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Abstract degli articoli
Saggi

PIERO SANDULLI

Il Nuovo giudizio relativo alle ammissioni e/o esclusioni dalle competizioni

The Law 30th December 2018, n. 145, in addition to the reform of CONI Servizi S.p.A., deals with the sports organisation, especially with sports justice. This contribution analyses the new judgment concerning admissions and/or exclusions from sports competitions, as defined by the clauses 647 to 650 of the article 1 of the L. 145/2018. In particular, the author highlights that, despite the previous regulatory framework (L. 280/2003), the new system creates a special judgment for admissions and/or exclusions from sports competitions, in which can fail the phase proper to sports justice, entrusts the matter to the administrative judge only. This choice by the Italian legislator, if responds to the need to quickly resolve sensitive issues, such as those concerning starting championships, integrates a considerable step backwards with respect to the autonomy system of sports justice advocated by the L. 280/2003.

CARLO ROMBOLA' – JACOPO IERUSSI

E-sports: cosa sono?

The present work deals with the matter of eSports, a theme which presents many points in common, both from agonistic and legal point of view, with the traditional sports. Therefore, the authors have treated the topic starting by the analysis of analogies and the differences between these two categories of sport. Following, the article shows the most important features of the Italian experience in comparison with the one of the rest of the world. The focus, also, has been placed on the punishable behaviours, as well as the doping and gambling issue. A views on the perspectives of development of eSports concludes the present work, with regards, in particular, on what we should do in order to overcome the difference with traditional sports.

DECIO NICOLA MATTEI – VITTORIO OCCORSIO

Il sistema sanzionatorio previsto dal Regolamento FIFA sullo Status e sui Trasferimenti dei Calciatori

Recently FIFA has introduced two new articles in the FIFA rules related the status and transfers of players (RSTP), with the aim of counteract the issue of non-payment: art. 12 bis (introduced in 2015) entitled "overdue payables" and art. 24 bis (introduced in 2018) "execution of monetary decision". The first rule (article 12 bis) allows the creditor to demand the FIFA bodies (Dispute Resolution Chambers or Player's Status Committee depends on their relative competence) not only the right of asked the debtor to pay the

amounts due in accordance with the agreement, but also to impose certain penalties for the breach of contract.

So far, this first rule, has been applicable with a lot of success, since until December 31, 2018 there were over 260 measures issued by the FIFA bodies. The second rule (Article 24 bis) instead, provides the possibility to imposed penalties if the monetary decisions adopted by FIFA bodies are not executed; the rule has been introduced recently and therefore the legal precedents still very few. After the theoretical analysis of the two rules, some operational aspects have been examined – including also the existing legal precedents – also some operative aspects of the application of art. 12 bis, the applicable penalties and the liability exemptions of art. 12 bis, as well as the connection between this provision and art. 24 bis.

FLAVIO RODI

L’NBA Collective Bargaining Agreement del 19 gennaio 2017: uno sguardo al Sistema della National Basketball Association

The NBA Collective Bargaining Agreement signed by the NBA and the Players Association aims to rule every aspect of the relationships between the league, the franchises and the players. Such agreement reveals how complex the NBA system is; people who are responsible for the franchise’s success have to act as they were companies’ directors. They must deal with complex contractual and tax matters in order to successfully manage the franchise.

GIORGIO DAIDOLA

L’evoluzione del turismo invernale: la pratica dello scialpinismo e del fuoripista tra illusioni e preconcetti

Modern skiing, including ski mountaineering, has forgotten its origins, has become a sport detached from the environment. The serious accidents both on the slopes and as a consequence of avalanche phenomena that also involve so-called expert skiers and mountain guides are the consequence. Through a reflection on the great skiers of the past and on the different phases of winter tourism development, the Author proposes a way of experiencing skiing that is less dangerous and more aware.

ROBERTA VIGOTTI

La sicurezza in montagna: doveri e responsabilità nella pratica sciistica

Responsibilities related to the definition of mountain activities and the related contractual types: responsibility of the ski slope managers and facilities, user responsibility. Concession and authorization: liability as a cause of control and revocation powers. Public administration ordinance powers; emergency management. The off-piste and the de facto track, in light of the principles of trust and good faith.

LINA MUSUMARRA

La gestione della sicurezza negli sport invernali (sci e slittino in particolare), attraverso l'analisi della posizione di garanzia del maestro di sci e del gestore dell'impianto

The present work resumes and complements the report held at the 9th European Snow Legal Forum «The duty of care of the ski instructor», held on December 1, 2018 in Bormio. The contribution analyzes the current regulatory framework on the topic of mountain safety management, through the examination of state and regional legislation and the jurisprudential evolution in this matter.

RICCARDO CRUCIOLI – MAURIZIO FLICK

La guida alpina. Profili di responsabilità penale e civile

The article examines the notion of italian mountain guides «guida alpina» for civil and criminal law purposes. The analysis is carried out in the light of the case-law and of relevant state legislation. The paper provides an overview of italian jurisprudence within this peculiar area of work.

Giurisprudenza commentata

Cass., Sez. Un., 13 dicembre 2018, n. 32358, con nota di FILIPPO VARI – NICO MARRA, Ai confini della giurisdizione sportiva: la “partita” infinita dell’assegnazione dello scudetto 2006 e le sezioni unite della Cassazione

The article analyzes the relationship between civil and sportive jurisdiction in the context of the big Italian football scandal (Calciopoli). The scandal of match fixing had as consequence that Juventus FC, the championship winner of the 2005-2006, had to give back its title. Similar allegations emerged subsequently with regard to Internazionale FC, that had meanwhile obtained the title. Therefore Juventus requested that the title for the scandal season should be removed and should remain unassigned. A long juridical battle followed. It lead to the most recent judgment of the Supreme Corte di Cassazione, a never ending story ...

Corte App. Bruxelles, 29 agosto 2018, n. 6348, con nota di GIOVANNI ROMANO – LORENZO SERAFINELLI, Sull’invalidità delle clausole compromissorie contenute negli statuti delle federazioni sportive

The article aims at giving an insight of the decision rendered by the Court of Appeal of Brussels in the case n. 6348/2018. In this controversy, the Belgian court has established, incidentally, that the sport arbitration agreement was invalid (rectius, inexistent) in light of Belgian law, even though, in our opinion, it was not Belgian law that should have been

applied. The issue of the law applicable to the arbitration agreement represents a good starting point in order to take into consideration the backlash against sport arbitration within – particularly – the European Union and the ECHR framework.

Tar Lazio, Sez. I., 13 aprile 2018, n. 4100, con nota di ANDREA AVERARDI, Autonomia privata ed esercizio di funzioni pubbliche sul problema della qualificazione delle federazioni sportive come organismi di diritto pubblico

In its judgment of 13 April 2018, The Administrative Tribunal for Lazio has argued that Italian football federation must be regarded as body governed by public. Thus, the Tribunal has established that the federation must permanently apply public procurement rules. The formalistic arguments underlying this approach seem not convincing since they do not consider properly the distinction among private and public activities of the sport federation. In the following essay the author explains why administrative rules should be applied to sport federations only whether it is strictly necessary to protect a public interest

Coll. Gar., Sez. I, 9 agosto 2018, n. 58, con nota di ALBERTO FANTINI – FRANCESCA MUCCIO, Gli aspetti rilevanti della decisione del Collegio di Garanzia dello Sport del CONI, prima sezione, n. 58 del 9 agosto 2018 sulla finale play off Campionato Nazionale L.N.P. Serie B 2017-2018

The paper focuses on the principles inspiring the sportive process, including the rules concerning the acquisition of the television test. There are an analysis about the competences of the Collegio di Garanzia dello Sport, that is the body of the third (and last) instance of the Italian sports system, and a detailed description of the so-called «giudizio di rinvio», that is the process guaranteeing a new review of the dispute before the Judge of the second instance. The authors examine the relationships among the Civil procedural law, the Administrative procedural law and the Sports Law. A specific definition is also given to the sports illegalities, that have to meet the constitutional requirement of certainty and non – retroactivity, connected to the principles of impartiality, loyalty and fairness affirmed by Pierre De Coubertin.

Rassegne

LAURA SANTORO

La giurisprudenza del Collegio di Garanzia dello Sport nel suo quarto anno di attività

This essay analyzes the decisions of Sport Guarantee Committee issued in the year 2018. It follows the previous essay dedicated to the jurisprudence of Sport Guarantee Committee during the past three years of activity, published in this same journal, with the dual aim of updating with respect to the issues already dealt with therein and of enlargement with regard to new issues. As well as the previous, the present essay, for the function performed

by the Author within the Sport Guarantee Committee, carries a reasoned analysis, but with a merely descriptive cut, of the main jurisprudential approaches expressed in the decisions of the Guarantee Committee, with the aim to extrapolate the rules and principles that form the sports law which derives from jurisprudential source.

Storia dello sport
a cura di Francesco Bonini

ANTONELLA STELITANO – ALEJANDRO MARIO DIEGUEZ

Boxe e morale cattolica: da «omicidio legalizzato» a strumento di promozione umana

What is the position of the Catholic Church with respect to the world of boxing? How can a sport considered dangerous be reconciled with the imperative of “do not pass the boundaries of prudence, do not expose yourself to dangers and harm your health”? In this essay the points of contact that have existed between these two worlds, the severe moral reflections of the Church, the sharing of messages of condemnation when boxing lives, in the Sixties, one of its saddest periods, up to the most signs of openness linked to a vision of sport, instrument for the promotion of ideals of encounter, dialogue and peace.