

HOW ITALIAN SPORT IS CHANGING. FROM SPORTS LABOR REFORM TO SPORT AS A RIGHT

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Abstract: *Over the past few years, sport in Italy has been at the core of changes affecting the whole sector and, even before that, sport as a right.*

The reform process, started in 2019 (L. 86), was only concluded in July 2023 and, to date, the Sport Reform is finally an operational reality in (almost) all its parts.

The goal of the Reform to modernize the system and bring it in line with the current reality can be seen especially with reference to sport as work, still regulated in Italy by a 40-year-old law, no longer in line with the current needs of the sector.

Legislative Decree 36/2021 completely redesigned the figure of the sports worker, and subsequent amendments to that decree have helped to refine the initial line and enucleate a series of labor figures that were previously completely nonexistent at the regulatory level.

In the same direction and consistent with this new look of the sports worker was also the abrogation of the institution of the sports tie, considered an illegitimate limitation on the contractual freedom of the subject, now correctly qualified in labor terms.

And these changes also fit into a revitalized role of sports as a right. After a long process of constitutional revision, in fact, in September 2023 the right to sport finally made its first explicit entry into our Constitution, through the inclusion of a special comma in Article 33, which emphasizes the high and undeniable educational value of sport.

Epochal changes, then, long overdue and necessary, which require coordination and continuous - but not easy - dialogue between institutions, in order to arrive at a regulatory framework that can adequately balance the autonomy of sport system and the rights of subjects.

Key words: *Sport law – Sports Reform – Sport Right*

1. The context of the Reform.

In the past few years, the Italian sports system has experienced a strong sense of awareness of the inadequacy of the discipline of many aspects of the sector, which is now obsolete and no longer in line with the changed social and cultural context¹.

1. Sport has long been considered a time for play and something “superfluous,” but today that view is completely changed. Sport is a job and a value. this need has also been more and more felt as an investment in health from which, therefore, it seems to be impossible to ignore, along with other constitutionally guaranteed rights such as the right to study. See, M.F. SERRA, *L'autonomia sportiva ai tempi dell'emergenza sanitaria da COVID19*, in *Nomos – Le attualità del diritto*, n. 1/2020.

For example, the field of “sports work” was still regulated by L. 91/81² on professional sports, which, by its express provision, had a limited scope of application to well-defined categories of subjects, thus creating a not insignificant disparity in treatment between athletes who practiced, in essence, the same activity³.

Similarly, the area of equal opportunities was also inadequate, since the women’s sector was completely excluded from the possibility of access to professionalism and, therefore, to sports work, with all the resulting gaps in terms of protection⁴.

Similar considerations can also be made with reference to the permanence of the institution of the sports tie, an entirely Italian particular feature which, although born with precise intentions deserving of protection, has soon changed form, transforming itself into an instrument of superpower of associations/companies towards the athlete⁵.

Major events, such as the COVID-19 pandemic, have forcefully underscored the inadequacy of the system in the terms described above and contributed to the accelerated intervention of the national legislature in the sector.

In fact, the national *lockdown* ordered in Italy⁶, which became necessary dur-

2. Law No. 91 of March 23, 1981, in G.U. General Series No. 86, March 27, 1981.

3. The subjective area of application of L. 91/81 is that stated in its Art. 2: “For the purposes of the application of this law, professional athletes are athletes, coaches, technical sports directors and athletic trainers, who engage in sporting activity for remuneration with a character of continuity within the disciplines regulated by CONI and who obtain qualification from the national sports federations, according to the rules issued by the federations themselves, with observance of the directives established by CONI for the distinction of amateur activity from professional activity.” According to this law, therefore, the autonomous federal decision about the institution of a professional sector serves as the only *discrimen* for qualification in terms of the employment relationship of athletes, with obvious consequences for the position of the vast majority of athletes. See M.F. SERRA, *A Strange case of Conflict: Labour Law vs. Federal norms about Sports*, in *Sports Law, 22 years IASL, Lex Olimpica and Sports Jurisdiction Experience – Development & Perspective*, pp. 99-103.

4. The autonomy recognized to the Federations about the choice of whether or not to create the professional sector has, in fact, cut off the entire women's sport since no Federation, not even those that have instituted professionalism, has taken steps to extend it to women's categories. M.F. SERRA, *Women's sport: a sui generis discrimination*, in *Pandektis*, 2018. On the autonomy of the sports system see also EAD., *Brevi riflessioni sull'autonomia e specificità dell'ordinamento sportivo*, in *Rassegna di diritto sportivo*, 2015, a cura di DI NELLA, pp. 325-348; EAD., *Ordinamenti giuridici a confronto. La sporting exception e l'attività del professionista di fatto*, in *Quaderni di Nomos*, Padova, CEDAM, 2017, pp. 230; EAD., *The Autonomy of Sport in Italy*, in *Sports Law – present and future*, pubblicato da KEE-YOUNG YEUN, Chaek Yearn, Seoul, 2018, p. 70-79.

5. M.F. SERRA, *A Typically Italian Anomaly: Sports Tied Contracts*, in *e-Lex Sportiva Journal*, Vol. III, 1-2, 2015.

6. DPCM March 9, 2020, in G.U. General Series No. 62, March 9, 2020.

ing the first periods of the pandemic, led to the suspension of all activities, including sports, whether at the level of competitions and championships, training or simple access to facilities and gyms. Therefore there was a need to protect a huge number of *de facto* workers who, from sport, derived their only source of income and who were faced with a forced interruption of their activities. In other words, there was a need to reconcile the existing legal provisions - which only protected the category of *ex lege* workers - with the *de facto* situations and therefore with the inadequacy of the discipline of sports work, not only in an emergency context but also in that of today's reality⁷.

2. Law 86/2019 and the enacting decrees.

Actually, the process of “modernization” of the system had already been initiated in 2019, with Law 86⁸. That law, in fact, had already laid the groundwork for a revision and reorganization of the topic “sports regulation,” delegating the government to adopt, by August 2020, a series of reform decrees with the intention of redesigning the sports sector in a systematic and more adherent to reality, intervening on topics and issues not only no longer appropriate to the context but, moreover, that have always been a source of interpretative doubts, unequal treatment and discrimination.

In this law we can find the redefinition of the concept of “sport” as “any form of physical activity based on compliance with codified rules that, through organized or unorganized participation, has as its objective the expression and improvement of physical and mental condition, the development of social relations or the achievement of results in competitions of all levels.”⁹

As a second step, the liberalization of the corporate form and a streamlining of administrative and bureaucratic procedures and also the introduction of a limited power to distribute profits were envisaged.

With regard to sports labor, the support and training of the youth and the position of women's sports, new typologies of contracts¹⁰ and protections were provided and, above all, the redefinition of sports labor and the figure of the

7. M.F. SERRA, *Le nuove prospettive dello sport alla luce della Riforma 2020*, in her speech as part of *III Forum Internazionale del Gran Sasso*, held online 1-3 October 2020, and EAD., *L'autonomia sportiva ai tempi dell'emergenza sanitaria da COVID19*, cit.

8. Law No. 86 of August 8, 2019, in G.U. General Series No. 191 of August 16, 2019.

9. Definition recalling that contained in the 1992 Chart of Rhodes.

10. It is proposed to include, for example, the trainee contract or contract typologies that aim to incentivize the training of the youth, ensuring their all-round growth, sporting, cultural, educational and also professional that can also facilitate them in accessing employment at the end of their sporting career.

worker, with attention also to the Paralympic sector, the professionalization of the women's sector¹¹ and the elimination of the sports tie.

Thus, the law appropriately aimed to achieve univocal sectoral legislation, for which it was desired to produce a Unique Text so as to provide the sports sector with a complete, well-ordered and coordinated set of reference regulations.

However, the Unique Text did not come, and the Reform followed the initial approach of approving multiple, interconnected but still "separate" enactment decrees, which were approved preliminarily on November 24, 2020, and finally on February 28, 2021¹², although their entry into force began in 2022 and was differentiated by subject, due to the need for "careful" revision of the new regulations as well as the need for corrective and gradual adjustment of the sports sector¹³.

In detail, the areas focused on were those related to sports agents (Legislative Decree 37/2021¹⁴), sports facilities (Legislative Decree 38/2021¹⁵), administrative simplification of procedures and combating and preventing gender-based

11. In order to incentivize the Federations in the establishment of the professional sector, Law 86 had also provided for the creation of an *ad hoc* fund with resources allocated to those federations that would deliberate the transition of women's leagues to professional sports.

12. Legislative Decree Feb. 28, 2021, No. 36, on the *reorganization and reform of the provisions on professional and amateur sports bodies as well as sports labor*; Legislative Decree Feb. 28, 2021, No. 37, on *measures concerning the representation relationships of athletes and sports clubs and the access to and exercise of the profession of sports agent*, in G.U. No. 67, March 18, 2021. Legislative Decree Feb. 28, 2021, No. 38, on *measures on the reorganization and reform of safety standards for the construction and operation of sports facilities and regulations on the modernization or construction of sports facilities*; Legislative Decree Feb. 28, 2021, No. 39, on *simplification of fulfillments related to sports bodies*; Legislative Decree Feb. 28, 2021, No. 40, on *safety measures in winter sports disciplines*, in G.U. March 19, 2021, No. 68.

13. The first version of the decrees contained, in fact, a number of oversights, probably due to the urgency of providing the sector with specific and current legislation. This need perhaps "rushed" the Legislature, which was not able, in the first instance, to precisely coordinate all areas, then having to turn to postponements in the entry into force and to several corrective decrees (Legislative Decree 163/2022, in G.U., General Series, Nov. 2, 2022, No. 256; Legislative Decree 198/2022, in G.U. General Series, Dec. 29, 2022, No. 303; Legislative Decree 120/2023, in G.U. Sept. 4, 2023, No. 206).

14. The decree contains the revision of the profession of sports agent, emphasizing that it is a "qualified" profession with the duties of respecting the principles of loyalty, probity, dignity, diligence and competence and fair and fair competition, with autonomy, transparency and independence, as well as the obligation of professional updating.

15. The aim was to systematically reorganize, in a single measure, the regulations contained in various provisions, among which the interpreter had to navigate and which were not always easy to coordinate. Therefore, the procedural process for the construction of a sports facility was revised, preparing a "Unique Regulation", bearing the technical safety standards for the construction, modification, accessibility and operation of sports facilities.

violence (Legislative Decree 39/2021¹⁶) and winter disciplines (Legislative Decree 40/2021¹⁷).

The most impactful decree, however, is L.D. 36/2021, which relates specifically to sports work and to which, as part of our discussion, we deem it appropriate to reserve specific analysis.

3. Legislative Decree 36/2021 and the new face of sports work.

Legislative Decree 36/2021¹⁸ provides for a radical revision of the field of sports labor and outlines that which could be described as the “new face of the sports worker”¹⁹, under the statement that “The discipline of sports labor is posed to protect the dignity of workers while respecting the principle of the specificity of sport”²⁰.

After due modifications posed by corrective decrees²¹, today: “A sports worker is the athlete, coach, instructor, technical director, sports director, athletic trainer and match director who, without any distinction of gender and regardless of the professional or amateur sector, performs sports activity for remuneration. A sports worker is also any member, within the meaning of Article 15, who performs for

16. This decree provides for the simplification of procedures for the establishment and modification of entities, under which an application for registration in a dedicated Register (“Registro delle Attività Dilettantistiche”) will be sufficient - obviously if they meet the requirements - but without any minimum asset threshold. With reference to the fight against and prevention of gender-based violence, on the other hand, it is provided that “The National Sports Federations, Associated Sports Disciplines, Sports Promotion Bodies and Meritorious Associations, having heard the opinion of CONI, must draw up, within twelve months from the date of entry into force of this decree, guidelines for the preparation of organizational and control models of sports activities and codes of conduct for the protection of minors and for the prevention of harassment, gender-based violence and any other condition of discrimination provided for in Legislative Decree April 11, 2006, no. 198 or for reasons of ethnicity, religion, belief, disability, age or sexual orientation” (Art. 16).

17. Containing provisions covering a range from the characteristics of equipped ski areas, classification of facilities, obligations of operators, rules of conduct for users, rescue obligations, and civil liability (with related penalties). In addition, the decree also includes provisions in favor of the participation of people with disabilities by preparing a series of protections aimed at ensuring the practice with the help of a qualified companion, but also to encourage the practice of sports independently, strengthening the protections on the slope.

18. The date of entry into force of which is different depending on the topic. The scope of sports work and the regulations pertaining to bodies were to come into force on Jan. 1, 2023 (but the date was postponed to July 1, 2023 by the Milleproroghe decree), while the provisions on the transition to women's professionalism, those on the promotion of gender equality and equal opportunities for the differently abled will be operational on Jan. 1, 2022.

19. M.F. SERRA, *Le nuove prospettive dello sport alla luce della riforma 2020*, cit.; EAD., *La Riforma dello sport tra luci e ombre e un futuro incerto*, cit.

20. Legislative Decree 163/2022.

21. See footnote 13.

remuneration the duties falling, on the basis of the regulations of the individual affiliating bodies, among those necessary for the performance of sports activities, with the exclusion of duties of an administrative-managerial nature.”²²

Of major importance appear, first of all, the phrases “irrespective of the professional or non-professional sector” and “without distinction of gender,” since they have de-linked the legal qualification of relationships from the merely formal requirement of the establishment of the professional sector by the Federation²³, properly anchoring it to substantive criteria and consequently paving the way for women’s professionalism as well²⁴.

With reference to the phrase “regardless of the professional or non-professional sector,” the autonomy of the Federations and the dignity of sports workers are simultaneously safeguarded. The Federations will, in fact, be free to decide whether or not to establish a professional sector (a choice often linked to fiscal and tributary reasons), but on their decision will not depend the classification of athletes as professional workers.

Closely linked considerations are those related to the gender distinction: this step turns out to be of fundamental importance with regard to not only the promotion of women’s sports but, above all, its recognition as “work” and “profession”²⁵.

22. Art. 13 Legislative Decree 163/2022, amending Art. 25 Legislative Decree 36/2021 first draft, according to which: “A sports worker is the athlete, coach, instructor, technical director, athletic director, athletic trainer, and competition director who, without any distinction of gender and regardless of the professional or amateur sector, exercises sports activity for remuneration outside the amateur services referred to in Article 29.”

23. Derived from Art. 2 of L. 91/81, according to which “athletes, coaches, technical-sports directors and athletic trainers who engage in sporting activity for remuneration with a character of continuity within the disciplines regulated by CONI and who obtain qualification from the national sports federations, according to the rules issued by the federations themselves with observance of the directives established by CONI for the distinction of amateur activity from professional activity” were considered professionals, and therefore workers. Thus, according to this approach, the legal qualification of sports work depended exclusively on the formal requirement of the Federation’s choice of the establishment of the professional sector, without any regard for the substance of the relationships.

24. “Major excluded” from the labor sphere *ex lege*, since no federation, not even those that had actually established a professional sector, had extended it to the women’s sphere, relegating women to amateurism “by law.” See on this point, M.F. SERRA, *Lo sport femminile*, in *Femininum ingenium*, 1/2014; EAD., *Women’s sport: a sui generis discrimination*, in *Pandektis*, 2018; EAD., *La discriminazione di genere: il valore paradigmatico di una discriminazione sui generis*, in *Giustiziasportiva.it*, 1/2018.

25. In this regard, FIGC initiated the “change” with the establishment of the long-awaited professionalism of female soccer players. With Resolution 226/A23 of April 26, 2022, FIGC introduced some amendments to the Norme Organizzative Interne (NOIF), necessary to allow women’s professionalism (Art. 28, point 1, NOIF: as of July 1, 2022, “players and female footballers who carry out sporting activity for consideration with a character of continuity, regis-

Moving on to examine the new definition of the sports worker, we note the recovery of the category of the volunteer²⁶. The volunteer, in the new Reform framework, is the one who performs his or her activity in a completely spontaneous manner, incompatible with any form of remunerated work and who may receive, eventually, only mere documented reimbursement.

Such a recovery appears, first of all, to be in line with the original face of sports as a world characterized by volunteerism. In addition, it helps to correctly distinguish “volunteers” from those who exercise performance for pay, “workers,” who are in turn divided into sports workers²⁷ and administrative-management workers²⁸.

In addition, “member” in general is recalled, thus creating, in some way, a link with the sports system and its autonomy, since membership constitutes the act by which a subject becomes part of the sports system and is, therefore, framed within its own provisions²⁹.

The new sports labor, therefore, has begun its course, marking a milestone and assigning dignity as a worker even to those who perform their activities in federations without the professional sector or in DSAs and EPSs³⁰.

tered for associated clubs in the Leagues and/or for clubs participating in the Women's Serie A Championship were considered professionals”). On the other hand, the women's sector has now reached a decidedly high economic dimension, quite equal to that of the men's, and it no longer seems plausible that it should be relegated to the realm of amateurism/ de facto professionalism, lacking even basic labor protections. With regard to the women's sector, moreover, the uncertain and partial protection is even more marked since it also includes the hypotheses of maternity and maintenance of sporting merit, a topic that, recently, has been at the center of an affair - with more media than judicial prominence -, due to the “Lugli case” that has underscored even more that the matter, although included in the 2018 and 2020 Finance Acts, is far from pacific. See on this M.F. SERRA, *La discriminazione di genere: il valore paradigmatico di una discriminazione sui generis*, cit.; EAD., *Le nuove prospettive dello sport alla luce della riforma 2020*”, in *Atti del III Forum Internazionale del Gran Sasso*; EAD., *La Riforma dello sport tra luci e ombre e un futuro incerto*, cit.

26. Replacing that of the amateur, provided for in Art. 25 Legislative Decree 36/2021, first draft (M.F. SERRA, *Lavoro, valore, diritto e le molte facce dello sport*, in *Nomos – Le attualità nel diritto*, n. 2/2022).

27. Athletes, coaches, instructors and, in general, all members of the membership who perform a necessary task according to the provisions of the sports federation to which they belong.

28. With administrative functions.

29. Consequently, the lack of a membership will result in the exclusion of the collaborator from the discipline of sports labor and his or her placement, possibly, in the ordinary labor law schemes.

30. According to the new framework, the employment relationship may be subordinate, self-employed (with a P.IVA), occasional, coordinated and continuous collaboration, and apprenticeship contracts may be signed for young athletes, with the corresponding social security protections and in case of illness, injury, maternity, etc.

4. The sports tie.

Further provisions contained in Legislative Decree 36/2021 concerned the abolition of the sports tie.

For completeness, it should be recalled that this institution - about which much has been written³¹ - is ingrained in Italian sports culture and organization and represents a *unicum* on the world stage.

With the sports tie, the athlete establishes a relationship - of varying duration³² - with the club or association making the membership under which he/she commits himself/herself to perform his/her activity solely and exclusively in favor of that club or association. Thus, if the athlete, for whatever reason, should decide, during the constancy of the tie, to change club or association, he/she is not entirely free to do so, since he/she requires the *placet* of the club that first made the membership and is obliged to pay an indemnity to it.

The original *ratio* of the tie, in the definition we have provided, was to safeguard the work of the clubs that invested time and resources on the athlete (by providing for the payment of the indemnity) and also to guarantee a certain “loyalty” of the athlete to the club. However, the use that has been made of the tie over the years has deviated from the potential intentions of the institute, causing it to become one of the most debated issues of dubious legitimacy³³, related to

31. See, in particular, M. COLUCCI, M.J. VACCARO (a cura di), *Vincolo sportivo e indennità di formazione*, Sport Law and Privacy Center, 2010. Please, refer also to: A. DE SILVESTRI, *Potestà genitoriale e tesseramento minorile*, in *Riv. dir. sport*, 1991; AA.VV., *Vincolo sportivo e diritti fondamentali*, con saggi di P. MORO, E. CROSETTI BERNARDI, P. LOMBARDI, Euro 92 editrice, Pordenone, 2000; A. DE SILVESTRI, *Il contenzioso tra pariordinati nella Federazione Italiana Gioco Calcio*, in *Riv. dir. Sport*, 2000, pp. 520 ss.; P. MORO, *Questioni di diritto sportivo: casi controversi nell'attività dilettanti*, Euro92 editrice, Pordenone, 2002; ID., *Natura e limiti del vincolo sportivo*, in *RDES*, 2005; A. BELLOMO, *Disciplina e funzionalità del c.d. scioglimento del vincolo sportivo*, in *Giustiziasportiva.it*, 2005; D. ZINNARI, *Percorsi dottrinali in tema di vincolo sportivo*, in *Giustiziasportiva.it*, 2005; ID., *Atleti dilettanti, sportivi non professionisti?*, in *Giustiziasportiva.it*, 2007.

32. With reference to the duration, the institution has been variously reshaped over time: from being an undetermined constraint, although it has become a “term” one, it has been so with provision for complex and lengthy procedures for release that have often discouraged athletes, even leading them to abandon sports practice.

33. Numerous criticisms of the permanence of the sports tie have been raised over the years: P. MORO, *Vincolo sportivo e diritti fondamentali*, in M. COLUCCI, *Atti del convegno l'indennità di formazione nel mondo dello sport. Prima analisi della sentenza 'Bernard' della Corte di Giustizia e il suo impatto sul mondo dello sport*, Sports Law and Policy Centre, 2002; P. MORO, *Natura e limiti del vincolo sportivo*, in *RDES*, 2005, pp. 67 ss. It is not surprising, then, that in recent years voices have been raised in defense of its abolition even though many concerns have been raised in the sports sphere: M. COLUCCI, M. J. VACCARO, *Vincolo sportivo e indennità di formazione. I regolamenti federali alla luce della sentenza Barnard*, Sports Law and Policy Centre, 2009. For a more in-depth discussion after the recent legislative

the potential restriction of the freedom of athletes, especially when their performance is qualified in labor terms³⁴.

That being said, the proposed abolition of the institute is absolutely in line with the intent of the Reform and also consistent with the new status of the sports worker, it should be recalled, unhooked from formal parameters and anchored on substantive criteria: the idea of some sort of power over the mobility of a worker athlete, in the sense reshaped by the Reform, would have been a contradiction in terms, and, on the other hand, if the member becomes a worker, as such he must be protected, thus also being free to choose which club to “work” at³⁵.

However, on this point, some further considerations must be made, involving the autonomy of the sports system and, in turn, of the Federations.

This autonomy requires, in fact, a coordination of the provisions of the national legislature with those of the statutes and, therefore, an adjustment of the latter. This adjustment requires time and, possibly, transitional regimes as well as - and above all - the proper balancing of the needs of clubs with the rights of members.

Article 31 of Legislative Decree 36/2021, as amended by Legislative Decree 198/2022, stated that “Limitations on the athlete’s contractual freedom, identified as a sports tie, shall be eliminated by July 1, 2023. The aforementioned deadline shall be extended to July 1, 2024 for memberships that constitute renewals, without interruption, of previous memberships. National Sports Federations and Associated Sports Disciplines may dictate transitional rules providing for the gradual decrease of the maximum duration of the same. After the expiration of the terms referred to in the first and second periods of this paragraph, the sports tie shall be considered abolished.”

However, to date, the provisions relating to the abolition of the sports tie are not yet fully operational and are expected to come into force by July 2025³⁶.

provisions, see M. COLUCCI, P. PALOMBI, *Il vincolo sportivo e la sua (irreversibile) abolizione. Considerazioni sull’istruttoria dell’ADCM nel caso della FIPAV*, in *RDES*, 2022. The Authors, starting with FIPAV's decision to postpone the abolition of the tie, analyze the nature of the sports constraint and its critical issues in light of the constitutional, labor law and European law norms that led the legislature to abolish it in the context of the recent reform of the sports system. They therefore hope that the constraint can actually be eliminated and that amateur sports associations can be rewarded for their commitment to the training of athletes without this having to result in the restriction of athletes' freedom of association and movement. See also G. AGRIFOGLIO, *Un momento dialettico tra ordinamento sportivo e ordinamento statale: la riforma in materia di lavoro sportivo*, in *RDES*, 2021.

34. On the other hand, in these terms, the constraint had already been abolished for professionals *ex lege* 91/81 (art. 16) and this provision had also been supported by the Bosman decision (December 15, 1995).

35. Actually, the same considerations should apply to volunteers, precisely because the essence of volunteering lies in the freedom to choose for whom to volunteer.

36. Law Decree No. 89 of June 30, 2024, converted into Law No. 120 of August 8, 2024.

Nevertheless, most federations have already made the necessary statutory changes and are already proceeding - by virtue of their autonomy - to implement the new provisions³⁷.

5. Sport as a constitutional right: article 33 Const.

The Reform, as we have seen, moved in the direction of actualizing the system and making it more adherent to new social and cultural contexts.

Above all, however, the Reform is part of a historical moment characterized by the revival of sport as a value and as a tool for the dissemination of values and, above all, its concrete qualification as a “right.”³⁸

Thus, the need to provide sport with a constitutional anklet matured in our legislator, and a process of constitutional revision was undertaken, the stages of which we briefly review.

At first, in an effort to provide sport with an appropriate constitutional framework, Italian legislator moved to propose the amendment of Article 32 Const.³⁹.

Article 32 Const. constitutionalizes the right to health, to the protection of which, undoubtedly, sporting activity contributes.

This amendment, however, seemed clearly reductive. In fact, taking as its

37. In any case, the total abolition will not affect athletes who are not in professional employment relationships. For that category, the sports tie will remain in place, although its maximum duration will be lowered to two years. In fact, Law 112/2023 (in Official Gazette No. 190 of August 16, 2023) stipulates that “As of July 1, 2023, **also** in order to protect the youth nurseries and related investments made by amateur sports associations and clubs, Article 31, paragraph 1, of Legislative Decree No. 36 of February 28, 2021, shall not apply to athletes who do not have employment relationships of a professional nature, for whom national sports federations and associated sports disciplines may provide for a membership subject to a bond for a maximum duration of two years. The regulations of national sports federations and associated sports disciplines shall also provide the terms and conditions for the transfers of athletes referred to in the first sentence, determining the technical training awards based on the criteria established by Article 31, paragraph 3, of Legislative Decree No. 36 of 2021.”

38. It should be recalled, in fact, that the “right to sport” has always been proclaimed and traced back to various provisions of the Italian Constitution, without, however, ever being expressly codified, at least until now. In this regard, it is well known that the first explicit entry of sports into the Constitution was represented by the 2001 reform of Article 117 of the Constitution. That reform, however, treated sports only as a “matter” within the State-Regions division of competences. As much as its importance as a value, tool and vehicle for the dissemination of values was reiterated, sport (*rectius* the “right to sport”) was not mentioned elsewhere and could only be traced back to other constitutional provisions (e.g., Art. 18, Art. 32) and included (again implicitly) within the list of rights in Art. 2.

39. The text proposed in the May 20, 2015 stated: “1. The first paragraph of Article 32 of the Constitution shall be replaced by the following: ‘The Republic shall protect health and food security as fundamental rights of the individual and interests of the community, and shall guarantee free care and access to food to the indigent’.

starting point the consideration of the educational value of sports, it did not seem sufficient to reduce it to a mere implication of the right to health.

Its best placement appeared to be, secondly, that of Article 33 Const.⁴⁰, relating to freedom of art and science and that of teaching. Moreover, this provision is closely related to both Article 32 and Article 34 concerning education. These are fundamental articles relating to “Ethical and Social Relations” and should be read in coordination.

Thus, on September 20, 2023, the amendment to Article 33 of the Constitution was finally approved⁴¹ and sport has been codified as a constitutionally guaranteed right with profound educational value.

The new text of Article 33 Const. inserts a specific comma for sports: “*The Republic recognizes the educational, social and promotion of psychophysical well-being value of sporting activity in all its forms.*”

From a general perspective, the amendment finally represents the elevation of sport to the *status* of a right belonging to the constitutionally guaranteed human person and the codification of its very high educational and social value.

This is also in line with continuity and coordination at the European level, within which the connection between sports and social rights and the need to promote sports and physical activity is unanimously recognized.

Moreover, it also fits perfectly with the policy of inclusion, where the educational value of sport is recognized “in all its forms”⁴², thus including, among others, the sphere of disability⁴³.

It should not be forgotten, moreover, that other legislative measures had already recognized, though not at the constitutional level, the importance of sports.

Reference is made to the inclusion of physical education in elementary school

40. As currently worded, the article states: “Art and science are free and free is the teaching thereof. The Republic dictates the general rules on education and establishes state schools for all orders and grades. Entities and private individuals shall have the right to establish schools and educational institutions, without charge to the State”.

41. **The amendment is the synthesis of a series of converging projects (DDL S. 747, S. 2262, S. 2474, S. 2478, S. 2480, S. 2538).** https://www.senato.it/japp/bgt/showdoc/18/DDLPRES/0/1354513/index.html?part=ddlpres_ddlpres1. *Si veda pure* <https://www.sport.governo.it/media/3438/ac0594.pdf>.

42. Amendment passed in the Constitutional Affairs Committee in March 2022 in order to make the protection of sporting activity as all-encompassing as possible.

43. The importance and timeliness of this issue was also highlighted during the European Swimming Championships held in Rome in August 2022. In fact, on the closing gala night of artistic swimming, there was an out-of-competition performance by the Misinini/Sacripante duo, who are not allowed to compete in official competitions, according to current rules, because Sacripante is a Paralympic athlete, suffering from down syndrome. Statements from the duo (who had already performed in 2018 in Kyoto) converge on the hope that they will be able to compete in an official competition that sees no disability-related barriers.

as of the 2022/23 school year and the recognition of the professional dignity of the physical education teacher as a specialist in a discipline no longer considered - nor can it be considered - merely leisure, but a moment of personal development⁴⁴.

Recognition of the educational value of sports makes it necessary to enhance the value of sports activities not only in the school environment but also to support with adequate resources the amateur sports associations and clubs that are at the basis of the sports pyramid and contribute to the achievement of the various purposes of sports.

In any case, this is simultaneously a starting point and an end point, which will require political commitment to implement the constitutional dictate and whose developments in the near future will be interesting to observe.

6. Conclusion.

Italian sport today, therefore, has an entirely new framework.

Sports operators - regardless of the professional or non professional or amateur sector and without gender distinction - have finally acquired the dignity of workers and obtained due protections.

Coordination between state and sports systems has required time but it has finally been achieved: sports institutions have aligned their Statutes and Regulations in the sense of the Reform. Indeed, they have shown to be one step ahead of the Italian legislator, for example, in the matter of sports tie, ordering the entry into force of the related sector provisions even before the deadline set by the national legislator.

All this strongly underscores the renewed consideration of sports and its codification as a right not only “recognized” but consecrated in the constitutional chart in the new comma of Article 33 Const.

The path is probably still long and will certainly present new traps that will have to be addressed and resolved, especially from the point of view of applicability. However, the changes made are the first step toward the recognition of a reality, such as sports, which is a complex and multifaceted universe.

44. In fact, with the 2021 Financial Act (Law No. 234 of December 30, 2021, in G.U., General Series No. 310, of December 31, 2021), the inclusion of two hours per week of physical education in fifth grade classes was provided for, with progressive extension to the other classes in subsequent years, and the need to entrust teaching exclusively to specialized subjects, graduates precisely in motor sciences, with the establishment of a special competition class. The inclusion, in addition to reaffirming the educational value of sport, also responds to the indications of the PNNR regarding the strengthening of infrastructures in order to enhance skills related to motor activity starting from elementary school (point 1.3). For further considerations on the point, see M.F. SERRA, *Sport di fine anno: il cerchio si chiude (male) attorno a un settore di nuovo stimato*, in *Nomos – Le attualità nel diritto*, n. 3/2021.