, AA.VV., 2004, Le Monnier; in this document – for completeness sake – we deal with the traditional division into four parts.

² Truthfully, during a competition we record – as far as we know – at least two interventions of technical bodies independent from arbitration. In one case (6 Nations of Rugby), the arbiter may validate a score with the use of the movieola, therefore appointing a collaborator to see the video of the match and to refer “live” to the arbiter, with an earphone; in the other case instead (sailing) there is an immediate claim through judges’ provisions relative to the committee of appeal which decides on technical matters during the unfolding of the regatta.

Decisive also regarding the exclusive jurisdiction of federal bodies, is art. 2 letter a) of law No. 280/2003 according which “...*the discipline of the matters having the following objects is reserved to the sports order: a) compliance and application of regulatory, organisational and statutory regulations of the national sports order and of its articulations for the purpose of guaranteeing the correct performance of sport activities.*”

All FSN (National Sports Federation) also envisage, beyond of often irrelevant detailed differences, a common core of regulations finalized at the safeguarding of essential values: whoever does not comply with such regulations enters into conflict with the system and the latter’s behaviour can integrate a **disciplinary offence**.

Usually, a justice³ regulation is foreseen that contains the procedural regulations for the application of disciplinary procedures and for issuing the relative fines according to the seriousness of the offence.

The most significant disciplinary violation - taking into consideration that the sports order is focused on matches and competitions - consists in the sports offence, better defined as the direct acts (or the attempts) to alter the result of a competition or the carrying out of match for providing to oneself or to others a classification advantage.

It must be remembered that all the FSNs foresee liability not only with respect to the single individual but also to the sports associations for offences from the occurrence of which they would also be indirectly favoured; liability in this sense, can be of objective nature and even presumed with a really surprising forcing of the blaming regime.

Moreover, in many cases it is sufficient for blaming the violation of regulation rules of loyalty, integrity and correctness, primary regulations of the penalty system.

It must be stated then, that regarding to sports justice codes, regulations often do not describe analytically and specifically the conduct to be adopted, for which a discretionary power (excessive) is left to the justice bodies, through the resort of *analogia in bonam* (or *in malam*) *partem*.

Letter b) of art. 2 of law 280/2003 foresees also in this case, a jurisdiction reserve of the sports order, in addition mitigated – as we will see subsequently in detail - by a State’s “invasion” regarding cases of “*relevance for the Republic’s juridical order, concerning subjective juridical situations linked to the sports order*” (textually thus by art. 1 paragraph 2).

Economic justice deals instead with controversies relative to economic relations between athletes and the associations under the patrimonial aspect; and also – but this point is also controversial – of controversies relative to the illegitimacy of sports bond, both of labour nature (for professionals) and associative nature for amateurs.

³ During drafting of the present document, FISU has not sent yet its own Justice Regulation, even if repeatedly reminded; neither has it supplied any decision to its own disciplinary justice bodies. Unfortunately, the absence of the latter prevents us to comment more deeply on the matter, even if by reading of FISU’s by-laws, it is an inferred note (and we hope) compliance to the “Sports Justice Principles” as set forth by the Deliberation of CONI’s National Council dated 22 October, 2003.

Art. 3 of law No. 280/2003 foresees – without prejudice to the arbitration clauses set forth by art. 4 law No. 91/1981 – the jurisdiction of the lay judge regarding patrimonial relations between associations and athletes, and particularly of the Court, performing a role of labour judge, when the controversy concerns a "sports" job.

And in fact, the real problems arise for the *de facto* professionals, that is to say those athletes that perform services similar to those related to an actual job, even if not regulated by "law 91" (only 6 Federations on 43 have acknowledged the provision in object), they carry out performances that are assimilable to all effects to real labour.

Keeping into consideration this fact, for the purposes of our document and regarding FISI (Italian Winter Sports Federation), an alarming question must be raised regarding the fate of relations between athletes, instructors, technicians and associations, which often fall within a general "sports service agreement", similar to a contract of subordinate or para-subordinate work.

Fourth and last category is that of **administrative justice**, moreover opposed by most of the prevailing doctrine of law.

With this it was intended, mainly, the possibility foreseen by the by-laws of some federations to impugn regulatory acts concerning them.

In the FIGC (Italian Football Federation) documents, for example, a competent federal Court is foreseen for the purpose of deciding on the validity of meetings, disciplinary provisions, interpretation and validity of federal regulations.

Today, after law No. 280, the category has assumed a remarkable importance since the regulation foresees that, once sports justice⁴ levels have been exhausted, the actions of the CONI (Italian National Olympic Committee) and even those of the FSN (National Ski Federation) must be impugned before the administrative judge.

These acts in particular, consist in the affiliation's revocation provisions, exclusion from championships, illegitimacy of membership cards (and here things already get complicated) until the impugnation - as also seen this summer - of the decisions of bodies of endo-associative justice's last instance which, nobody knows why, assumed an administrative meta-juridical character.

⁴ It regards the sports prejudicial question: to "complete" the sports justice sessions, it is necessary to have also resorted to CONI's Conciliation and Arbitration Chamber according to the interpretation of the TAR Lazio and State Council.

2) **Inconsistencies and contradictions of law No. 280/2003**

As any good emergency⁵ legislation, law No. 280/2003 – converted by the modifications of the so-called “August Holiday Period” Law Decree No. 220/2003 – shows several contradictions and inconsistencies the main of these are quickly indicated below:

a) Firstly, the provision of art. 2 letter b) resulted being an “empty simulacrum”, relative to the fact that the law should reserve (the conditional here is compulsory) to the sports order, the exclusive jurisdiction on disciplinary proceedings.

Straightaway, in fact, and that is to say since the TAR Lazio (Regional Administrative Court of Latium), 1 April, 2004 No. 2987, established that no prevention existed for state courts each time that subjective, controversial positions exist, even for the relevant State order.

Further confirmation of such principles was given also this summer when FIGC saw its exception being denied of non suit relative to the appeal for lack of jurisdiction in sentence passed by the former General Manager of the Juventus Football Club, Luciano Moggi.

As order No. 4666 of 22 August, 2006, passed by section III ter, it was specified that art. 2, letter b) must be read jointly with art. 1, paragraph 2 and therefore, the independence of the sports order is not valid in case the sanction is not sufficient within the strictly sports sphere, but it needs support from the State general order (in compliance with the same section, sentences No. 2801 of 18 April, 2005 and No. 13616 of 14 December, 2005).

Furthermore:

The administrative judge specifies that a different interpretation of the provision in object would raise doubts on the constitutional legitimacy of the law since it would subtract sports sanctions from the jurisdictional safeguarding of the state judge; and that therefore, an interpretation should be favoured which allows giving a meaning to the rule, compliant with the Constitution.

On the other hand, the TAR concludes by stating that there is no doubt that *“such sanction, due to its nature, assumes relevance also outside the sports order, also considering that Mr. Moggi can be liable for damages claimed by the Juventus Football Club (a company with quotation in the stock exchange) and by the single shareholders and also, in general, regarding the disvalue sentence that such sanction (suspension of 5 years with proposal of expulsion) concerns the subject in question in all economic relations”*.

Certainly, it is very difficult to determine, with no precise criteria and without falling into personal judgement, which are the interference limits of

⁵ On the subject of sports, the emergency legislation is in fact always present. We recall law No. 91/1981 based on “tampon” decree of 1978 with which the Government did not approve the block of the football market (through a provision of Milan Magistrate Costagliola) sanctioned according to the illicit labour intermediation when negotiating players by intermediaries; and then modification of law No. 91/1981 (by law No. 586/1996) took place after the explosive effect on the sports order of the Bosman sentence.

the State judge that, even based on the aforesaid jurisprudence, cannot be specified.

b) Even more surprising on the other hand, is the choice of the legislator to appoint the administrative judge (in this case the TAR of Lazio in first instance) as the sole competent judge for controversies with CONI's and Federations' actions as object.

In fact, if it is possible to share the jurisdiction of the administrative judge theoretically regarding to the impugnation of CONI's actions, certainly it is seen as lack of the system to foresee the same competent judge for the impugnation of the Federations' actions.

It cannot be forgotten, in accordance with the Melandri Decree⁶, and in particular, art. 15, paragraph 2, the FSN and the Associated Sports Disciplines have the nature of associations legal personality of private law, to which the discipline of the civil code is applied and also⁷ relative to executory provisions.

The private nature of Federations, in turn constituted by associations and companies of private law, does not reconcile well with the recalled public nature of its own acts.

Frankly, it is not understood why an association of private law has the faculty to issue acts of public nature.

The irrelevant (but not that much) Federations' approach to condominiums in accordance with articles 1117 and subsequent, of the civil code (also from private body) is needed to recall that condominium deliberations (therefore condominium's actions) can be impugned - obviously - before the Lay Judge; as it should also occur for Federations' actions.

The reason for which the decisions of endo-associative justice bodies become actions of administrative nature which can be impugned by the TAR, is not also clear.

Even CONI's Chamber (which is not a CONI's body and which activities do not involve the public body) makes - according to this public view - decisions of public content, even if it is renowned that it acts as a private chamber and that the sentence is an "informal" ⁸ arbitration.

But the flaw, as previously mentioned, is original: and originates from the Melandri Decree.

c) Even though the TAR of Lazio accepted the aforementioned sports preliminary question (deeming it useful also for mitigating purposes of the dispute), strong doubts concern the said institute.

Firstly, because this does not reconcile well with the parties' precautionary needs; and secondly because the application limits of same can be defined ambiguously and are not always foreseen by the operators.

⁶ It consists of L.D. No. 242/1999, as modified by L.D. No. 15/2004 (the Pescante decree) to reorganize CONI and subsequent modifications and integrations.

⁷ The "strengthening" of the legislator and the recalling of the execution provisions of the civil code have only one meaning when establishing the private nature of the aforesaid bodies.

⁸ See on this point, for an ample excursus DE SILVESTRI, Lo sport nella Costituzione Italiana ed Europea, in *Rivista Telematica della Giustizia Sportiva* (www.giustiziasportiva.it), No. 1/2006

Even today, the intervention of CONI's Chamber is not clear, that in certain specific subjects it is a sort of third degree sports judge while in others is *by-passed* by claimants.

Such justice body has, in any case, the unquestionable advantage to "formally" guarantee impartiality and independence principles of the competent judge; this principle cannot be found in endo-associative justice bodies, the members of which are elected within the competent Federation.

d) "Economic justice" problem.

Probably a good opportunity was lost to redefine the Institute's limits, without prejudice (only) to the arbitration clauses in accordance with law No. 91/1981.

It is an unquestionable principle that only the subordinate sports workers in accordance with law No. 91 can resort to arbitration for relative disputes of labour nature.

Such conclusion is reached by the coordination of various law provisions, both of general and specific type, relative to sports⁹.

To such *de facto* professionals who intend to claim their labour related rights are instead forbidden to resort to formal and informal arbitration.

The latter can in fact be used effectively for labour disputes only if a collective agreement is present, in accordance with the aforesaid art. 412 *ter* of the criminal code, therefore "in cases foreseen by law", as envisaged by the aforesaid paragraph 1 of art. 5 of law No. 533/1973 (that differently from paragraphs 2 and 3, it was not abrogated by the mentioned legislative decree No. 88/1998); but amateurs cannot benefit either from the former provision, reserved exclusively to sports professionals, nor from the latter provision, since no laws are present to this regard.

The logic consequence is on one hand, the invalidity of such arbitration clauses; on the other, disputes related to amateurs cannot be compromised, and also all those relative to other subjects, in particular technicians and executives, and also doctors and paramedics, whose services fall within a labour relation.

It would have been better to regulate the subject, by avoiding a sort of "double line", derived from the objective scarce *appeal* of law No. 91/1981.

⁹ It regards in particular (in the list prepared by DE SILVESTRI) of: a) art. 1966 of the Civil Code, which regulates the ability to compromise, limiting it expressly to available rights; b) art. 409 of the c.p.c., which regulates individual work controversies, of subordinated (No. 1) and para-subordinated type (No. 3); c) art. 5 of law 11 August, 1973 No. 533 which regulates work arbitrations; d) articles 806-808 of the c.p.c., which admits in formal arbitrations, the controversies set forth by art. 409, where this is foreseen in collective agreements; e) art. 4 paragraph 1 of Law No. 91/1981 which foresees a collective agreement only in professional spheres; f) art. 412 *ter* of the c.p.c., as modified by two legislative decrees, No. 88/1998 and No. 387/1998, which regulate informal arbitration on the subject. On this point, see also TOGNON, "Il rapporto di lavoro sportivo: professionisti e falsi dilettanti", in "Giuslavoristi.it, Informazioni e dibattiti sulla Giurisprudenza del lavoro di Piemonte, Liguria e Lombardia, Rivista Giuridica on line", June 2005.

3) The sport justice system within the FISJ framework

The Italian Winter Sports Federation (FISJ) governs its own domestic justice provisions according to its By-laws (with particular reference to articles 55 and 62) as well as with a Justice Regulation and discipline that foresees, among others, procedural regulations for sports sentences.

Art. 55 establishes the informative principles of federal Justice through which the essential elements are sanctioned for the good functioning of internal bodies.

It follows the description of the justice bodies (Federal Public Prosecutor's Office, Regional Single Judge, Justice Commissions of 1st and 2nd instance) as well as articles 57 to 59, a precise listing of the relative competences.

Art. 60, furthermore, is of much interest. This article governs jointly the justice bond and the arbitration clause, two totally different institutions, in our opinion.

This point deserves an in-depth consideration.

The "justice bond" (according to the definition given by LUBRANO, in "Sports bond: towards an announced end" in "Rivista telematica della Giustizia sportiva (telecommunications Review of sports Justice) (www.giustiziasportiva.it) No. 3/2005) is an institution, foreseen in almost all sports orders, on which basis sports members are forbidden to resort to the state judge for the safeguard of their interests on penalty of being subject of disciplinary sanctions.

Under another point of view, it has been also mentioned that through the justice bond, affiliates and holders of membership cards are committed to accept the full and exclusive effectiveness of any provision adopted by the Federation on subjects of its competence.

At a closer glance, the problem concerns two different aspects.

Acceptance of endo-associative justice provisions is justified by the Cassation Supreme Court by associating the preventive waiver to the legal safeguarding to the fact that with the subscription and/or affiliation an arbitration clause is undersigned for informal arbitration based on the parties' consent.

Regulatory bodies would therefore constitute a form of informal arbitration "administered" by the Federation the provisions of which nevertheless have public nature, according to the interpretation given by law.

Both sentence No. 18919/2005 and that very recent No. 21006/2006 agree in deeming that the violation of articles 24 and 102 of the Constitution not subsisting, stating that the basis for sports autonomy are provided for by articles 2 e 18 of the Charter¹⁰.

¹⁰ Again LUBRANO, *op. cit.*, stated that "this institute - of very doubtful legitimacy in relation to art. 24 of the Constitution (right of all citizens to resort to State justice bodies for safeguarding their interests) and law No. 280/2003 (which sanctioned this right for all athletes) – was no longer applied (only in a few rare cases) after the issue of law No. 280/2003". MORO also agrees with, "Critica del vincolo di giustizia sportiva", also in this Magazine with issue No. 1/2005.

Therefore, if the arbitrational nature of federal sentence can be agreed upon¹¹, such a radical thesis cannot be admitted inasmuch that it implies on one hand, the preventive and absolute waiver to any state jurisdiction (which cannot occur: the Moggi case on this point is emblematic regarding to unavailable juridical situations, such as personal subjective rights, or legitimate interests); on the other hand, the application of disciplinary sanctions to whoever dared to "challenge" the Federation in a proceedings before a State judge.

By this reasoning, it is evident that paragraph 4 of art. 60 of the FISI By-Laws (for which "*the non observance of this provision – justice bond – implies the adoption of disciplinary provisions up to expulsion*") is illegitimate and unjust, as also (for another federation) already established by the TAR with sentence dated 22 April, 2005 No. 2244¹².

Not easily understandable is then the third paragraph of art. 60 applied to an arbitrational sentence for the resolution of disputes (which ones?) which are not of competence of the federal justice bodies or the TAR; but in this case, economic disputes between associates and affiliates would be excluded for which, in case a work relation is present, no arbitrational court would be competent, as already extensively refined.

Even FISI's By-laws, as almost all those of the Federations, foresee, in accordance with art. 61, resorting to the CONI's Conciliation and Arbitration Chamber for disputes between FISI and affiliates/associates, once internal appeals and conciliation attempts have been exhausted.

In conclusion, art. 62 foresees the arbitrational procedure and in particular, the last paragraph indicates another sanctioning measure (therefore: *issuing* of disciplinary sanctions in case of non compliance of arbitration) the legitimacy of which is strongly doubted.

4) An interesting case occurred at the Olympic Games: the decision of *chambre ad hoc* by TAS (Sports Arbitrational Court) in the "Dal Balcon" arbitration

In absence of federal decisions on which to discuss (moreover, we deem not particularly so many) and since CONI's Chamber never dealt with disputes involving FISI in arbitrational or reconciliation instances¹³, we deem it worthwhile of interest to briefly mention the arbitration of the *chambre ad hoc* by TAS with headquarters in Lausanne but with detached special sections at Olympic sites during such events) regarding the claim brought about by snowboarder Isabella Dal Balcon.

¹¹ It is also an *ex post* way for legitimizing the juridical nature of endo-associative bodies of which a convincing qualification was lacking: we personally have strong doubts to this regard.

¹² To go back to this summer's case once again, if Juventus had decided to continue – as it stated – resorting to Tar Lazio, FIGC would have initiated a new suit for violating the justice bond and assigned a new penalty of 3 points in the classification. Federal bodies could have therefore resorted to the TAR, and discussions would have continued. It is true instead that punishing who is expelled from the order (in the cases allowed by law) with disciplinary sanctions, it is illegitimate and unjust.

¹³ Coni's Chamber during the last few years dealt almost exclusively with – unfortunately – controversies on football; to complete the information, we point out two arbitration cases of hockey associations (Hockey Club Auronzo in 2005 and Hockey Club Gherdeina in 2002) against "affiliated" FISG but no sentences in winter sports.

The latter, after having participated to the FISU's selection to choose the athletes that would have represented the Italian team in the Turin Games, was informed at the beginning of the competitions of not having being selected for the Olympic team.

The reasons for denial mainly consisted in not passing the selection procedure based on two best results obtained; such criterion nevertheless, according to the claimant, was modified unilaterally from the technical sector in January 2006 without communicating it to the athlete.

Dal Balcon instead, with the criteria in effect since October 2005 resulted selectable.

TAS admitted the snowboarder's claim.

According to the Court of Arbitration, the rule of the two best results is a radical alteration of the original criteria and, whether Dal Balcon was aware or not, it was introduced in the selection procedure too late for it to be fair.

In addition, it is also sanctioned the arbitral nature of the regulation in view of the absence of a discretionary criterion, in compliance with arbitral law on this point.

The consequence is the annulment of FISU's decision to exclude the athlete and the order of the Federation to insert/reintegrate the athlete in the Italian Olympic team (obviously to the disadvantage of a previously selected athlete).

The main question undoubtedly involving the area of technical-sports autonomy, concerns the technical provisions of evaluating the requirements of sports.

It is a consolidated principle that the acts of the sports authorities which involve the evaluation of companies' and athletes' sports requirements, for example for constituting national representations, do not involve so much the control and the application of technical regulations but an evaluation of the "sports merit".

The latter is entrusted to a discretionary judgment and choice of competent subjects, where it is evident that we are on a technical subject of competence of the independent order¹⁴.

In this particular case, nevertheless, the federal regulations (*rectius*: the directives given by the technical sector) had established the participation requirements of athletes of the national representation based on certain and objective elements, so that the discretionary choice became bound creating a legitimate athlete's interest in the correct application of the established criteria.

The Dal Balcon case has in effect a precedent (related precisely to the FISU), in a decision of the TAR of Lazio (section III, 27 November, 1978, No.

¹⁴ Think for example if the CT (Technical Commissar) of the football national team would be bound when summoning players among those who scored more goals in the national championship; or if for goal keepers, he would summon whoever had been subject to less goals. This way discretion and autonomy that the sports order wishes to preserve would be hindered.

679) which reconfirmed the aforesaid principles, annulling a Federation's provision of similar content.¹⁵

In our opinion, the decision of the *chambre ad hoc* is legally irreprehensible but raises disturbing questions regarding the possibility for sports judges to substitute selectors in constituting national teams.

In this particular case, FISJ was certainly "naïve", thus changing the selection criteria for constituting the best team too close to the Olympic event.

The snowboarder legitimately took "advantage" of the situation and placed her own personal interest before that of the team.

It is difficult in any case to share the snowboarder's choice under an ethic and sports profile; and the modest results attained by the entire team confirm that the appeal caused more damages than benefits.

5) Conclusions

It was attempted, without any pretension to be exhaustive in this difficult subject, to provide an as much as possible accurate picture of the various problems that concern endo-associative sports justice.

Prospective of reform and improvements set forth by law No. 280/2003 must be definitely taken into consideration by the legislator.

The jurisdiction in disciplinary session must be resolved, such as the sports preliminary question (giving a more significant role to CONI's Chamber) and the legitimacy of the justice bond that, as formulated, is preliminary to the dispute.

The legislator shall intervene on amateurs, lacking *ad hoc* legislation, keeping into consideration that the dichotomy between professionals and amateurs is just a relict of the system.

The inexpensiveness of the service, as confirmed by the European community law since the mid 70s¹⁶, shall become the reference parameter of work disputes, substituting the merely formal requirement given by the Federations' adhesion (or not) to the professional sector disciplined by law No. 91/1981.

In this way, all disputes of sports workers can be resolved through informal arbitration.

Then, regarding to disciplinary justice, it is evident that the federal commissions have demonstrated their inadequacy since whoever passes the sentence is elected by the Federation and tends, humanly, to defend the body's actions.

May we be allowed to state the obvious principle that the sports judge not only shall be impartial but shall also appear as such: this in endo-

¹⁵ The reasons should be read, still very current even if written 30 years ago, in FRATTAROLO, "L'ordinamento sportivo nella giurisprudenza", 2005, pages 269 and subsequent.

¹⁶ Regarding this point refer to TOGNON, "La libera circolazione nel diritto comunitario: il settore sportivo", in Rivista Amministrativa della Repubblica Italiana, July 2003, issue No. 7. The update of such comment is being drawn up inside a monograph which will soon be published entitled "Appunti di Diritto Europeo dello Sport".

associative proceedings – also for mere reasons of opportunity – does not always occur.

In a reform prospective, it would be appropriate if also the disciplinary justice – at least regarding professional athletes – would be detached from Federations, involving (why not?) CONI, and entrusting their relative powers to the Conciliation and Arbitration Chamber.

Certainly, impartiality, independence and unbiased view would be guaranteed beyond any reasonable doubt.

Finally, the exclusive jurisdiction of the TAR Lazio is not convincing, obviously based on interventions of the various local TARs during summer 2003, but not related to the principles set forth by the Melandri decree, since reference to the Federations' *"political articles value"* is not sufficiently generic.

The in-depth work of these new regulations on sports justice relative to football (and the results of which should be seen in February 2007) can be useful to all Federations in order to undertake a new path of sports justice, with the purpose to overcome those inconsistencies and those contradictions that we briefly mentioned in this document.

Hoping that the desired intervention of the legislator (under the profile of European law we are still far away from a uniform legislation due to the lack of the Community's direct competences) is not rushed by the umpteenth emergency situation.

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BRIEF BIBLIOGRAPHY

- DE SILVESTRI and others, "Diritto dello Sport", 2004
- MORO, DE SILVESTRI, CROCKETTI BERNARDI and LUBRANO "La giustizia sportiva, analisi critica della legge 17 ottobre 2003, n. 280", 2003
- VACCA' (by care of), "Giustizia sportiva e arbitrato", 2006
- VALORI, "Il diritto nello sport", 2005
- SANINO, "Diritto sportivo", 2002.
- SPADAFORA, "Diritto del lavoro sportivo", 2004
- FRATTAROLO, "L'ordinamento sportivo nella giurisprudenza", 2005
- DE SILVESTRI, "Lo sport nella Costituzione Italiana ed Europea", in Rivista Telematica della Giustizia Sportiva (www.giustiziasportiva.it), No. 1/2006
- LUBRANO, "Vincolo sportivo: towards a pre-announced end" in telematic Magazine of sports Justice (www.giustiziasportiva.it) No. 3/2005
- RUSSO, "L'ordinamento sportivo e la giustizia sportiva", in Rivista telematica della Giustizia sportiva (www.giustiziasportiva.it) No. 2/2006
- MORO, "Critica del vincolo di Giustizia sportiva", in Rivista telematica della Giustizia sportiva (www.giustiziasportiva.it) No. 1/2005
- DE SILVESTRI, "Il lavoro nello sport dilettantistico" in Rivista telematica della Giustizia sportiva (www.giustiziasportiva.it) No. 2/2006

- TOGNON, “La libera circolazione nel diritto comunitario: il settore sportivo”, in Rivista Amministrativa della Repubblica Italiana, July 2003, issue No. 7.
- TOGNON, “Il rapporto di lavoro sportivo: professionisti e falsi dilettanti”, in Giuslavoristi.it, Informazioni e dibattiti sulla Giurisprudenza del lavoro di Piemonte, Liguria e Lombardia, Rivista Giuridica on line, June 2005.