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SOME CONSIDERATION ABOUT SPORT AS INTRINSICALLY ETHICAL ACTIVITY

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Abstract: *Almost all scholars depict sport as an activity, characterised by an intrinsic ethical feature. This distinctive feature gives rise to some issues, both in international and/or state legal system and in sports legal systems. The first ones highlight the value of fair play, considering it as the true pillar upon which structuring sport. An in depth analysis shows some issues. What is fair play in a state and/or international legal system? Is it the mere respect of state and/or international norms on sport? Is it more? In the first case, what is the true difference between fair play in sport and the obligation to respect legal norms? In the second case, how can we introduce such "more" in a state and/or international legal system? How can we rule such "more"? Sports legal systems establish themselves as ethical legal systems, because of their* Grundnorm, *namely the ensuring of fair competition. Thus, they structure and organise themselves in order to ensure the compliance with this single absolute principle, up to the recession of the protection of individual rights. However, some issues arise when we consider the unavoidable overlap of regulatory competences between these different legal systems is considered. Which of them prevails?*

Summary: *1. Introduction 2. The Ethical Nature Of Sport Within Sports Legal Systems. 2.1 What Is The Founding Value Of Sport? 2.2 Issues. 3. Sport Within State And/Or International Legal Systems. 3.1 Sport And State Legal Systems 3.2 Legal Issues. 4. Further Issues 5. Conclusion.*

Keywords*: Fair Play Principle; Fair Competition Principle; State Legal Systems; Sports Legal Systems*

1. Introduction

The aim of this essay is to deepen the distinctive feature of sports activity, consisting in its ethical characterisation.

Almost all scholars depict sports as an ethical activity: this feature seems to be at least without problems when we consider sports legal systems, characterised by an intrinsic ethical nature, being them structured and organised in order to ensure the compliance with a single absolute principle, namely that of fair competition.

The ethical feature of sports activity persist also when sport enters into the sphere of normative competence of international and/or state legal systems, giving rise to some issues. On the one hand, there emerges the issue related to the

difficulty to identify the true founding value of sports activity. In this regard, just recall how state, international and supra-national texts seem to identify such a value in fair play, according the need to ensure fairness in sports competition. If so, there emerges the issue about definition of fair play within a state, international and/or supranational legal system. On the other hand, there emerges a more general issue, related to the re-introduction of an ethical feature within state, international and/or supra-national legal systems, in a true counter-trend with the separation between Law and Morality as stated since Enlightenment.

2. The ethical nature of sport within sports legal systems

Before enter into merit, it seems important to give a definition of sport, to better circumscribe the sphere of interest, as well as to outline their distinctive features.

Thus, we define sport as an activity marked by the involvement of the psychophysical sphere that pursues the essential objective of excelling in the competition[1]. The preparation, made in order to reach the proposed goal (i.e, victory in the competition), develops dexterity skills, which allow the execution of gestures that require extremely refined coordination skills.[2] All of this is part of a frame of essential and original unnecessary nature, which makes sport a peculiar activity of free time, marked by the pleasure that comes from its practice.[3] How-

1. "An activity involving physical exertion and skill, esp. (particularly in modern use) one regulated by set rules or customs in which an individual or team competes against another or others." (Oxford English Dictionary online, 2022). Martin Bertmann (2008, 36) argued: "Sport is a sort of game, between or among human beings, directly engaging physical skills and/or powers in a competition whose goal is victory." In the same sense, see Jan Boxill (2003, 3-4): "The third feature of sport in its paradigmatic form is that sport is physically challenging. […] The final feature of sport in its paradigmatic form is that it requires competition. And it is in competition that the mental and physical skills, talent and coordination come together."

2. In his outlining the distinctive feature of sport, Bernard Suits (1995, 12) affirmed: "with the invention of games far removed from the pursuits of ordinary life, quite new capacities emerge, and hitherto unknown skills are developed. […] Games are new things to do, and they are new things to do because they require the overcoming of (by ordinary standards) unnecessary obstacles, and in ordinary life an unnecessary obstacle is simply a contradiction in terms." Similarly, Jan Boxill (2003, 4), pointing out how sport is characterised by being a regulated activity, noted: "the rules which define the sport activity are specifically designed for displaying and expressing bodily performance and aimed at bodily excellence". In the same sense, see also Lucio Di Nella (2010, 15), who stated that the technical gesture is the result of an education that aims to its perfection through a constant control of the learned gesture.

3. Scholars seem to be unanimous on the characterisation of sport as freely chosen activity. In this regard, Sigmund Loland (2002, 109) stated: "we take part in sport on a voluntary basis. We are not forced to engage in the practice, we have the choice between participation and non-participation". Similarly, Jan Boxill (2003, 2) noted: "sport is a freely chosen, voluntary activity, participation in which is an expression of the individual's creativity and his or her freedom to

ever, all this is not enough to unequivocally distinguish sport from other similar human activities, such as play and physical activity: to distinguish sport from other similar activities there is both an irrepressible relational dimension and an institutionalized regulation of such an activity.[4]

After such brief outlining of sport, we can observe how the characterisation of sport as an intrinsically ethical activity emerges immediately within sports legal systems, due their distinctive features.

In fact, sports law systems are established and structured in order to regulate competitions: fair competition is their *Grundnorm* (*basic norm*), which "constitutes, as a common source, the bond between all the different norms of which an order consists."[5]. According to it, sports legal systems pay a particular attention in order to ensure the so-called equal level playing field: in a word, sports competitions must take place among athletes who start from a potential as equal as possible. This *Grundnorm* gives rise and reason to the distinction of competitions by gender, age, weight, level of professionalisms.

Such peculiar feature gives an intrinsic ethical nature to sports legal systems that may lead to a compression of individual rights in comparison with the supreme good of fair sports competitions.

In this regard, it seems important to underline how it is possible thanks to sports legal systems specific consensual nature: we are not born "citizens" of

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choose. Thus, sport is an unalienated activity, and as such is in what may be called 'the realm of freedom' and has as its end the activity itself. Though it may serve other purposes, it does not have to have a product or provide a service, nor is it a means to an end outside itself." Lucio Di Nella (2010, 21) more specifically observed how the execution of the athletic gesture, in its technical perfection satisfies the spiritual need of liberation from everyday life.

4. There is unanimity among scholars also on the nature of regulated activity of sport. Bernard Suits (1995, 6): "since games are goal-oriented activities which involve choice, ends and means are two of the elements of games. But in addition to being means-end oriented activities, games are also rule-governed activities, so that rules are a third element." Sigmund Loland (2002, 2), premising that "the predominant view of the function of rules is that they structure and in fact define a practice, or at least that they define the framework within which the practice takes places", stated:"sport competition are rule-governed practices." From her part, Jan Boxill (2003, 4) observed: "the second feature of sport in its paradigmatic form is that is rule governed. There are two different sorts of rules that are important: rules of decency or fair play and constitutive rules. […] Rules of decency reflect basic moral standards. […] Added to the rules of decency and fair play are constitutive rules, which define the game and the permissible moves. Constitutive rules are designed to develop and exhibit distinct sets of skills and talents." In the same way, see Martin Bertmann (2008, 36), who observed: "each sport is a structure created by constitutive rules, which has a quantitative determination for victory and play may be facilitated by regulative rules policed by the absolute authority of a referee who judges the relation of action in the game's play to the governing rules of the particular sport."

5. H. Kelsen, 2009. *General Theory of Law and State* (1945), Clark NJ: The Lawbook Exchange Ltd, p. 111.

sports law systems, but we become part of them only by an expressed act of will, signing an act of membership or association.[6] Thus, sports legal systems solve the issue of obligation to obey to law, grounding it on the express consent. This option inserts them within the school of political thought, which found the political obligation and the related obligation to obey to law on consent, formulated by the theory of social contract as basis of political governance.[7]

This particular feature expands, on the one hand, the power to 'rule' over those who belong to this legal system: the signing of an act of membership and/or association implies acceptance of all the rules put in place by the legal system itself, even acceptance of a significant limitation of personal freedom. On the other hand, it gives rise to a lack of jurisdiction, because sports law systems have no sovereignty over persons who do not belong to them, and consequently cannot pursue them.

2.1. What is the founding value of sport?

As outlined above, legal sports systems are legal orders, having an ethical nature. Such a feature grounds, in turn, in the intrinsic ethicality of sport. In this regard, it seems important to underline the fundamental role of competition in sport, in both the ideal and the realistic sense. In the first case, competition is an essential element of sport, but it is not the diriment one. "Athletes acknowledge that one cannot compete sincerely without aiming for victory, but they also recognize that the real prize is *aretē*. Since victory without *aretē* is worthless and *aretē* can be demonstrated without achieving victory, the emphasis is on participation and struggle, but struggle is emphasized in an aidful manner."[8] In the second case, the more realistic hypothesis, the search for victory becomes prevalent: according Keating, we have athletics, referring to the Greek root *āthleîn*, to

6. Foster (2012, 37) noted: "Global sports law, by contrast, may provisionally be defined as a transnational autonomous legal order created by the private global institutions that govern international sport. Its chief characteristics are first that it is a contractual order, with its binding force coming from agreements to submit to the authority and jurisdiction of international sporting federations, and second that it is not governed by national legal systems."

7. It is all too well known the philosophical debate about the basis of political authority to be resumed punctually. Here it suffices to remember how a very important part funds such authority on the so-called social contract (assumed as really stipulated or as an ideal artifice). A current of thought that has had very different outcomes (even antonymic) on the forms of government. In this sense, philosophers such as Thomas Hobbes and John Locke are emblematic among many. The first is remembered for its theory of the transfer of sovereignty to Leviathan (Hobbes, 1997) and the second for its liberal theory that bases the political order on the social contract (Locke, 2010).

8. M. Holowchack – H. Reid. 2011. *Aretism. An Ancient Sports Philosophy for the Modern Sports World*, Lanham Md: Lexington Books, p. 165

compete for a prize, from which *athlon* (the prize designed for the winner in the competition).[9]

Sports legal systems mirror such latter feature in their regulating competition: more, they make the fundamental role of fair competition their own, recognizing it as a fundamental and absolute value of sport.

2.2. Issues

Given all that just above, there emerge at least two cluster of issues: firstly, one related to the non-founding nature of fair play; the second concerning the absoluteness of the value of fair competition in sports legal systems.

As regards the first one, it seems important to point out that, despite the declarations of principle, fair play does not constitute its founding value in legal sports systems. In fact, within them athletes try to show their excellence in a context governed by rules: fair play consists in complying with these rules. Any attempt to circumvent them deprives any victory achieved in this way of its value, considering it as a deliberate attempt to deprive the sports contest of its meaning.[10] According to it, we can conclude how fair play acquires a derivative and not constitutive character of sports activity. Such an activity, in fact, grounds on the search for victory in the competitive confrontation and on the rules that determine the criteria for identifying the winner. In this case, fair play is a habitus, aimed at capturing the spirit of those rules put in place for a quantification of performance, namely at certifying the victory, if any, achieved. Thus, again, fair play does not seem to assume a fundamental character qualifying itself rather for being a *posterius*.

For that concerns the absoluteness of fair competition value in sports legal systems, it seems important to stress how ensuring the fairness of the competition, as an absolute value, could lead to a compression of individual rights. In this sense, the drastic reduction of the spaces of freedom determined by the application of the whereabouts principle, as sanctioned by the WADA Code,

9. "While the dictionaries reflect some of the confusion and fuzziness with which contemporary thought shrouds the concept of athletics, they invariably stress an element which, while only accidentally associated with sport, is essential to athletics. This element is the prize, the *raison d'être* of athletics. Etymologically, the various English forms of the word 'athlete' are derived from the Greek verb *athlein*, 'to contend for a prize', or the noun *athlos*, 'contest', or *Athlon*, a prize awarded for the successful completion of the contest" J. W. Keating, *Sportsmanship as a Moral Category* (1964), in W. J. Morgan – K. V. Meier (ed.), *Philosophic Inquiry in sport*, cit., p. 146).

10. "In the athletic contest there is a mutual recognition that the rules of the game are drawn up for the explicit purpose of aiding in the determination of an honorable victory. Any attempt to disregard or circumvent these rules must be viewed as a deliberate attempt to deprive the contest of its meaning. Fairness, then, is rooted in a type of equality before the law, which is absolutely necessary if victory in the contest is to have validity and meaning" (Ibid., p. 150)

appears emblematic; just as it seems to go in the same direction, always with regard to doping, to almost completely ignore the condition of legal incapacity of underage athletes.

3. Sport within state and/or international legal systems

Before deepening how state and/or international legal systems consider sport, wondering if it falls within their regulative competence; if so, how much extends their power of regulation; if so, how they define sport), without claim to be exhaustive, here we outline some distinctive feature of state legal systems.

Firstly, they have competence over the whole territory and over everyone and everything is within the sphere of their territorial jurisdiction (including foreign citizens). Secondly, as consequence of the previous feature, their own legal dictates have a force of coercive imposition,[11] which gives rise to a broad regulatory competence that, however, because of coercive force, ordinarily stops at the threshold of what is termed the citizens' private sphere.

Beyond these distinctive features, it seems appropriate to recall a further one, consisting in that separation between law and morality, as theorized by Kant, in his affirming that law acts in the so-called external forum, giving rise to hypothetical imperatives,[12] essentially different from moral (categorical) imperatives,

11. Many legal scholars have stressed the essential relationship between law and force, so it seems rather difficult to reconstruct the debate punctually here. Thus, here it seems sufficient to recall firstly Rudolph von Jhering, who clearly affirmed the existence of a necessary link between law and force. In this regard, he affirmed: "The law is not mere theory, but living force. And hence it is that Justice which, in one hand, holds the scales, in which she weighs the right, carries in the other the sword with which she executes it. The sword without the scales is brute force, the scales without the sword is the impotence of law. The scales and the sword belong together, and the state of the law is perfect only where the power with which Justice carries the sword is equalled by the skill with which she holds the scales" (R. von Jhering, (2006), *The Struggle for Law* (1872), Clark NJ: The Lawbook Exchange Ltd, p.2). In his perhaps best-known book, Hans Kelsen, observed: "The first characteristic, then, common to all social orders designated by the word 'law', is that they are orders of human behaviour. A second characteristic is that they are *coercive orders*. This means that they reacts against certain events, regarded as undesirable because detrimental to society, especially against human behaviour of this kind, with a coercive act; that is to say, by inflicting in the responsible individual an evil – such as deprivation of life, health, liberty or economic values – which, if necessary, is imposed upon the affected individual even against his will by the employment of physical force" (H.Kelsen (2005), *Pure Theory of Law* (1967), Clark NJ, The Lawbook Exchange Ltd, p. 33).

12. "Duties in accordance with rightful lawgiving does not require that the I d e a o f this duty, which is internal, itself be the determining g r o u n d o f the agent's choice; and since it still needs an incentive suited to the law, it can connect only external incentives with it." (I. Kant (1991), *The Metaphysics of Morals* (1797), Cambridge, Cambridge University Press, p.46)

characterized by absoluteness.[13] This separation has become an authentic *tòpos* of the science of law.[14]

3.1. Sport and state legal systems

These above outlined definitions and features lead to conclude, firstly, how sport hardly falls within the regulatory competence of the states, because of its unnecessary nature. Notwithstanding, there is a trend towards an increasing legislative intervention at state and/or international level, aimed at regulating some sports matter (especially focused on some pathological sport phenomena as doping, sports fraud, match fixing).

The international attention on some sports pathologies gave rise to the adoption of some conventions on the matter, certainly favouring this trend at the state level. The establishment of WADA also contributed considerably to it, considering its peculiar feature of international agency equally funded by the sports movement and world governments.

The adoption of Conventions at an international level had at least two consequences. On the on the one hand, they contributed to an increasingly uniform regulation by the ratifying states that have to adequate their legislations on the matter to the standard established by each Convention. On the other hand, however, it is possible to detect a reintroduction of ethical elements in state regulations. In this regard, it is emblematic the UNESCO International Convention against Doping in Sport,[15] whose definition of doping closely follows the WADA Code's definition in force at that time.

It seems important to underline how this second consequence has its origin in the wake of a focus on sport, developed at an international and/or supra-national level, highlighting its pedagogical function as useful tool for education in democracy, for the prevention of pathological behaviours, and/or for the integration of migrants and people with disabilities.[16] Beside it, there is, at the same time, an ever-greater attention paid to the struggle against some pathological

13.. "Categorical (unconditional) imperatives. As such they are distinguished from technical imperatives (precepts of art), which always command only conditionally. By categorical imperatives certain actions are *permitted* or *forbidden,* that is, morally possible or impossible, while some of them or their opposites are morally necessary, that is, obligatory. For those actions, then, there arises the concept of a duty, observance" (Ibid., p. 48).

14. In this regard, it seems significant the theoretical contribution of Kelsen, particularly explained in his *Pure Doctrine of Law* (H.Kelsen (2005), *Pure Theory of Law* (1967), Clark NJ, The Lawbook Exchange Ltd, pp. 66-69).

15. Adopted in Paris on 19th October 2005and entered in force on 1st February 2007.

16. In this regard, it is emblematic the *White Paper on Sport* of the European Commission, adopted on 11th July 21 of TFEU, by which sport came within the competence of EU.

sports phenomena, considered the tips of the iceberg of a progressive infiltration of organised crime into sport, for illegal purposes. [17]

3.2. Legal Issues

This increasing legislative intervention by states on sports matters highlights some legal issues.

Firstly, as already highlighted, there is an issue of general nature, consisting in the ethical characterisation of state rules: such a characterisation is in strong contradiction with that separation between law and morality, as matured within Enlightenment juridical thought. It appears important to underline how this trend is not exclusive to the legal rules governing sports matters, but seems to characterize Law as a whole. In fact, for sport is happening what already experienced in the bio-juridical field: the difficulty of society in finding shared ethical guidelines leads it to attribute to the law the burden of indicating what is morally acceptable or not, operating a distortion of the law, which give rise to many questions. Can we consider moral (or immoral) what is lawful (or illegal) tout-court?

Even if we consider solved the just mentioned issue, there emerges immediately another one related to it. In fact, an analysis of state rules and/or international Conventions on sport highlights the value of fair play, considered the true pillar upon which structuring sport.[18]

Before proceeding further, however, it seems appropriate to ask ourselves what fair play is, and then what fair play could be in a state and/or international legal system. Without claim to be exhaustive, here it suffices to underline how fair play is an intrinsically polysemic locution: according its etymology, in fact it could mean playing free from deceptions; as much as playing fair and honest; as well as, finally, playing by the rules. Options that are not at all fungible, even if apparently such.[19]

In this regard, I wonder if fair play could be the mere respect of state and/or international norms on sport, or it is more.

If we consider the first hypothesis valid, I wonder if there is a difference be-

17. The European Convention on the Manipulation of Sports Competitions (CETS n° 215/2014), as well the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS n° 218/16) are two typical examples of such concern by the Council of Europe.

18. To make just few examples, see the Preamble of the International Convention against Doping in Sport; the European Sports Ethics Code (Appendix to Recommendation No. R (92) 14 rev), significantly entitled Fair Play - The Winning Way; the Preamble of the Anti-Doping Convention (ETS n° 135/1989); the art. 1, para 1, of the Italian Law 14th December 2000, ".Regulation of the health protection of sports activities and the fight against doping"

19. On this point see more widely A. Di Giandomenico (2013), *Fair Play: una dimensione fondamentale dello sport?*, in A. Di Giandomenico (a cura di), *Dona virtù e premio ... Scritti in onore di Serenella Armellini*, Roma, Nuova Cultura, especially pp. 50-53.

tween fair play in sport and the obligation to respect legal norms, not finding any characteristic that differentiates them significantly. In both cases, in fact, it would seem that there is only a request for a mere observance of the rules (according the Kant's conception of Law), without any internal recognition of their validity and / or justness.[20] Hence, I wonder why we qualify such an obligation as fair play: in a word, why we distinguish it from the observance of state rules, if it is substantially the same.

4. Further issues

A further cluster of issues arises as soon as we consider the unavoidable overlap of regulatory competences between these different legal systems.

As already underlined, there is a trend towards an increasing legislative intervention at state and/or international level, aimed at regulating some sports matter. This trend favours, rather determine, an overlap between sports and state legal systems, giving rise to some issues, difficult to solve. Which of them prevails?

In this regard, Alex Schwazer judicial case seems emblematic of such difficulties. Just recall, without claim to be exhaustive, how sports Courts (up to TAS-CAS) sanctioned the Italian race walker, Alex Schwazer, with an eight-year period of ineligibility.[21] While the Italian state judge for preliminary investigations of Bolzano ordered the dismissal of the charges, for not having committed the crime.[22] Thus, we have a judgment of sports Courts establishing his guilty and a judgment of state Court disposing for dismissal of charges. Note how Italian state ratified the above mentioned UNESCO International Convention against Doping in Sport, whose rules entered in force in a legal system establishing doping as a

20. In this regard, it seems important to recall the significant contribution of Herbert L. Hart theory, for his integration of the Kelsen Pure Doctrine of Law. In fact, deepening the issues of the rule of recognition, Hart distinguished between the so-called internal point of view (that of courts and other officials), and the external point of view (that of an external observer). The first implies the shared acceptance of some rules as guiding rules: an acceptance highlighted by expression as 'it is the law that'. The second is that of an observer who records *ab extra* that a social group accepts such rues but does not himself. "The first of these forms of expression we shall call an *internal statement* because it manifest the internal point of view and is naturally used by one who, accepting the rule of recognition and without stating the fact that it is accepted, applies the rule in recognizing some particular rule of the system as valid. The second form of expression we shall can an *external statement* because is the natural language of an external of the system who, without himself accepting its rule of recognition, states that others accept it" H.L. Hart (2012), *The Concept of Law* (1961), Oxford, Oxford University Press, pp. 102-103).

21. CAS. 2017. 2016/A/4707 *Alex Schwazer v. IAAF, NADO Italia, FIDAL & WADA, award of 30 January 2017.*

22. Tribunale di Bolzano – Ufficio del Giudice per le indagini preliminari. 2021. *Ordinanza di archiviazione del 18 febbraio 2021*, available at the link: https://www.giurisprudenzapenale.com/wp-content/uploads/2021/02/schwazer-omiss.pdf.

crime (*ex* Law 14 December 2000, n. 376, now art. 586 bis Italian penal code). The antithetical judgments ground on the different basic norm, underlying sports and state legal systems, as well as their different feature. The first ones structured on the absolute value of fair competition; the second ones, characterised by a strict separation between Law and moral; the first ones characterising themselves as ethical legal order; the second ones, structured according the standard of the Rule of Law.[23] All above considered, is Alex Schwazer guilt or innocent?

Thus, I wonder, in case of prevalence by sports legal systems, how can we reconcile the essential ethical nature of their rules with the abovementioned separation between law and morality. Could the consensual nature of sports legal systems be sufficient to justify the implementation of their norms within state legal orders? Notwithstanding the ratification of the UNESCO Convention by Italy, and consequent implementation of its rules in the Italian legal order, the GUP Decree gave prevalence to the Rule of Law standards, above all considered that doping is a crime.

In case of prevalence of state rules, to what extent could the compression of the fundamental principle of sports legal systems have, without compromising its absoluteness? Being conscious that Rule of Law standards are disposed in order to guarantee the safeguard of people, better of their rights, in case of overlap between sports and state norms (e.g. UNESCO Convention), how far can the prevalence of the protection of such rights go to the detriment of the protection of the principle of fair competition? This knot is difficult to unravel. For example, Italian Court, in its preliminary judgment against Alex Schwazer, established that the right of individual to be judged on the basis of objective and not presumed evidence absolutely prevails on the principle of fair competition (which, on the other hand, would seem to be the founding principle of the UNESCO Convention).

23. It seems interesting to point out how both the judgments considered the alleged breach of internal chain of custody, but with antonymic outcomes. The CAS argued: "In this context, the Panel recalls that all alleged breaches of the internal chain of custody or other administrative and reporting issues could be rationally explained in the evidentiary part of the hearing. The Appellant did not submit a scenario, which *"could make plausible a mistaken manipulation"* of the 1 January Sample *"or a wrongful intervention by a third party who would have been able to contaminate"* his sample or substitute it with another with the same identification number without traces (see Judgement of the Swiss Federal Tribunal of 28 February 2013, 4A_576/20121). The Appellant's case in essence is that it cannot be excluded that there are persons in this world with a motive and the capacity to sabotage him. The identity of such persons having a motive and the capacity to conspire against the Athlete, however, was left in the dark as well as the time and place when such manipulation occurred" (pt . 90). On the contrary, the Italian Court, having regard to the equivocal nature of the evidence, was unable to establish the guilt of the accused (Alex Schwazer), thus dismissing the allegations. On the contrary, the noted that, in an attempt to prevent the detection of the aforesaid crime, a series of crimes were committed (para 5).

5. Conclusion

Summarising, we have seen how sport is an activity characterised by an intrinsic ethical feature. This feature seems confirmed, when we consider such an activity within the sports legal systems, which, in turn, have an essential ethical feature, due their consensual nature.

Such systems structured themselves upon the principle of fair competition, assumed as their *Grundnorm* (basic norm). This principle rises to an absolute value, such that it could lead to a compression of the rights of individuals, recessive with respect to the supreme good of fair competition.

This characterisation highlights some issues: among them, we recall the necessary clarification aimed at specifying that the true absolute founding value is the principle of far competition and not that one of fair play, notwithstanding several declarations and documents of sports bodies, authorities and related codes. An analysis of such principle, even in a more realistic conception of sport, shows its qualification as a habitus, a *posterius* with respect the principle of fair competition.

State and/or international regulations seem to confirm the ethical nature of sports activity: such a characterisation of sport gives rise to several issues. A first cluster of issues emerges as soon as we consider the clash between an even more ethical characterisation of rules on sports matters and that separation between Law and Moral, as founding principle of Rule of Law. Another cluster of issues arises from the identification of fair play as founding principle, justifying the just above-mentioned drift towards an ethical characterisation. Even admitting such deviation, we highlighted further question in defining fair play and its related application within legal systems, having public nature.

Finally, there is the outlining of issues deriving from the unavoidable overlap of rules (established by state and/or international legal systems and sport legal systems): which of them prevails? Until up can state and/or international norms go without losing their fundamental features? Vice versa, to what extent can the rules of sports legal systems enter into force in a state legal order without denying their founding principle?

All the issues just outlined do not question the ethical nature of sport: even in its more realistic develop, the ethical feature of sport emerges both in sport legal systems and state and/or international ones. The true knots to be deepened and solved are the issues related to the overlap of regulation among different legal systems, focusing especially on distortions arising from such an overlap. All this is impossible if we remain within a positive law perspective: we only can try to adjust one aspect or another, without solving its root cause. In a word, considering that such distortion involves Law as a whole (remember the similarity with bio-juridical issues), I believe there is the need to rethink Law, going beyond Enlightenment legacy.

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