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Abstract degli articoli
Saggi

ANDREA PANZAROLA

Il Commissioner. Origini e sviluppo del sistema di governo delle quattro leghe più importanti dello sport professionistico americano

The author deals with the role of the «commissioner», the organ at the head of the professional sport leagues in the North-american system.

The analysis takes into account various aspects, specifically focusing on the powers of the commissioner.

Particular attention is drawn to a historical explanation of its origins and evolution, as well as to its current nature, its relation with the different figure of the «system arbitrator», and, more in general, to the means of control of sport arbitration in the U.S. jurisdiction.

EMANUELE INDRACCOLO

Le certificazioni sanitarie di idoneità all'esercizio di attività sportive

The paper analyses the rules concerning medical certifications required for sporting activities, as foreseen by the law. The analysis focuses on the evolution of this rules and aims to prove that the criteria presently required to differentiate the various certifications seem to be inconsistent with Articles 2, 3 and 32 of Italian Constitution. It is also criticized the use of dubious categories of sport activity as «professional», «agonistical», «non-agonistical», «recreational» or «amateur». It is necessary, therefore, to better regulate the field, even with the contribution of the Olympic Committee and sports federations, with the aim of ensuring an effective protection to the athlete as a person, based on the nature of the sport activity concretely practiced.

CRISTINA ASPRELLA

L'informazione all'atleta nel divieto di associazione: natura processuale e requisiti Sostanziali

The author comments on the provision of art. 2.10 of the Antidoping Sporting Code prohibiting athletes the association with support staff or inhibited disqualified for doping founding the source in the need to combat doping also by the boycott of the entourage of the athlete who has been sanctioned because of this illicit conduct. In particular, the author examines the similarities and differences compared to the similar provision of the WADA Code 2015 and then devoted herself to the study of the nature of the information that must be provided to the athlete under the provision to integrate the incriminating the

ban on association. The author, among the two possible alternatives, namely the configuration of that information as a condition of admissibility of the claim or for proposing the same believed to adhere to the last of the two hypotheses. In particular, it argues that under art. 2.10 seems to configure the two conditions laid down therein – information to the athlete and the reasonable opportunity to avoid counseling or support staff inhibited – what conditions necessary for the very existence of the ban. The author then examines the list of «unapproachable» recently published by Wada believing that the list can not in any way replace the athlete prior information request in writing from the norm examined.

SERGIO FIDANZIA – ANGELO GIGLIOLA

Il project financing per gli impianti sportivi alla luce delle linee guida dell’Autorità Nazionale Anticorruzione (ANAC) del 23 settembre 2015

The project financing procedure is a valid instrument to face the underdevelopment of sports complexes despite the lack of economic resources available to realize public facilities. In order to guarantee the effectiveness of the procedure, Regions could act as central purchasing bodies; in fact, because of their territorial dimension they can manage the technical issues better than municipalities.

Furthermore, if Regions could operate as central purchasing bodies it would be easier to guarantee the value for money of sports complexes realized through project financing procedure.

AUGUSTO PRETA

Restrizioni verticali e ruolo dell’esclusiva: i diritti audiovisivi del calcio tra efficienza economica e benessere sociale

Premium contents (i.e. in particular, sports events and football, first-release Hollywood movies) are seen as primary means of differentiation among broadcasters in both the pay-TV and the free-to-air sector, given their ability to attract high audience and, as a consequence, to drive subscriptions and advertising investments. Moreover, the sale of sports broadcasting rights is a key element for the football industry, being the biggest source of revenue for most sports organizations. The paper analyses the incentives for media operators to opt for an exclusive distribution agreement (across platforms) of premium contents rather than a non-exclusive one: it then compares the effects of both types of dealings on the competitive process and on consumer welfare. Our specific field of inquiry is represented by sport premium rights of the Italian professional league (Serie A). Firstly, the paper surveys the exclusive distribution theory in general economic literature, recalling the main contributions on this subject; the theoretical framework is then applied to the media industry and, specifically, to content owners’ incentive to sell on exclusive basis. Secondly, we focus on the downstream market (the broadcasters’ one) and examine whether and under which conditions it is profitable for rights’ purchasers to resell contents to their competitors. Finally, the main theoretical findings are applied to

the selling procedures of audiovisual football rights, suggesting a potential overhaul of the Italian current model towards the European best practices.

MARCO CAPPÀ – MARCO COSTANTINI

Gli aiuti di Stato e il calcio

This article analyses the application of EU State Aid Law on football either considering (direct or indirect) funds to clubs or building and renewing of infrastructures. The European Commission has dealt with a series of cases implying potential violation of EU State Aid Law: the focus is centered on Spain and the fiscal measures that could have favoured some professional football clubs. Then, the attention moves towards the construction of sports infrastructures with a commercial exploitation; the public support for stadiums might benefit certain undertakings and, therefore, it could involve State aid.

MARGHERITA PITTALIS

La responsabilità in ambito sciistico

This work analyses liabilities in skiing: particularly, it focuses amatory and competitive skiing and the nature dangerous or not of their respective liabilities and also liability in case of clash among skiers; CONI and FISI liability as sport events organizers, and the liability of the others organizers, of ski resorts' managers, of skiing teachers and sport referees.

KAREN PUTZER

Gli aspetti della responsabilità legati allo sci agonistico

The aim of this paper is to discover the legal aspects about liability linked to competitive ski. First of all, it's very important to understand if the ski competition planning involves strict liability, due to dangerous activities, instead of tort liability. Furthermore, it's necessary to individuate the accountable subjects: the ski piste validation, both in a singular competition and plural competitions, and also joint and several liability deserve a particular focus. About that, Italian jurisprudence considered two legal theories: the first was about the possibility of establishing a strict liability and the second sustain the opposite theory of tort liability. On the other side, the Austrian jurisprudence considered both competitive sport activity and ski competition planning dangerous themselves. Lastly, a gradual increasing of the level of liability should be evaluated in order to guarantee an equal compensation in favor of competitive accident's victims.

Giurisprudenza commentata

Corte di Cassazione, sez. III, 22 ottobre 2014, n. 22344, con nota di MATILDE RATTI, Scontro tra sciatori e responsabilità del gestore

The Italian Supreme Court's decision deals with the case of two skiers colliding while skiing downhill. The Court focuses on the liability of the ski resort for the damages suffered by the plaintiff. In fact, in the first and second degree, the Regional Courts granted the plaintiff with compensation by the other skier, but no amount was found to be due by the other resistant, the ski resort. The plaintiff brought then the case before the Supreme Court. He asked the Court to recognise the existence of the ski resort's obligation to supervise skiers on its slopes. The Supreme Court did not acknowledge any contractual liability to supervise skiers on the company, since it would not have been reasonable to require such supervision in accordance to the ski pass contract. The Court reached the same conclusion in relation to the noncontractual liability: the obligation to supervise skiers could not be implied by article 2043 of the Italian Civil Code, the general provision on non-contractual liability. Nevertheless, in this decision, the Supreme Court stated the juridical principle according to which failure to oversee the skiers' behaviour on the slopes can lead to non contractual liability only if the ski resort has been promptly informed of the presence of a dangerous skier on the ski slopes. In this specific case, no evidence of the ski resort being informed was brought before the Supreme Court's attention. On the contrary, in this decision the Court seems to suggest that the plaintiff would have had a better chance to obtain compensation by grounding its requests on article 2051 of the Italian Civil Code, the provision dealing with the liability for things in someone's care.

Corte di Cassazione, sez. feriale penale, 13 agosto-15 settembre 2015, n. 37267; Corte di Cassazione, sez. IV penale, 30 settembre-9 novembre 2015, n. 44796, con nota di STEFANIA ROSSI, Ancora sulla posizione di garanzia del gestore di aree sciabili. Due recenti sentenze e alcune notazioni critiche

The Criminal Court confirms the orientation that the fault of the operator of ski areas, in relation to indictment of manslaughter and negligently causing injury, is in breach of the obligation to take all necessary care to prevent atypical dangers, even outside the track, to which the skier can encounter and extends the possible liability to cover the case in which external atypical dangers, not properly neutralized, have given due to a reckless behavior. In the two pronouncements is likewise confirmed the orientation that the warranty position originates from the ski pass contract.

Tribunale di Trento, 16 aprile 2015, con nota di FILIPPO BISANTI, La responsabilità della scuola e del maestro di sci per caduta autonoma di un'allieva tra obblighi di vigilanza e autoassunzione del rischio: una pronuncia di merito.

The judgment under review analyzes the liability of a ski school for damages suffered by a ski-trainee during a lesson. The ski instructor is required to maintain a continuous

control on their students, giving them the necessary lessons and assigning exercises proportionate to their abilities, making sure that the lesson is conducted safely. In order to exclude the school's responsibility about an accident occurs to a student, fell independently, it cannot be simply invoked the principle of self-risk-taking but it is always essential to prove that the concrete accident was produced by causes not attributable to them.

Storia dello sport
a cura di Francesco Bonini

ANTONIO CAPPUCCIO

Sognando Londra: il rientro dell'Italia nel movimento olimpico nel secondo dopoguerra (1944-1948) 513

The aim of the research is to analyze the relationship between Italy and the Olympic Movement after the Second World War (1944-48), looking at the interconnections between national and international arenas and the processes of inclusion and exclusion. A special focus will be dedicated to the Italian «non-exclusion» from the IOC and the quick but not always easy return in some ISF, which excluded Italian athletes and official for their Country's role in the war.