THE EXCLUSIVE JURISDICTION OF THE ADMINISTRATIVE COURTS ON THE SPORTING LEGAL SYSTEM: RATIONALE, FEATURES AND LIMITS

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Abstract

The main purpose of this paper is to analyze the exclusive jurisdiction that the administrative courts have over the sporting legal system, under Law No. 280/2003 – a jurisdiction that is regarded as unusual in multiple respects.

Firstly, it is a jurisdiction over acts issued by persons of a variety of different natures, such as the Italian National Olympic Committee (CONI), a public authority; and the national federations of individual sports, which are private associations that, while they operate in the public interest to promote and organize the respective sports, are not formally recognized as public-law bodies.

Secondly, it is a jurisdiction that may be brought to bear only where the matters at issue in the case are of (legal and economic) relevance, and only where all three instances of sporting justice have been exhausted.

Thirdly, it is a jurisdiction that is subject to significant limitations in some of the key areas in which the sporting legal system reaches determinations, such as with respect to sporting disciplinary matters, where the administrative courts' jurisdiction is restricted entirely to the award of compensation, as the Constitutional Court ruled in its Judgments, Nos. 49/2011 and 160/2019.

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1. Introduction

Any analysis of the exclusive jurisdiction of the administrative courts over the sporting legal system presupposes an understanding of the relationship between sporting organizations and the state system, and the way on which Italy's legal system approaches the system of sporting justice. That demands a schematic outline of how the relationship currently operates within the general system (set out in Para. I, below).

Placing the operation of the state system in its proper context reveals how the sport justice system is best understood as a sectoral system, operating with autonomy, and requires one to understand the relationship between the system of sport justice and the state legal system throughout their historical development, before and after the enactment of Law No. 280/2003, which provided for the administrative courts to have exclusive jurisdiction over the system of sports justice (Para. II, below).

2. The state system in its current configuration

In order to properly frame the state system in its current configuration it is necessary to trace the historical evolution of the concept of legal system in general (para. 1), to recognize the corresponding existence of a plurality of legal systems within the state system (para. 2) and to identify the relationship between autonomy in sectoral arrangements, and the supremacy of state power (para. 3).

2.1 The concept of legal systems as it developed historically

To understand fully just how sporting organizations may assert an autonomous legal order, and the relationship to the State as one among a number of legal orders, there must first be an examination of how that legal order is configured, and its proper collocation within the State's legal system.

In the historical evolution of the general theory of law, the concept of the legal system is originally identified, under Kelsen's normativistic doctrine, exclusively in the system of norms put in

place by the State. This approach holds that a legal system may be identified as a regulatory system composed entirely of norms [1].

Subsequently, this approach was superseded by the institutional doctrine of Santi Romano (*L'ordinamento giuridico*, 1918), which held that the element of standardization was not sufficient to express the concept of a legal system, as it is the product of a social conscience put in place by the representatives of the people. It therefore recognized that the elements of "multi-subjectivity" and of pre-existing "organization" reproduce the element of "standardization", with the consequence that the concept of legal system coincides with the concept of society (*ubi societas ibi ius*) [2].

The book[3] was organized into two Chapters. In the first, Romano critically discussed the dominant conception of norma-

1 On this argument, see: F. Modugno, *Normativismo,* Enc. Dir. Vol. XXVIII 543 (1978).

2 On this argument, see: F. Modugno, "*Istituzione*" Enc. Dir. Vol. XXIII, 69-96 (1973) "*Ordinamento giuridico (dottrine generali)*", Enc. Dir. Vol. XXX, 678 (1980). On the influence of the doctrine of Santi Romano on public law, see A. Sandulli, *Santi Romano and the Perception of the Public Law Complexity*, 1 Italian Journal of Public Law 1-38 (2009): "*Santi Romano, the major Italian scholar of Public Law, was protagonist of the «most extraordinary intellectual adventure that any twentieth- century Italian jurist ever lived»: he was the architecture of the complexity of Public Law*"; A. Sandulli, *Santi Romano e l'epurazione antifascista*, 2-2 Dir. Amm. 287-309 (2018). See also: L. Arata, "*L'ordinamento giuridico" di Santi Romano,* 1 Riv. Corte conti, 253 (1998); F. Carnelutti, *Appunti sull'ordinamento giuridico*, Riv. Dir. Proc. 361 (1964); W. Cesarini Sforza, *Il diritto dei privati, Il corporativismo come esperienza giuridica* (1963); G. Cicala, *Pluralità e unitarietà degli ordinamenti giuridici*, *Scritti giuridici per il notaio Baratta*, 62.; V. Frosini, *Santi Romano e l'interpretazione giuridica della realtà sociale*, Riv. Internaz. Filosofia diritto 706 (1989); M. Fuchsas, *La "genossenchafttheorie" di Otto von Gierke come fonte primaria della teoria generale del diritto di Santi Romano,* Materiali storia cultura giur. 65 (1979); M.S. Giannini, *Gli elementi degli ordinamenti giuridici*; *Sulla pluralità degli ordinamenti giuridici, Atti del XIV Congresso internazionale di sociologia*, 455.

3 *L'ordinamento giuridico* was first published in 1917 (Part I) and 1918 (Part II). The second edition, which appeared in 1946, was translated into Spanish (1963), French (1975), German (1975) and Portuguese (2008). It was translated into English only in 2017, by Mariano Croce (*The Legal Order*).

tive legal positivism[4]. In the second, Romano dealt with a series of issues that arose out of his theory mainly related to the question of pluralism[5].

His doctrine of the plurality of legal orders was very influential in Italy (where the pluralism of institutions was subsequently recognized not least in the Italian Constitution). Its international influence has also been considerable (following the vari-

[4] Santi Romano's introduction to his discussion about the dominant conceptions of normative legal positivism early in Chapter I is particularly stimulating: "*All the definitions of law that have been advanced so far have, without exception, a common element, that is to say, the genus proximum to which that concept is reduced. Specifically, they agree that the law is a rule of conduct, although they to a greater or lesser extent disagree when it comes to defining the differentia specifica by which the legal norm should be distinguished from the others. The first and most important goal of the present work is to demonstrate that this way of defining law, if not mistaken in a certain sense and for certain purposes, is inadequate and insufficient if considered in itself and for itself. Consequently, it is to be integrated with other elements that are usually overlooked and that, instead, appear more essential and characterizing*" (S. Romano, *The Legal Order* (2017), Chap. I, par. 1 translated by Mariano Croce).

[5] The conclusion reached in the Chapter II, about the pluralism of institutions, is very important, particularly in the section in which Santi Romano discusses the "*effectiveness*" of the order posed by the institutions and about their characteristics, which could be also *criminal or immoral*: "*As long as these institutions live, it means that they are constituted, have an internal organization and an order, which, considered in itself and for itself, certainly qualifies as legal. The effectiveness of this order is what it is, and will depend on its constitution, its ends, its means, its norms and the sanctions of which it can avail itself. (…) They have legislative and executive authorities, courts that settle disputes and punish, statutes as elaborate and precise as state laws. In this way they develop an order of their own, like the state and the institutions recognized as lawful by the state. Denying the legal character of this order cannot be but the outcome of an ethical appraisal, in that entities of this type are often criminal or immoral*" (S. Romano, *The Legal Order* (2017), Chap. II, par. 30). The institution, in Santi Romano's conception, is "*an organization, a structure, a position of the very society in which it develops and that this very law constitutes as a unity, as an entity in its own right*." (S. Romano, *The Legal Order*, Chap. I, page 12).

ous translations made of *L'Ordinamento giuridico* over the decades, and especially the 2017 English translation by Mariano Croce)[6].

The recognition of a plurality of legal orders requires the acknowledgement of a plurality of rules imposed by different institutions and of a plurality of judicial systems. Other organizations, not just the State, impose laws and have a judicial system.

Once you acknowledge the plurality of legal orders, the issue then is to coordinate and avoid conflicts between State-laws and other systems' laws and between the State jurisdiction and the other legal orders' judicial systems. This is particularly the case in the relationship between State and Sport.

The issues posed by the recognition of the plurality of legal orders have been resolved by the application of the principle of a hierarchy of institutions (whereby the State is recognized as occupying a higher level than all the other legal systems) and of a hierarchy of regulations (whereby only the State may promulgate laws of primary level, and other institutions may promulgate only regulations of a secondary level).

The application of the principle of a hierarchy among legal systems regulations will also govern the relationship between State jurisdiction and the jurisdictions of the other legal systems.

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[6] On the importance of the concept of pluralism among legal orders see also: R. Cotterrell, *Still Afraid of Legal Pluralism? Encountering Santi Romano*, 45:2 Law & Social Inquiry, 539-558; M. Croce, *Romano Santi*, Encyclopedia of the Philosophy of Law and Social Philosophy 1-3 (2020); M. Croce, *Whither the state? On Santi Romano's The legal order,* 11 Ethics & Global Politics 1-11 (2018); M. Croce – A. Salvatore, *Ethical Substance and the Coexistence of Normative Orders*, 39 The Journal of Legal Pluralism and Unofficial Law 1-32 (2007); M. De Wilde, *The dark side of Institutionalism: Carl Schmitt reading Santi Romano*, 11 Ethics & Global Politics 2-24 (2018); F. Fontanelli, *Santi Romano and l'ordinamento giuridico: The Relevance of a Forgotten Masterpiece for Contemporary International, Transnational and Global Legal Relations*, 2 Transnational Legal Theory 67-117 (2011); V. Kondurov, *The Court and the Order: Classic Institutionalism by M. Hauriou and S. Romano*, 4 Vestnik of the St. Petersburg University of the Ministry of Internal Affairs of Russia 39 (2020); G. Itzcovich, *"Something More Lively and Animated Than the Law": Institutionalism and Formalism in Santi Romano's Jurisprudence*, 33:2 Ratio Juris 241-257; C. Mac Amhlaigh, *Constitutional pluralism Avant la Lettre?: on Santi Romano's l'ordinamento Giuridico,* 11 Jurisprudence: An International Journal of Legal and Political Thought 101-113 (2020); A. Salvatore, *A counter-mine that explodes silently: Romano and Schmitt on the unity of the legal order,* 11 Ethics & Global Politics 50-59 (2018); L. Vinx, *Santi Romano against the state?*, Ethics & Global Politics 25-36 (2018).

Sport is an important example of the application of these principles of hierarchy among legal orders and their jurisdictions. In Italy, Law 280/2003 lays down an important principle describing "sporting preliminary rulings" (requiring all instances of sport justice to be completed before the matter may be brought to the national courts). Thus, athletes and sports associations gain access to the State's court only once they have completed all grades of Sport Justice and the final decision of Sport Justice on a single case may be challenged by the national courts.

2.2 The plurality of legal systems in the Italian constitutional system

The consequence of this approach is that every association with elements of "multi-subjectivity", "organization" and "standardization" is recognized as a legal system; and that the existence of a plurality of legal systems must be recognized.

Therefore, also from the standpoint of the general theory of law, the state system includes a series of subsystems, constituting sectoral orders, each of which pursues the interests of a particular sector.

The existence of social legal pluralism is also expressed in the Constitution with the recognition of the positive value of social formations as an expression of the personality of the individual (Article 2), of the principles of autonomy and decentralization (Article 5), of the right of association in general (Article 18) and within the family (Article 29), of trade unions (Article 39) and political parties (Article 49) [7].

After the Second World War, the state model as a centralizing apparatus was replaced by a polycentric state model whose functions were decentralized both, at a local level, to local authorities and, at institutional level, to organizations pursuing collective and public interests.

This model recognizes, within the State, a series of institutions for the pursuit of collective interests in various sectors. These social formations are recognized as sectoral systems (the military order, the orders of the various professions, the ecclesiastical order, the university system, sports organizations, and so forth).

[7] G. Ambrosini, *La pluralità degli ordinamenti giuridici nella Costituzione italiana*, 1 Studi in onore di Giuseppe Chiarelli (1973-1974).

These sectoral systems carry out their activities with a certain degree of autonomy. This autonomy has practical consequences in terms of the organizations' ability to establish self-regulation and standardization.

2.3 The relationship between the autonomy of the sectoral systems and the supremacy of the State

These sectoral systems are created, and develop, within the state system, of which they form part.

This derivation is the consequence of two essential and objective factors:

1) in most cases, given the recognized worth of the public or collective purposes those systems pursue, the State finances them by means of public contributions; and

2) the persons within the various sectoral orders are also present within the state system, carrying on their professional activities within the relevant sectoral order.

It follows that instruments issued within individual sectoral systems can assume legal relevance outside the sectoral framework within which a member of the sector carries on its activities, to the extent that those instruments are detrimental to the legal sphere of the person to whom they are addressed also as a citizen of the State system, and to their fundamental rights (the right of expression of the personality, the right to work, and the right to carry out economic initiatives, under Articles 1, 4 and 41 of the Constitution).

Accordingly, the relationship between the individual sectoral systems of the State should not be expressed in terms of separation, but in terms of autonomy. The sectoral regulations, as an institution existing within the state System, are in any case subject to the control of the administrative and jurisdictional authorities of the State.

The unity of this polycentric state organization is guaranteed by the existence of a hierarchy of institutions determined by the existence of the hierarchy of sources of law. In fact, only the State has regulatory power as its primary source, while all the other sectoral systems have a normative power of a secondary source. It follows that the internal regulations of the sectoral systems must always comply with the principles established by the higher regulations established by the State and the European Union.

The concept of autonomy of sectoral systems, therefore, expresses the recognition of the free sphere of action that such institutions have, though it contains an intrinsic limitation upon this freedom that is a result of having to operate subject to the supremacy of the state system and European system, thus in compliance with the regulations that they establish. In fact, where the legislation of the sectoral order is in conflict with the national or European legislation, which by nature is of a higher order, it may be found to be illegitimate and annulled by the State or European institutions (administrative or jurisdictional).

3. The sports system as a sectoral system

In light of the above regarding the recognition of the existence of a plurality of sectoral orders and the relationships between the autonomy of sectoral systems and the supremacy of state power, the sports system may be recognized as a sectoral order.

3.1 The international and national sports organizations

The current sports system is structured on an international basis. At the apex of the pyramid is the International Olympic Committee (the IOC), which aims to organize and promote sport worldwide.

All the national Olympic committees of the various countries, each pursuing the aim of organizing and promoting sport within their territories, are affiliated to the International Olympic Committee. In Italy, the National Olympic Committee is CONI (*Comitato Olimpico Nazionale Italiano*).

The overall sports system is divided into a series of subsystems that are federations that govern the organization of individual sports. There are also a number of sports regulations, related to the regulation of the individual federations. In particular:

1) at an international level, international sports federations are also affiliated to the International Olympic Committee, and they are tasked with organizing international competitions for individual sports; and

2) at the level of the individual nations, the various national sports federations are affiliated to the national Olympic committees; the national sports federations are tasked with organizing

competitions related to the various sports within their territories and are also affiliated with the relevant international sports federations.

At an intermediate level of the overall sports system are the continent-wide Olympic committees (in Europe, the European Olympic Committee), which have the task of organizing sports competitions at a continental level.

Also at an intermediate level between the international and national federations are the continental confederations, responsible for organizing continental competitions of the various sports disciplines (such as UEFA for soccer in Europe).

This vision of the system acknowledges the system of sports justice as a legal system[8]. It also distinguishes between:

1) a general international sports system, which brings together all of the components within the system ultimately headed up by the IOC; and

2) a general national sports system, which brings together all of the components of the system ultimately headed up by the National Olympic Committee.

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[8] The existence of a legal system within the organization of sports was first recognized in Italy by Massimo Severo Giannini, in 1949 (M.S. Giannini, *Prime osservazioni sugli ordinamenti sportivi*, 1 Riv. Dir. Sportivo 10 (1949); the author returned to the same subject, 50 years on, in *Ancora sugli ordinamenti giuridici sportivi*, Riv. Trim. Dir. Pubbl. 671 1996).
See also A. Albanesi, *Natura e finalità del diritto sportivo*, 2 Nuova giur. Civ. Comm. 321 (1986); A. De Silvestri, *Il diritto sportivo oggi*, Riv. Dir. Sport., 189 (1988); A. De Silvestri, *Il discorso sul metodo: osservazioni minime sul concetto di ordinamento sportivo*, www.giustiziasportiva.it (2009); R. Frascaroli, Sport, Enc. Dir. Vol. XLIII, 513; G. Gentile, *Ordinamento giuridico sportivo: nuove prospettive*, 1 Riv. Dir. Econ. Sport X (2014); S. Grasselli, *Profili di diritto sportivo* (1990); S. Landolfi, *L'emersione dell'ordinamento sportivo*, Riv. Dir. Sport. 36 (1982); P. Mirto, *Autonomia e specialità del diritto sportivo,* 1 Riv. Dir. Sport. 8 (1959); R. Nuovo, *L'ordinamento giuridico sportivo in rapporto al suo assetto economico–sociale,* Riv. Dir. Sport. 3 (1958); V. Renis, *Diritto e sport*, Riv. Dir. Sport. 119 (1962); R. Simonetta, *Etica e diritto nello sport*, Riv. Dir. Sport. 25 (1956); M. Sferrazza, *Spunti per una riconsiderazione dei rapporti tra ordinamento sportivo e ordinamento statale,* 2 www.giustiziasportiva.it (2009); B. Zauli, *Essenza del diritto sportivo*, Riv. Dir. Sport. 239 (1962).

3.2 The claim of autonomy by the sports organizations

Because of its undeniable peculiarities, the sports system has placed emphasis upon its specificity and accordingly asserted its autonomy from the various legal systems of the State.

To that end and in an effort to provide itself with the means to resolve all disputes arising out of sporting activities, the sports system has established a system of internal justice.

Furthermore, in accordance with the provisions of the international sports regulations, the various national sporting organizations have drawn up regulations that prevents affiliated organizations from applying to the courts when seeking to protect their sporting interests, with disciplinary sanctions that apply in the event of their breach.

Thereby, the sporting organizations sought to assert their autonomy from the various state systems by denying both affiliated companies and associations, and individual members (both athletes and trainers) the ability to protect their own interests through the courts.

For this reason, actions that persons within the sports organizations have brought in the national courts with a view to protecting their interests deriving from sports, have been the basis for the imposition of disciplinary sanctions by sports institutions.

This restriction (provided from sport regulations, which is of a lower standing as far as the Italian legal system is concerned) was potentially in violation of constitutional principles, such as the right to protect interests through the courts (Article 24) and the jurisdiction of the administrative courts over acts of public administration (Articles 103 and 113).

4. The historical development of the relationship between sports organizations and the state

Prior to the enactment of Law No. 280 of 17 October 2003, the relationship between sports organizations and the national legal system had not been explicitly addressed anywhere, with legal uncertainty resulting. The bringing of actions by members of the sport system lacked any systematic regulation by the State, with the result that there was sometimes conflict between the sports system and the national legal system.

4.1 Historical uncertainty of the law on judicial protection in sport

Given this historical backdrop, a situation of great legal uncertainty has resulted, one that has been resolved only in part through the contributions of the academic authorities and the often uneven pronouncements of the caselaw.

In particular, prior to the enactment of Law 280/2003, a series of areas of legal uncertainty had arisen with respect to key aspects of the ability of affiliated organizations to bring actions in the national courts.

As a result of the unresolved conflict between the autonomy of the sports system and the supremacy of the state system, there was no unequivocal answer to issues relating to:

1) how the national courts might establish jurisdiction over sports matters;

2) which jurisdiction (the ordinary or the administrative courts) should hear sports issues;

3) how the court should establish geographical jurisdiction; and

4) the extent to which the decisions taken by the state courts in sports matters would be binding.

4.2 The general principles established by the caselaw

The courts endeavored to find a way to provide justice while also delivering certainty.

1. With respect to identifying those situations in which state jurisdiction over sports matters would be considered to arise, the courts had applied what was referred to as the "relevance test", as the Court of Justice of the European Union had established in 1974[9]. Under this test, where the interests involved acquire not

[9] Court of Justice of the European Union, judgments in *Walrave* (12 December 1974, *Walrave* v *UCI*), *Donà* (14 July 1976, *Donà* v *Mantero*) and *Bosman* (15 December 1995).

About Bosman sentence, see: L. Barani, *Journal of contemporary European research* (2005); T. Erikson, *The Bosman case: effects of the abolition of the transfer fee*, Journal of Sports economics (2000); B. Frick, *Globalizations and factor mobility: the impact of the Bosman-Ruling on player migration in professional soccer*, Journal of Sports Economics (2009); S. Kesenne, *Youth development and training after the Bosman verdict (1995) and the Bernard case (2010) of the European Court of Justice*, European Sport Management Quarterly (2011); S. Kesenne, *The Bosman case and European football* (2006); A. Geeraert, *The Legacy of Bosman* (2016); D. Schmidt, *The effects of*

only a sporting but also economic and legal importance, with the ability to adversely affect the legal sphere of the person addressed by the decision, the jurisdiction of the national, and also of the European, courts was recognized. This principle of (legal and economic) relevance was ordinarily applied to all issues that could arise in the context of sports regulation and disciplinary, administrative, and financial matters.

2. With respect to determining the courts with jurisdiction over sporting matters, the caselaw's answer was to rely upon the ordinary rules for allocating jurisdiction. The jurisprudence had considered ordinary courts to have jurisdiction where the matter at issue concerned the protection of "subjective rights", and the administrative courts to have jurisdiction where it concerned the protection of "legitimate interests".

3. In terms of identifying the court with jurisdiction in geographical terms, the caselaw had applied the normal tests under civil and administrative procedural law for establishing geographical jurisdiction.

4. In terms of the binding nature of the courts' decisions, the state judges had tried to ensure that their decisions would be enforceable by deploying such means as they had at their disposal (such as imposing acting commissioners upon organizations), but often this would have negative results, and historically the failure on the part of sports institutions to enforce the decisions taken by the national courts was a very serious issue.

4.3 The inadequacy and inconsistency of the solutions adopted by the caselaw

1. Although the caselaw had tried to establish consistent criteria for resolving the various issues related to sports disputes in the national courts, there remained considerable uncertainty around the rules governing the four major areas identified in the previous paragraph.

Specifically:

1) establishing the jurisdiction of the national courts;

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the Bosman-case on the professional football leagues with special regards to the top-five leagues, www.essay.utwente.nl (2007).

2) assigning jurisdiction among the administrative and the ordinary courts;

3) identifying geographical jurisdiction; and

4) the extent to which decisions by the national courts were binding and enforceable.

1. With respect to the issue of the jurisdiction of the national courts, applying the relevance test to subjective legal situations brought before the courts was perhaps the only one that guaranteed a certain uniformity, although its application to particular situations resulted in:

a) a general principle that an issue failed the relevance test where it entirely regarded technical matters[10];

b) a general principle that an issue would be relevant where it concerned disciplinary issues, whether the consequences were[11]:

b1) definitive (removal from a register, or revocation of affiliation);

b2) temporary (suspension or disqualification); or

b3) financial (in the form of fines);

c) a general principle that an issue would be relevant where it concerned matters of a financial nature[12];

d) a general principle that an issue would be relevant where it concerned administrative matters that were[13]:

d1) absolute, involving a definitive loss of status as a person within the sports system, as where affiliation was forfeited; or

d2) limited, where an entity would remain an associate, but would see its level reduced, as where a club was relegated several divisions.

2. With respect to the allocation of jurisdiction between the administrative and the ordinary courts, the test based upon the

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10 Supreme Court of Cassation, *en banc*, No. 4399/1989; Civil Court of Rome, Judgment of 20 September 1996; Regional Administrative Court of Lazio, No. 1613/1985; and among the academic authorities, G. Naccarato, *Sulla carenza di giurisdizione del giudice statale in ordine alla organizzazione di competizioni sportive*, Rivista Dir. Sport. 548 (1997).

11 Regional Administrative Court of Lazio Sez. III, Nos. 962/1999 781/1999. See also, in Germany, *Krabbe* case, District Court of Munich, 17 May 1995. See also, in the United States of America, the *Reynolds* case, District Court of Ohio, 3 December 1992.

12 Pretura di Roma, 9 July 1994; Pretura di Prato 2 November 1994.

13 Council of State, No. 1050/1995.

subjective legal situation being pleaded was by contrast extremely vague, given the difficulty in identifying the exact nature of the interests that were alleged to have been harmed (distinguishing between "subjective rights" and "legitimate interests"). This difficulty was also a consequence of the issues around the legal nature of sports federations (whether they represented forms of public administration, or private associations) and their activities, and consequently the nature of the acts they carried out (that is, whether they constituted public or private acts).

3. In relation to the issue of geographical jurisdiction, the ordinary principles of civil and administrative procedural law for resolving such issues had been almost systematically bypassed by litigants, who almost always turned to the most local courts, which would often result in favorable rulings, at least on interim matters.

4. As for the binding nature of the decisions made by national courts on sports matters, the failure to define the role of sports organizations within the state system meant that, in some cases, sports institutions that were unsuccessful in the national courts would fail to give effect to the courts' decisions.

The fact that the relationship between the autonomy of the sports system and the supremacy of the state system remained unresolved had, in the field of judicial protection of the interests of sports subjects, resulted in serious legal uncertainty on key issues: in particular, on preliminary questions such as establishing jurisdiction, identifying the appropriate venue also in geographical terms, and also with respect to matters that arose after the fact (such as the enforceability of the decisions of the national courts).

The need to establish certain rules in this area that would provide legal practitioners, sportspersons and organizations alike with legal certainty became increasingly obvious. Above all, the early 1990s saw increasing demand for justice at the state level from individuals and entities within the sports system, partly as a result of the increasing size of the economic interests present within the sector.

The legislature's long-anticipated response was first delivered in urgent circumstances, with the enactment of Decree Law 19 August 2003, No. 220, subsequently converted with amendments into Law No. 280 of 17 October 2003.

5. The jurisdiction of the administrative courts over matters of sports law, under law no. 280/2003

Law No. 280/2003 may have merely codified the principles upon which the academic authorities and the caselaw had settled with regard to the relationship between sports organizations and the state system, but it nonetheless provided an effective response, at least with regard to aspects over which there had been much legal uncertainty.

5.1 The general principle enshrined in Law No. 280/2003: the autonomy of sports system and its limits

Law No. 280/2003 definitively resolved a number of key issues that had remained controversial. In particular, it:

1) endorsed the principle that a national sports system had autonomy as a division of the international sporting order and it established the principle of relevance testing, thereby effectively recognizing that the national courts would have jurisdiction over sports matters where the interests involved where of legal relevance (article 1(1));

2) established that, where the interests did have legal relevance, the administrative courts had exclusive jurisdiction to hear disputes relating to actions by the Italian National Olympic Committee (CONI) or by the national sporting federations, except in cases of financial disputes between peers, over which the ordinary courts would have jurisdiction (article 3(1); this provision is now reflected in the code of administrative procedure, Legislative Decree No. 104 of 2 July 2010, article 133(z));

3) identified, for those matters over which the administrative courts have jurisdiction, the Regional Administrative Court of Lazio, in Rome, as having functional and binding competence (article 3(2), this provision also reflected in the code of administrative procedure, article 135(g)); and

4) effectively ended all attempts by organizations within the sports system to avoid the enforceability of decisions by the national courts.

The Law also contains specific provisions relating to the methods of bringing actions in the national courts, by bringing in "sporting preliminary rulings" (requiring all instances of sport justice to be completed before submitting the matter to the national courts), and regarding specific procedural features of decisions on

sports matters in the administrative courts (including an accelerated trial procedure, reflected in the code of administrative procedure, at article 119(g)).

Under Law No. 280/2003, the principle of the hierarchy of legal systems is implicitly codified. Consequently, the principle of hierarchy of the legal systems and the principle of hierarchy of the sources of regulations applies to the relations between sports organizations and the state system.

It follows that the sporting order, because of its autonomy, has an ability to regulate matters that is of secondary standing and can, therefore, enact rules of a regulatory nature whose terms and principles do not conflict with the higher regulations originating from primary legislation and constitutional law within the state system and within the European legal system.

In the event that a rule of the sport system conflicts with the higher principles of the state system or indeed of the European legal system, it may be challenged directly in the administrative and ordinary courts of the national legal system and also of the European legal system, which will be able to assess the legitimacy and, if necessary, annul the rule directly or impose such changes as may be required to bring it into line with the superior principles.

5.2 The basis under which the administrative courts hold jurisdiction

Law No. 280/2003 provided an important resolution to the issue of the allocation of jurisdiction between the administrative courts and the ordinary courts, specifying that every relevant act of the sport legal system would be within the exclusive jurisdiction of the administrative courts and only financial disputes between peers would be matters for the ordinary courts.

The legal rationale for conferring exclusive jurisdiction over sports subjects to the administrative courts has its legal basis in the recognition of the public nature of the activities carried out by sports federations, as offshoots of the Italian National Olympic Committee, which is defined a public authority under article 1 of Legislative Decree No. 242/1999.

5.2.a The public nature of the activities carried out by CONI and the national federations

In administrative law what matters, for the purposes of identifying the substantive and procedural principles to be applied, is the nature of the activity carried out, and not the nature of the agent, which means the nature of the national federations as private associations is not material, as is recognized by article 15 of Legislative Decree No. 242/1999.

The legislature's decision to assign jurisdiction over all sports matters exclusively to the administrative courts (rather than the ordinary courts) must be considered a positive development, as almost all the activity carried out by the sports federations are public by nature, as is also confirmed by article 23 of the Statute of the Italian National Olympic Committee.

The entire national sports organization that is headed up by CONI, with a view to achieving autonomy and decentralization in administrative action (as required by article 5 of the Constitution), has a task that is of a public nature, to organize and promote sports generally.

In particular, within CONI all of the affiliate sports federations are charged with organizing the particular sporting discipline, in relation to which they are responsible for assuring that the competitions are properly conducted.

The organization of the sport sector is decentralized from the State to CONI, and from CONI to the individual sports federations.

For this reason, the acts by sports federations that are of relevance (in legal and economic terms) beyond the sports system, given their public status, assume the nature of administrative measures. These acts are assumed by the federations in a top-level authoritative public position in the interest of the best pursuit of their institutional activity toward their members[14].

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[14] On the nature of instruments issued by national federations, see S. Cassese, *Sulla natura giuridica delle federazioni sportive e sull'applicazione ad esse della disciplina del parastato*, Riv. Dir. Sport. 117 (1981); A. Clarizia, *La natura giuridica delle federazioni sportive anche alla luce della legge del 23 marzo 1981 No. 91,* Riv. Dir. Sport. 208 (1981); L. Di Nella, *Le federazioni sportive nazionali dopo la riforma,* Riv. Dir. Sport 53 (2000); F. Fracchia, *Sport*, XIV Dig. Disc. Pubbl. 470-471 (1999); F. Luiso, *La giustizia sportiva* 90, 125, 198 (1975); G. Napolitano, *Sport* in S. Cassese (ed.), Dig. Dir. Pubbl. vol. VI 5678-5685 (2006); G. Napolitano, *La riforma del*

5.2.b The application of the principles of administrative law and European law to sports institutions

In Italy, it is understood that the national federations are private entities, with legal rights and duties under the private law, as recognized by article 15 of Legislative Decree No. 242/1999. However, most of the academic authorities and of the caselaw identifies the national federations as having principal, institutional objectives as well as a public interest[15] which is to promote, organize and guarantee the administration of the championship of the particular sport.

Consequently, the activity of the national federations is subject to administrative law, like any other private person who participates in public functions, pursuant to Law No. 241 of 1990.

Article 1(1-*ter*) of Law No. 241 of 1990 establishes that private persons responsible for the exercise of administrative activities must ensure compliance with the principles of administrative law. This provision codified the principle according to which even private parties, such as federations, can perform public functions, through the exercise of authoritative powers ("Private parties responsible for carrying out administrative activities shall ensure that the criteria and principles referred to under this subsection are observed").

Furthermore, this sub-article provides that these persons must operate in accordance with the normal principles that regulate the performance of administrative activities, particularly principles of good administration and impartiality referred to in Article 97 of the Constitution, as well as the principles of economic efficiency, effectiveness, openness and transparency and of all the principles of the European legal system, referred to by article 1 of

CONI e delle federazioni sportive (commento al D. Lgs. 23 luglio 1999, n. 242), 6 Giornale di Dir. Amm. 113 (2000); G. Napolitano, *L'adeguamento del regime giuridico del CONI e delle federazioni sportive (commento al D. Lgs. 8 gennaio 2004, n. 15)*, 10-4 Giornale di Dir. Amm. 353 (2004); M. Sanino, F. Verde, *Il diritto sportivo*; L. Trivellato, *Considerazioni sulla natura giuridica delle federazioni sportive*, Dir. e Soc. 141 (1991).

[15] On the notion of public interest, see A. Benedetti, *Seeking "certainty" between public power and private systems*, 2 Italian Journal of Public Law, 337-358 (2012); G.F. Ferrari, *The concept of "public interest" in the case law of the Italian Court of Auditors,* 2 Italian Journal of Public Law 859-866 (2019); G. Rossi, *Administrative power and necessary satisfied interests. Crisis and new perspectives of administrative law,* 2 Italian Journal of Public Law 280-334 (2012).

Law No. 241/1990 ("Administrative action shall pursue the objectives established by law and shall be founded on criteria of economy of action, effectiveness, impartiality, publicity and transparency, in accordance with the modes of action provided for both by the present Law and by the other provisions governing individual procedures, as well as by the principles underpinning the Community's legal order").

The application of the principles of Law No. 241 of 1990 and of the European law also compels sports institutions to comply with obligations related to the right of access (article 22 of Law No. 241 of 1990)[16] and the regulation of its activity in compliance with the principles of competition (Law No. 287 of 1990) [17].

Law No. 280/2003 requires that sports institutions in their administrative actions operate within the usual schemes for such decision-making, and that activities within the sports system are subject to review and supervision by the administrative and jurisdictional authorities of the State.

5.2.c The issue concerning the application of the Public Contracts Code to national federations

There are numerous issues concerning the application of the Public Contracts Code (Legislative Decree No. 50 of 19 April

16 Regional Administrative Court of Calabria, No. 984 of 18 September 2006; Regional Administrative Court of Lazio, Section III Ter, No. 3996 of 21 April 2009.

17 M. Colucci, *L'autonomia e la specificità dello sport nell'unione Europea; alla ricerca di norme sportive, necessarie, proporzionali e di buon senso*, II-2 Riv. Dir. e Econ. dello Sport (2006); G. Greco, *La dimensione economica dello sport nell'UE: diritto antitrust e diritti televisivi*, www.giustiziasportiva.it (2015); M. Colucci, D. Rapacciuolo, *Lo scontro tra FIBA, FIBA Europa e Euroleague: la vexata questio sulla autonomia delle associazioni sportive e la specificità dello sport*, I Riv. Dir. e Econ. dello Sport 9-24 (2016); A. De Silvestri, *Lo sport nelle costituzioni italiana ed europea*, pubblicato, www.giustiziasportiva.it (2006); D. Gullo, *L'impatto del diritto della concorrenza sul mondo dello sport*, Riv. Dir. e Econ. Dello Sport (2007); A. Piscini, *L'evoluzione della disciplina sulla diffusione dei diritti di immagine relativi agli eventi sportivi – in Italia e in Europa – tra affari, concorrenza e specificità*, Riv. Dir. e Econ. Dello Sport (2008); L. Smacchia, *Il Lodo Mutu: come il Diritto Europeo limita la specificità dello Sport*, in Riv. Dir. e Econ. Dello Sport (2015); M. Vigna, *Il vento antitrust soffia dalla Germania: nubi per il Regolamento Procuratori FIGC*, II www.giustiziasportiva.it (2015); J. Tognon, *L'Unione Europea e lo Sport*, III www.giustiziasportiva.it (2006)

2016) to national federations. The Code expressly applies only to "public administrations" and "public-law bodies", and not private individuals and private-law organizations (article 3(1)(a)).

Thus, the issue is one of whether national federations should be identified as public-law bodies.

Public-law entities are a concept laid down in European Union law on public contracts, originally stated in article 1(b) of Directive 89/440/EEC and then Directive 92/50/EEC (article 1), Directive 2004/18/EU (article 9), Directive 2014/23/EU (article 6.4), Directive 2014/24/EU (article 2.1) and Directive 2014/25/EU (article 3.4) [18].

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[18] On the influence of European law on Italian administrative law, see D. De Pretis, *Italian administrative law under the influence of European law,* 1 Italian Journal of Public Law 7-85 (2010); T. Groppi, A. Celotto, *Diritto UE e diritto nazionale: primauté vs controlimiti*, 14-6 Rivista italiana di diritto pubblico comunitario, 1309-1384 (2004).

About public-law bodies, see: AA.VV. *Organismo di diritto pubblico: nozione e presupposti*, 12 Ventiquattrore avvocato 83-92 (2008); M. Antonucci, *La definizione ampliata di organismo di diritto pubblico nell'unione europea*, 54/5-6 Il Consiglio di Stato 1073-1080 (2003); E. Botta, *Assoggettabilità al Codice dei contratti pubblici dei Fondi paritetici interprofessionali e nozione estensiva di organismo di diritto pubblico e di personalità giuridica*, 2 I contratti dello stato e degli enti pubblici 43-52 (2017); F. Brunetti, *La c.d. "teoria della contaminazione" dell'attività commerciale o industriale svolta dall'organismo di diritto pubblico*, 10-3 Rivista amministrativa degli appalti 231-247 (2005); V. Caputi Iambrenghi, *L'organismo di diritto pubblico*, 8-1 Dir. amm. 13-39 (2000); M.P. Chiti, *L'organismo di diritto pubblico e la nozione comunitaria di pubblica amministrazione* (2000); M.P. Chiti, *Impresa pubblica e organismo di diritto pubblico: nuove forme di soggettività giuridica o nozioni funzionali?* 4s Servizi pubblici e appalti 67-76 (2004); F. Cintioli, *Di interesse generale e non avente carattere industriale o commerciale: il bisogno o l'attività? (brevi note sull'organismo di diritto pubblico)*, 4s Servizi pubblici e appalti 79-89 (2004); R. Garofoli, *L'organismo di diritto pubblico: orientamenti interpretativi del giudice comunitario e dei giudici italiani a confronto*, 4 Foro. It. (1998); R. Garofoli, *Organismo di diritto pubblico, Atti del Convegno 'L'organismo di diritto pubblico e l'atto amministrativo in contrasto con le norme CEE'* (2004); G. Greco, *Organismo di diritto pubblico: atto primo*, Riv. It. Dir. Pubb. Comm. 733 (1999); G. Greco, *Organismo di diritto pubblico, atto secondo: le attese deluse*, Riv. It. Dir. Pubbl. Comm. (1999); B. Mameli, *Gli organismi di diritto pubblico*, Urb. e App. (2000); B. Mameli, *L'organismo di diritto pubblico - profili sostanziali e processuali* (2003); G. Marchegiani, *La nozione di Stato in senso funzionale nelle direttive comunitarie in materia di appalti pubblici e sulla rilevanza nel contesto generale del diritto comunitario*, Riv. It. Dir. Pubbl. Comm. (2002); D. Marrama, *Contributo sull'interpretazione della nozione di 'organismo di diritto pubblico'*, 8/3-4 Dir. Amm. 585-615 (2000); A. Musenga, *Brevi cenni sulla questione dell'organismo di diritto pubblico titolare di diritti speciali ed esclusivi nei settori speciali*, 2 Giustizia amm. 41-46 (2009); V. Pedaci, *Considerazioni sull'organismo di diritto*

Under these Directives, a "body governed by public law" means any entity meeting all three of the following requirements:

1) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

2) having legal personality; and

3) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those authorities or bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the state, regional or local authorities, or by other bodies governed by public law[19].

Therefore, in order to understand whether national federations should be recognized as public-law bodies, one must examine whether they comply with these three characteristics.

The Anticorruption Italian Agency (ANAC, *Autorità Nazionale Anti Corruzione*) determined under its Resolution No. 372 of 23 March 2016 that national federations should be considered public-law bodies, recognizing that they:

1) had been established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character (promoting, organizing and ensuring the proper regulation of sport);

2) had legal duties (as set forth in article 15 of Legislative Decree No. 242/1999); and

3) were financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law or subject to management supervision by those bodies. In relation to this particular characteristic, ANAC acknowledged that not all of the national federations could be said to be mostly financed by CONI (at that time), because there were some federations (including the

pubblico nel processo di sostanzializzazione della funzione amministrativa, 156/2-3 Rivista amministrativa della Repubblica Italiana 261–269 (2005); S. Pelino, *Soggetti pubblici e privati nella nozione comunitaria di organismo di diritto pubblico*, 54-2 Rivista della Corte dei Conti 292–325 (2001); S. Vinti, *Note critiche in merito all'elevazione dell'organismo di diritto pubblico ad archetipo della personalità giuridica 'a regime amministrativo'*, Giustamm 1-8 (2013).

[19] Court of Justice of the European Union, 10 November 1998 (Case C-360/96); 15 May 2003 (Case C-214/00); 22 May 2003 (Case C-18/01); Council of State, Section IV, No. 4711 of 17 November 2002; Council of State, Section V, No. 4959 of 23 August 2006.

most prominent) that received little funding; but that these national federations were nonetheless subject to management supervision by CONI, which held many powers over the federations, for instance to approve the accounts, and to name each federation's external auditors.

ANAC underlined that this interpretation had support in the academic authorities and the caselaw (specifically, TAR Lazio No. 5414/2010; and Council of State, Nos. 4743/2007, 5440/2002, and 1050/1995), which recognized national federations as a limb of CONI (the confederation of the national federations, as article 1 of its own statute states), and ultimately by the inclusion of the national federations in the list of public-administration institutions kept by the official Italian statistical organization (ISTAT, *Istituto Nazionale di Statistica*).

Nevertheless, ANAC's position was challenged by some subsequent caselaw, which held that not all the national federations could be said to be financed for the most part by CONI. There was also criticism of the interpretation given to "management supervision," which, it was felt, required not just a power of oversight but a specific ability to determine the general policy or program of the federations.

After the decision by ANAC, the caselaw split into two camps:

1) one camp recognizing national federations as public-law bodies, on the basis that the powers CONI held over them qualified as management supervision, meaning the national federations were obliged to respect the Public Contracts Code (TAR Lazio Nos. 713/2020, 8092/2017, 6212/2011 *et seq*.); and

2) another camp refusing to recognize national federations as public-law bodies, on the basis that the powers CONI held did not so qualify, and accordingly the national federations had no such obligation (see TAR Lazio No. 3372/2017).

In this situation, two different courts, the Court of Auditors (*Corte dei Conti*) and the Council of State (*Consiglio di Stato*, Italy's highest administrative court), brought the issue before the Court of Justice of the European Union, querying the proper interpretation of "management supervision," and directly whether CONI had effective management supervision over the national federations.

In the first case, the Court of Auditors (under two Judgments, Nos. 31/2017 and 32/2017, made in connection with two lawsuits brought by federations contesting their inclusion on the ISTAT list) sought a preliminary ruling from the Court of Justice regarding the notion of management supervision under European law, particularly whether the position of CONI should be recognized as one of management supervision over national federations.

In the second case, the Council of State (under two Judgments, Nos. 1006/2019 and 1007/2019) applied to the Court of Justice for a similar preliminary ruling. That was in connection with lawsuits that had been brought against two federations, alleging that they had failed to comply with the Public Contracts Code. This second application also sought a ruling on the notion of management supervision and whether CONI was exercising management supervision over national federations.

The Court of Justice, Second Chamber, gave its decision on 11 September 2019 (Joined Cases C-612/17 and C-613/17) on the first application, that made by the Court of Auditors (the application from the Council of State has yet to be decided). It defined management supervision as "the ability of a public administration to exercise a real and substantial influence, on a lasting and permanent basis, on the very definition and achievement of the [non-profit institution]'s objectives, activities and operational aspects, as well as the strategic orientations and guidelines that the [non-profit institution] intends to pursue in the exercise of those activities".

The Court of Justice did not address the specific issue raised, which was "to verify whether a public administration, such as the National Olympic Committee at issue in the main proceedings, exercises public control over national sports federations". This it referred back to the Court of Auditors, for it to resolve in accordance with the general principle it had indicated.

The Court of Auditors has yet to decide the case.

It appears that while the Court of Justice has stated an important general principle regarding the notion of management supervision, it remains unclear whether national federations should properly be considered public-law bodies, and whether or not they are bound to the procedures laid down in the Public Contracts Code.

We may assume that, in the near future (when the two cases have been decided by the Court of Auditors, and when the Court of Justice has ruled on the application from the administrative court), the judgment will not be of universal application to all of the national federations, and in all likelihood the courts will confirm that the national federations are not under management supervision by CONI (given the limitations imposed upon this notion in the interpretation of the Court of Justice).

However, we can suppose that realistically the courts will in deciding upon individual federations, apply the second part of the third requirement ("financed, mostly by the state, or by other bodies governed by public law"). That would mean each court applying the "market/non-market test" and examine whether the particular federation receives more than 50% of its budget from the State, meaning directly from the publicly-owned company Sport e Salute Spa, established by Law No. 145 of 30 December 2018, article 1(629), and consequently:

1) where the federation has generated in revenues more than 50% of its budget, and thus received less than 50% from the State (taking into consideration the last five years), it will not be recognized as a public-law body; and

2) where the federation has generated in revenues less than 50% of its budget and received more than 50% from the State (again considering the last five years), it will be recognized as a public-law body and obliged to observe the Public Contracts Code.

5.3 Features and limits of the jurisdiction of the administrative courts on the sport legal system

The jurisdiction that the administrative court holds over the sport legal system is unusual, in that it is exclusive jurisdiction that nonetheless may only be exercised where the subjective legal situations submitted for consideration are considered relevant, and only once there is a "sporting preliminary ruling" in place, and subject also to further limits when dealing with sports disciplinary matters (meaning the purely compensatory jurisdiction).

5.3.a The exclusive jurisdiction of the admin. Court

On the basis of the considerations set out above regarding the public nature of the activities carried out by CONI and by the

national federations, and the consequent application of the principles of administrative and European law to sports institutions, the legislature has in relation to sporting matters allocated exclusive jurisdiction to the administrative courts.

That jurisdiction extends to disputes relating to instruments issued by any of the sports institutions that make up the organization of sports. In particular, it extends not only to instruments issued by CONI or a national federation, but also by any of their offshoots, such as the national leagues (when organizing the professional championships) or the referees' association (in ruling on issues relating to referees' work) [20] or as sport justice (in deciding sports issues)[21].

Lastly, this jurisdiction also includes disputes relating to the implementation and enforcement of the instruments issued by such subjects.

In light of the general principles governing the relationship between sporting organizations and bodies of higher standing (Italian and European court systems), it may be observed that decisions reached by sports institutions in relation to specific persons and organizations may be challenged in the administrative courts, since they are by nature regulatory acts, with the consequence that they may be deemed illegitimate where their terms breach regulations of higher standing in the Italian and European systems[22].

Regulatory instruments issued by a sporting organization may be challenged in the administrative courts be that because the instrument is:

1) directly detrimental to the interests of the litigant; or

2) because represents an underlying instrument, and its *application* has been detrimental to the litigant's interests.

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[20] Council of State, Sixth Section, No. 6673 of 14 November 2006.

[21] Regional Administrative Court of Lazio, Section I *Ter*, No. 11146 of 10 November 2016; Regional Administrative Court of Lazio, Section I *Ter,* n. 1163 of 23 January 2017. On these decisions, see A. Petretto, *Risarcimento danni a seguito di sanzione disciplinare: nota a sentenza n. 1163/2017 del TAR Lazio*, 1 www.giustiziasportiva.it (2017).

[22] Regional Administrative Court of Lazio, Judgments Nos. 33423/2010 to no. 33428/2010 (finding some of the Italian regulations on players' agents unlawful). On this, see G. della Cananea, *Giudice amministrativo e giurisdizione sulle regole [Commento a Corte di cassazione, Sezioni unite civili - ordinanza 17 aprile 2003, n. 6220]*, 9-12 Giornale di diritto amministrativo, 1287-1290 (2003).

In relation to these appeals, the administrative courts have recognized that they have complete jurisdiction over the rules of sports regulations, even if they constitute an expression of "technical discretion".

5.3.b The purely compensatory jurisdiction in sports disciplinary matters (Constitutional Court Nos. 49/2011 and 160/2019)

A further issue of great discussion in the academic authorities and the caselaw was the reservation made in favor of sporting justice, in relation to sports disciplinary matters, by article 2(b) of Law No. 280/2003[23]:

1) the question of the rule's constitutional legitimacy was brought before the Constitutional Court by the Regional Administrative Court of Lazio (ruling No. 241/2010), on the basis of a potential violation of Articles 24, 103 and 113 of the Constitution, given that such a rule would prevent access to the administrative courts, in relation to a field (meaning, sports disciplinary issues) in which there are legally and economically important positions, and

[23] Specifically, the Regional Administrative Court of Lazio interpreted article 2(b) as a reservation that was by no means absolute, and it recognized the jurisdiction of the administrative courts over sporting disciplinary matters where the sanction imposed was relevant on the basis of the principle set forth in article 1. See Regional Administrative Court of Lazio, Section III *Ter*, Order No. 4332 of 28 July 2004; Order No. 2244 of 21 April 2005; Judgment No. 2801 of 28 April 2005; Judgment No. 13616 of 14 December 2005; Order No. 4666 of 22 August 2006; Order No. 4671 of 22 August 2006; Judgment No. 7331 of 22 August 2006; Order No. 1664 of 12 April 2007; Judgment No. 5280 of 8 June 2007; and Judgment No. 5645 of 21 June 2007.
On these decisions, see P. Amato, *Il vincolo di giustizia sportiva e la rilevanza delle sanzioni disciplinari per l'ordinamento statuale; brevi riflessioni alla luce delle recenti pronunce del TAR Lazio*, II-3 Riv. Dir. Econ. Sport (2006); A. Bazzichi, *Diritto sportivo: illecito disciplinare*, www.filodiritto.com; G. Manfredi, *Osservazioni sui rapporti tra ordinamento statale e ordinamento sportivo (nota a TAR Lazio, ordinanze nn. 4666/2006, 4671/2006 e 7331/2006*, 5-9 Il Foro Amm. TAR 2971-2986 (2006).
The interpretation of Regional Administrative Court of Lazio was not accepted by the Council of State, which observed that the reservation that article 2(b) made excluded the administrative courts from having any possibility of jurisdiction over sporting disciplinary matters (Judgment No. 5728/2008).

that was substantially prejudicial to the right to judicial protection; (24)

2) in relation to this question, the Constitutional Court, gave a discursive judgment, No. 49/2011, finding that the rule in question should be interpreted as precluding the administrative courts from annulling the penalty, and enabling those courts to provide remedies solely in the form of compensation; in light of this interpretation, the Court considered the rule in question to be reasonable and not unlawful, as an expression of a balance between the opposing interests involved (the autonomy of the sport system and the right to judicial protection)(25);

3) this system for the award of compensation for damages in the administrative courts on sporting disciplinary matters, has been criticized by the academic authorities(26), which suggested that such a solution:

c1) failed to provide effective and full jurisdictional protection to the interests of those who were the subject of disciplinary sanctions;

c2) denied the administrative courts effective and complete jurisdiction over disciplinary sanctions; and

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24 On this ruling by the Regional Administrative Court of Lazio, see V.A. Greco, *La Legge 280/2003 alla luce dell'ordinanza del TAR Lazio n. 241/2010*, 3 www.giustiziasportiva.it (2010).

25 On these judgments by the Constitutional Court, see F. Dugati, *La creazione giudiziale del diritto nelle decisioni dei giudici costituzionali*, 13-1 Diritto pubblico 155-178 (2007).

26 See, in particular, the first issue of Rivista di Diritto dello Sport (http://www.coni.it/rivista-di-diritto-sportivo.html): F. Blando, *Finale di partita. La Corte Costituzionale "salva" l'autonomia dell'ordinamento sportivo italiano*; S. Fantini, *La soluzione di compromesso della Sentenza n. 49/2011 della Corte Costituzionale*; T.E. Frosini, *La Giustizia sportiva davanti alla giustizia costituzionale*; A. Scala, *Autonomia dell'ordinamento sportivo, diritto d'azione ex article 24 Cost., effettività della tutela giurisdizionale: una convivenza impossibile?;* A. Palmieri, *Sanzioni disciplinari sportive, ricadute su interessi giuridicamente rilevanti e tutela giurisdizionale: la consulta crea un ibrido*; M.R. Spasiano, *La sentenza n. 49/2011 della Corte Costituzionale: un'analisi critica e un tentativo di "riconduzione a sistema"*.
See also A.E. Basilico, *l'autonomia dell'ordinamento sportivo ed il diritto di agire in giudizio: una tutela dimezzata? (comm. A Corte Cost., sent. 11 febbraio 2011, n. 49)*, 17-7 Giorn. Dir. Amm. 733-741 (2001); F. Greco, *Ordinamento sportivo e statale: dibattito aperto e riflessioni a distanza di qualche anno dalla storica sentenza della Corte costituzionale n. 49/2011*, 10 Giustamm 1-13 (2015); S. Placiduccio, *La Giustizia Sportiva dopo la sentenza n. 49/2011 della Corte costituzionale*, 3 Riv. Dir. Econ. Sport 41-56 (2016).

c3) exposed sports institutions to the risk that damages could be imposed that may be substantial, as compared to the more limited risk of disciplinary sanctions' cancellation;

4) in light of the controversy around this issue, the Regional Administrative Court of Lazio by its Ruling No. 10171/2017 again referred the question of this rule's constitutional legitimacy to the Constitutional Court, emphasizing its disagreement with the interpretation that the court provided in its Judgment No. 49/2011 and highlighting the potential violation, in addition to article 24, above all, of articles 103 and 113 of the Constitution;

5) the Constitutional Court, in its Judgment No. 160/2019, affirmed the interpretation it had set forth in its Judgment No. 49/2011, underlining those issues around Articles 103 and 113 of the Constitution had already been previously considered in that judgment [27].

6. Conclusions

In light of the above, it appears that the entire Italian national sports system operates as an autonomous, sectoral order, while nonetheless remaining subject to the exclusive jurisdiction of the administrative courts because of the fact it carries out functions of a public nature, which means that CONI and the national federations are required to apply the principles of administrative and European law. That aside, it remains unclear whether national

[27] On Judgment No. 160/2019 by the Constitutional Court, see G.P. Cirillo, *La Giustizia Sportiva in Italia*, www.giustizia-amministrativa.it; A. Gragnani, *I "punti di contatto" fra autonomia dell'ordinamento sportivo e diritti costituzionali come "rapporti multipolari di diritto costituzionale. (Sindacato "complessivo" di proporzionalità e "regola generale di preferenza" in funzione di monito preventivo al legislatore nella sentenza 160/2019 della Corte costituzionale)*, 1 www.giurcost.org (2020); L. La Rosa, *La tutela reale in caso di sanzioni disciplinari sportive: profili di giurisdizione (nota a Corte Costituzionale, sentenza 25 giugno 2019, n. 160)*, in www.ildirittoamministrativo.it; E. Lubrano, *La giurisdizione meramente risarcitoria del giudice amministrativo in materia disciplinare sportiva*, 23 Federalismi (2019); S. Papa, *L'effettività della tutela e autonomia dell'ordinamento sportivo: la Corte costituzionale conferma la legittimità della disciplina vigente*, 7 Giustamm (2019); F.G. Scoca, *Autonomia sportiva e pienezza di tutela giurisdizionale*, 3 Giur. Cost. 1687 (2019); A. Trentini, *Giustizia Sportiva: la Consulta scioglie i nodi*, www.studiocataldi.it; A. Trentini, *Giustizia sportiva e giurisdizione. La Consulta e la stabilità delle regole nella sentenza n. 160 del 25 giugno 2019*, 7 Giustamm (2019).

federations are truly public-law bodies and whether they are accordingly obliged to observe the Public Contracts Code.

Regarding more specifically the rules that currently govern the jurisdiction of the administrative courts over sporting matters, the conclusions are only partially positive.

On one hand, Law No. 280/2003 has had the great merit of at least providing certainty over fundamental aspects of the relationship between sports organizations and the state system. In particular, it is clear that the sports system is a sectoral order situated within the state system. In this way, the legislature has ultimately resolved issues regarding the extent to which the State has any jurisdiction over national sporting issues, how jurisdiction over such issues should be allocated (among the ordinary and the administrative courts) and how the court with the appropriate geographical jurisdiction should be identified.

On the other hand, with reference to sporting disciplinary matters, article 2(b) of Law 280/2003 explicitly attempted to leave such matters exclusively to the sporting organizations. The result has been the judgments of the Constitutional Court, Nos. 49/2011 and 160/2019, whereby the courts have as a halfway house assumed the ability, notwithstanding that legislative provision, to award compensation. There are clearly constitutional issues that remain unresolved, however. Neither the affiliated organizations (clubs, federations) nor the individual members (athletes, trainers) are being provided with the administrative courts' full and effective protection, which is their constitutional entitlement. The only remedy that those courts may offer is compensation, as they are unable to overturn the sanction imposed. It would in my view have been preferable for the Constitutional Court to have declared article 2(b) unconstitutional under Articles 24, 103 and 113, as the Regional Administrative Court of Lazio suggested in its referral, as this would have been provided a means by which the administrative courts could both overturn sanctions, in particular and, more broadly, exercise their jurisdiction to the fullest extent.