Sport Juridification as the Hallmark of a Recent Italian Reform

17 Maggio 2021

di Leonardo Ferrara

1.

In August 1890, the Master of the Rolls, Lord Esher, had to consider an unpleasant bit of sports business involving the Blackburn Rovers Football Club and the Nottingham Forest Football Club. When the time came to deliver judgment (*Radford v Campbell*), it emerged that the defendant Campbell had first signed an agreement to play for Forest for the very generous salary of four pounds a week. Dissatisfied with these lavish terms, he then had himself registered with Rovers. So, when Forest applied for an injunction to prevent Campbell from playing for the Rovers, Lord Esher refused the injunction because these were clubs that had resorted to engaging professionals for the sole purpose of winning games.

In other words, once upon a time, even football was just a game. Today we live in another world. Sport is big business. Above all, as far as we are concerned, sports activity has been subject to a considerable amount of state regulation. It is no longer an area of freedom where participants decide the game rules. Competitive games are increasingly constrained, controlled and licensed. Sports organisations and their employees are now subject to a variety of conventions, statutes, programmes, policies and directives as governments considersports competition regulation instrumental to their political agenda.

This post revolves around the sports law in Italy, since the Cabinet at the end of February, by passing five delegated statutory decrees, introduced a major and comprehensive reform. The reform leaves out only sports litigation and audiovisual rights on sporting events.

2.

Before analysing the reform, let me give you a couple of *heads-up* concerning sports juridification.

First, juridification is also the story of the tensions between sports organisations and individual states. These tensions have no territorial boundaries. Considering the U.S., think of the opposition of the National Collegiate Athletic Association (N.C.A.A.) – the association in charge of U.S. and Canadian colleges and universities sports activities – towards the decision by the state of California in late 2019 to allow college athletes to use their name, image or likeness commercially.

Second. The process of juridification in Italy, only (almost only) in Italy, is at the same time the story of the tension between the public law dimension of sport and its self-regulation. If private autonomy prevails in the United States, state regulation is the dominant ordering factor in Italy.

Bear in mind that C.O.N.I. is a public body, unlike the U.S. Olympic Committee (established in Colorado Springs); indeed, C.O.N.I. is the most influential public sports institution in Italy. Things have recently become to change, for the budget law for 2019 reduced for the first time the C.O.N.I. budget.

Be aware that sport governing bodies, even when they are private, resemble governmental bodies as long as their structure and role as regulatory bodies are concerned. The dominant idea (which I dislike) is that public law principles govern their actions, such as passing legislation or administrative decisions. After all, C.O.N.I. is a public body, as I said. The curious thing is that Italian sports institutions hunt two rabbits at one time. They are part of the state, but they aren’t too. We can also say that Sports Institutions compound the nature of private corporations and state institutions. I know it’s all bizarre!

3.

The reform is envisaged by the delegation statute (the enabling act passed by the Parliament) no. 86 of 8 August 2019, which delegates the Government to enact six statutory decrees in corresponding policy areas.

The first area concerns the adoption of measures in the field of “ordinamento sportivo”. A caveat is fitting. There is no translation for this term. I could translate it as sports legal order, but it would be slightly misleading. To get an idea, we can imagine the sports phenomenon as if it were, to some extent, a state. It is as if sportspeople, sports organisations and the rules these organisations give themselves created an entity comparable to a state. However, the “ordinamento Sportivo” is theoretically not in the realm of the state. You understand that we face a huge problem. Although I am really at odds with this concept, that is how things stand.

The second area concerns the reorganisation and reform of the provisions on professional and amateur sports bodies and the sports employment relationship.

The third area includes measures regarding the reorganisation and reform of safety standards for the construction and operation of sports facilities and legislation on the modernisation or construction of sports facilities.

The fourth area deals with the representation relationships between athletes and sports clubs and access and exercise of the profession of sports agents.

The fifth area is about simplifying the obligations relating to sports organisations.

The last policy covers matters of safety in winter sport disciplines.

4.

The first policy area is the most relevant. However, the Government has not issued the decree yet. It was supposed to redefine, in particular, the role of CONI, bringing it back to its original Olympic mission.

From its birth, in 1942 during Fascim, to the 1999 Melandri and the 2004 Pescante reforms, CONI has been regulating and managing sports in every respect. However, as I mentioned earlier, the budget law for 2019 brought back to the Government most of the financial resources destined for the sustenance of sport. For these purposes, this law notably created a joint-stock company wholly owned by the Minister of Economy and Finance.

We can understand that a reorganisation of governance in sport was therefore necessary. In my opinion, this change of direction is, at least from a theoretical and constitutional point of view (leaving out less edifying practical reasons), definitely acceptable.

The fact is that interests never live in isolation from each other. Sports activity, in other words, may clash with other collective goals, such as health protection, job protection, education, urban planning, infrastructure, the environment, and so on. We could also say that sport is not a matter of interest to athletes only. Hence, as a sectoral policy, it cannot be managed irrespective of the collective interests previously mentioned.

This is why sports institutions cannot ignore the directives of a representative political body such as the Government in the management of public funding. However, until now, this management was entirely in the hands of CONI, an unelected body expression of the world of athletes only. As such, CONI clearly lacks democratic legitimacy.

Given the political conflict between the Government and CONI, the legislative reform decree has not been passed until now. Thereby, the reorganisation of the functions did not follow the redistribution of the budget.

5.

The Government has passed five statutory decrees, the most relevant of which deals with the reorganisation and reform of the provisions on professional and amateur sports bodies. It is divided into six titles or headlines, concerning general principles, amateur and professional sports bodies, individuals, the sports employment relationship, the use of animals, equal opportunities for people with disabilities in accessing military sports groups

and sports groups of civil corps of the state.

I will focus on amateur and professional sports bodies and the sports employment relationship.

A first significant change concerns the distinction between amateur sports organisations and professional sports organisations. Amateur sports organisations carried out non-profit activities while professional sports organisations could even be listed on the stock exchange. The reform now allows amateur entities, set up in the form of a company, to distribute profits to members within an amount not exceeding fifty per cent.

A second important innovation concerns the regulation of the employment relationship in amateur sport. Until now, the legislator had included only professional athletes in an employment relationship. The reform has dictated a unitary discipline of the employment relationship for professional and amateur sports, while it has laid down some special rules for either. However, the reform has at the same time established that amateurs can engage in sport in a personal, spontaneous and freeway, in other words, voluntary and non-profit.

6.

I reserve for another occasion to commenting on the other four decrees. To cut a long story short, I make only a final general observation. It is true that the reformis particularly expansive**,** and it widens the chasm with a De Coubertin ideal of sport. However, we should also admit that behind the incessant juridification, there is a growing necessity to protect the individual and collective interests that sport affects.