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**FROM THE SPANISH FLU TO COVID19:
WHILE THERE IS FOOTBALL THERE IS HOPE!**

by *Durante Rapacciuolo**

*“Some people think football is a matter of life and death.
I assure you, it’s much more serious than that”*

Bill Shankly

Scottish footballer and Liverpool Manager, 1913-1981

One century separates the 1918 Spanish Flu from the now globally raging COVID 19 pandemic. In this same century, only the football pitch has remained the same. For all the rest, what a revolution in a sport which is now the biggest global entertainment sportive industry!

In pandemic times, sports and football preeminently are both an irreplaceable source of solace and relax and an indisputable vehicle of infection and circulation of the virus because of uncontrolled, massive human aggregations.

This is the dilemma the public authorities worldwide are facing and trying to solve among many difficulties. How to conciliate the pros and cons of keeping open such a sport drawing billions of spectators.

The national and local governments are struggling to overcome their uncertainty between letting the supporters have their weekly entertainment while protecting them and their families and communities from the lethal infection.

* Editor in Chief of Rivista di Diritto ed Economia dello Sport (RDES).

The professional and Olympic sports, following the tracks of the professional football, have become a huge entertainment industry which churns billions of Euro yearly cumulating media and marketing rights and incomes added to the tickets sales for the sporting events.

Otherwise than in 1918, when the media were the papers and the radio, in this distressful pandemic time, the availability of video and digital media has fed an increase of the popular appetite for any kind of sports to watch on the home tv sets.

So, can we detect here a trend in sports watching? The public is not anymore around the pitch but it remains more and more seated before a tv.

«*The pandemic might be an impetus for changes that were already coming to how a fan experiences sport. A crisis like we're in doesn't necessarily create new trends,*» said David Aufhauser, the CEO of NeuroTrainer, a startup that uses virtual-reality technology to train athletes. «*It accelerates trends that are already there*».¹

The pandemic might accelerate the phenomenon of millions of football supporters giving up watching games in person but opting for the comfort and safety of their salon armchair. The smart phone logistic support would add the pleasure to bet easily and effectively on the results of their teams.

However, a deserted and silent stadium around a football pitch would be a monument to a very sad sport session.

Hopefully the COVID19 vaccines will end the distress for the football spectators in 2021.

The precedent or the 1918 Spanish Flu pandemic and the sports

Alike the present Covid19 pandemic, the 1918 Flu pandemic touched nearly all the countries and the continents and caused 50 million deaths all over the world.

The sport activities were not shut because of the Flu. The WWI ravaging Europe for five years already suspended the sport games. But the Flu blocked the sport championships for the season 1918-1919, a good six months after the WWI ended.

There was no discussion about the public authorities shutting down the football and other sports championships. This fact is understandable primarily for the ongoing war and secondarily for the reason that the financial and political value of the then entire sports industry was only a bit of the current multi-billion budget of the global football. Accordingly, the lobby power of the sports' associations was not so strong to appeal to the national governments.

¹ D. AUFHAUSER, *What can fans expect when sports return? A strange and uncertain experience*, available at <https://247news.com/what-can-fans-expect-when-sports-return-a-strange-and-uncertain-experience/> (last visited 26 October 2020).

That's why the 1918 public authorities did face no strong resistance by the clubs' owners and the industries sponsoring and working with the football clubs.

Finally, the strength of the humanity overcame the pandemic and people came to the sports to find health and gratification.

The football and the 2020 COVID19

The 2020 COVID19 pandemic happens in a different sport and social landscape.

The European professional football market alone is worth 28.9 in billion Euros, as estimated in the season 2018/2019.²

The global sports were estimated worth nearly \$488.5 billion in 2018 and able to nearly go to a value of \$614.1 billion by 2022.³

The importance of the football business is highlighted by the headlines of the British papers on the so-called Project Big Picture.⁴

Briefly told, the major six Premier League clubs would grab the power of deciding about the future distribution of the media right leaving the other 14 clubs only with the option of giving in. The power-seizing plan is accompanied by the offer of 25% redistribution to the EFL or the other minor divisions of the English football. Moreover, the Plan announced the creation "of the £250m short-term crisis fund that the EFL chairman, Rick Parry, had been seeking merely £20m guaranteed for League One and League Two clubs, with more available to be sought as loans".

This English story illustrates at best the present reality of the professional football, which is more an entertainment business than a sport as retained in the Olympic culture. A business means that the clubs' owners are investors and they have to ensure for themselves and associates the best return of profits for those investments.

This economic context easily explains the pressures on the public authorities by the football clubs to let the championships going on and conclude the season in 2019/2020, to start and try to conclude in the best possible way the current football season.

² C. GOUGH, *Market size of the European professional football market from 2006/07 to 2018/19*, available at <https://www.statista.com/statistics/261223/european-soccer-market-total-revenue/> (last visited on 25 October 2020).

³ Sports - \$614 Billion Global Market Opportunities & Strategies to 2022 - ResearchAndMarkets.com, available at <https://www.businesswire.com/news/home/20190514005472/en/Sports—614-Billion-Global-Market-Opportunities> (last visited on 25 October 2020).

⁴ D. CONN, *Project Big Picture power grab is shot down, but plan's ugliest parts will be back*, available at <https://www.theguardian.com/football/2020/oct/14/project-big-picture-power-grab-is-shot-down-but-plans-ugliest-parts-will-be-back?> (last visited on 25 October 2020).

Notwithstanding the striking differences between the two worlds of football, the 1918 and the 2020, the game played on the pitch still thrills millions of supporters helping them to overcome the distress and anxiety caused by the pandemic.

Nel presente volume sono pubblicati i seguenti saggi:

LE PROVE NEL GIUSTO PROCESSO SPORTIVO TRA ESIGENZE DI CELERITÀ E RISPETTO DEL PRINCIPIO DISPOSITIVO

di *Enrico Fanesi*

L'Autore analizza il tema delle prove nell'ambito del giusto processo sportivo, alla luce della riforma della giustizia sportiva operata dal CONI e del nuovo codice di giustizia sportiva della Federazione Italiana Giuoco Calcio (FIGC), approvato dalla Giunta Nazionale del CONI con deliberazione n. 258 dell'11 giugno 2019.

La prima parte dello studio delinea i confini dell'istruzione probatoria così come descritti dal codice CONI, distinguendo tra i due distinti processi volti alla tutela delle situazioni giuridiche protette sorte all'interno del mondo dello sport: il processo sportivo e il processo federale. In tale ottica l'accento è posto sul criterio sussidiario previsto dall'art. 2, comma 6 del codice di giustizia sportiva del CONI, il quale stabilisce che è necessario riferirsi, per quanto non espressamente disciplinato e nei limiti della compatibilità, ai principi e alle norme generali del processo civile.

Il richiamo al codice di procedura civile determina da un lato l'enfaticizzazione del principio dispositivo del processo sportivo e, dall'altro, implica un'analisi in termini comparatistici tra ordinamento civile e ordinamento sportivo.

La seconda parte del lavoro è dedicata all'esame dei mezzi di prova previsti dal codice di giustizia sportiva della FIGC, alla luce delle modifiche introdotte nel 2019, nella prospettiva di un coordinamento tra il codice CONI e i singoli codici di giustizia sportiva delle diverse federazioni.

FOOTBALL PREMATURE END ACROSS EUROPE DUE TO COVID-19 AND EU COMPETITION LAW CONCERNS

di *Amedeo Polichetti*

The European football federations and leagues' (hereinafter, collectively referred to as "the relevant national football associations" or "NFAs") decisions to prematurely end the season may have infringed EU competition law. Regardless of the termination's methodology (sealing of tables, application of algorithms, halting of any promotion and relegation), the premature end of the football season has failed the regularity of the competitions and penalised certain clubs to the benefit of others.

The analysis of the decisions focuses on their compatibility with the antitrust rules, namely Article 101(1) TFEU. In fact, the NFAs' determinations look like decisions of associations of undertakings limiting competition between the football clubs. That said, the core of the analysis tries to prove that these decisions restrict competition by object or by effect.

In principle, the extraordinary Covid-19 context seems justifying the exclusion of a restriction by object. On the contrary, following an analysis of the effects of the NFAs' decisions, it may be held that insofar as some matches – which could change the positioning of the teams in the title race and in the promotion/relegation battle – still had to be played, the premature end of the season may have had the effect of excluding actual or potential competitors and preventing competition among clubs. Furthermore, the NFAs' decisions may have prevented certain teams from the economic benefits associated with championship victory, promotion to first division or participation in the European competitions.

The potentially restrictive decisions may not be justified in the light of a legitimate objective nor be exempted from the application of antitrust rules according to Article 101(3) TFEU. As concerns the first aspect, the *Wouters/Meca-Medina* case-law does not seem applicable to the present case as the NFAs' decisions do not appear to have any causal link with legitimate objective such as athletes' health or the integrity and objectivity of competitive sport. As concerns the second aspect, the decisions do not seem to cover any of the cumulative conditions laid down in Article 101(3) TFEU, thus they do not generate objective economic benefits that outweigh the negative effects of the potential restriction of competition.

In conclusion, although all the antitrust complaints filed at the national level by the clubs affected by the premature league termination were dismissed by the national courts and authorities involved, this article will argue that the effects connected to the NFAs' decisions may give rise to some concerns under EU competition law. In that regard, while it is true that the exceptional Covid-19 situation required prompt and efficient action by all European NFAs, it is worth noting that less problematic approaches could have been followed. Particularly, the decisions taken by the “major” European NFAs – Italy, Spain, England and Germany – to extend the suspension measures and resume games following the virus slowdown have proven to be the most effective solution under an EU competition law perspective. It was indeed the resumption of the championships that kept sporting competition between clubs unaffected, as it favoured the restart of the leagues without altering the final positioning of the clubs.

LA COMMISSIONE D'INTERMEDIAZIONE CORRISPOSTA
ALL'AGENTE DI CALCIATORI E IL SUO REGIME IVA NEL DIRITTO E
NELLA GIURISPRUDENZA UE

di *Niccolò Emanuele Onesti e Andrea Cattaneo*

Il presente articolo ha l'obiettivo di contribuire alla discussione in ordine alla disciplina fiscale relativa ai servizi di intermediazione e rappresentanza degli agenti di calciatori,

nel contesto della normativa dell'Unione europea che regola tale ambito. Il numero sempre più alto di trasferimenti di calciatori che si registra all'interno del mercato europeo ed, in entrata e in uscita, sul mercato internazionale che vede protagoniste società affiliate alla UEFA rende il mercato europeo il territorio di maggiore interesse per transazioni che includono provvigioni ed emolumenti vari in favore di agenti/intermediari che incidono in modo diverso in ragione di regimi tributari differenziati, con conseguenze sulla regolamentazione dell'attività di intermediazione all'interno del mercato interno dell'Unione europea. Nell'ambito di una discussione circa l'efficacia del Regolamento FIFA 2015 sugli intermediari, il presente lavoro sviluppa un'analisi della normativa italiana ed europea attinente all'identificazione del soggetto destinatario dell'obbligo tributario con riferimento al pagamento di commissioni per l'attività di intermediazione e le condizioni della sua assoggettabilità all'imposizione dell'IVA.

LE CLAUSOLE FISCALI DEL CONTRATTO DI LAVORO SPORTIVO ALLA LUCE DELLA GIURISPRUDENZA DEL CAS

di *Mario Tenore*

Nei trasferimenti internazionali la variabile fiscale è un fattore cruciale che può determinare problematiche molto spesso foriere di fenomeni di doppia imposizione internazionale, con conseguente riduzione della remunerazione netta spettante in favore del calciatore.

Nel contratto di lavoro dipendente è dunque opportuno limitare tali rischi prevedendo la clausola di netto volta a garantire al giocatore la remunerazione netta pattuita anche in caso di successivi mutamenti della residenza fiscale del calciatore.

THE ECHR DEMANDS A FAIR TRIAL IN THE MATTER OF *ALI RIZA AND OTHERS VERSUS TURKEY*

by *Reto T. Annen*

The author summarises the ECHR's judgment in the matter of Ali Riza and others versus Turkey and describes its key elements. Next, he utilises doctrines and precedents to indicate the principles that must be fulfilled in order to regard an arbitral tribunal as independent and impartial. He then analyses the ECHR's judgment and highlights its importance to sports justice.

THE PECULIAR ITALIAN LEGAL FRAMEWORK OF FOOTBALL COACHES

by *Marcello Presilla and Alessandro Mosca*

The scope of the job of football coaches has had a stark evolution and has expanded worldwide, becoming great part of the clubs' financial strategies. The coach has

become a manager both on and off the pitch. He is a key figure shaping the identity of clubs. He embodies the image and even the corporate philosophy of the clubs.

There are coaches with technical, temperamental and communication skills in managing relationships with players, media and supporters. Other coaches show particular attention to young athletes to make them top players who carry prestige and capital gains for clubs' balance sheets. Similarly, there are clubs that have changed coaches at the rate of two or more per year,⁵ scapegoating them for the bad results, while other clubs have raised their coaches to the status of international icons. One such legendary coach is Alex Ferguson, who managed not only players' transfers but also imposed his own brand and a new identity for the team and the club. This has strongly characterized Manchester United for 27 years. Great coaches⁶ such as Pep Guardiola, Jurgen Klopp, Carlo Ancelotti, Cholo Diego Simeone and José Mourinho are icons of their respective teams, being able to shape their identity and build winning teams over time, both from sporting and managerial point of view. However, we cannot forget other great coaches such as Arrigo Sacchi, Vicente Del Bosque, Marcello Lippi, Fabio Capello, Rinus Michels, Giovanni Trapattoni and Niels Liedholm.

The choice of a coach is the first tile in the mosaic to build an ambitious and winning project, from a sporting as well as from entrepreneurial point of view.

The responsibilities and duties of a coach have grown over time. Consequently, salary and benefits have also increased significantly. Agreements between coaches and clubs have become a lot complex and structured as those of footballers. The employment agreements incorporate clauses and contractual provisions aimed to regulate the coach's professional activity. Individual work agreements between coaches and clubs are regulated by different national regulations. From this point of view, the lack of a framework of common rules very often favors the rise of disputes that could have been avoided in case more homogeneous and harmonious regulations had existed. In fact, the application of the regulations for players is better defined. For the players, either the FIFA Regulations on the Status and Transfer of Players apply for the internationals, or the national regulations apply to national contracts. This lack of a common rules forces clubs to apply exclusively the ordinary law contract. Despite some countries such as Italy,⁷ Argentina and Uruguay have historically introduced collective bargaining agreements to provide a framework for regulating relationships between

⁵ On the contrary, there are cases such as the French coach Guy Roux, who has the absolute record of longevity on the same club, having remained continuously for over 40 seasons at Auxerre.

⁶ This list does not want to be complete because there are so many great coaches in the history of football, coming from different geographical areas, that would be impossible mentioning all of them.

⁷ Two separate and distinct collective bargaining agreements are in force between coaches and clubs of Lega B and Lega Pro currently. Instead, the collective bargaining agreement between Serie A coaches and clubs expired some years ago and it has not yet been replaced.

coaches and clubs, in many other countries such as Spain,⁸ this option is not available.

In this multi-faceted international landscape, this article aims to provide a breakdown into the regulatory Italian framework examining both the rules brought by the law of professional sportsmen and the clauses of the collective bargaining agreements in force. Salary, method of payments, dismissal in the peculiar form of the so called “esonero”, taxation and licenses are amongst the other topics investigated in the paper with the aim to provide a full picture of the Italian discipline applicable to the contracts signed between clubs and professional coaches.

SPORT DATA RIGHTS, GDPR AND LEGAL PROTECTION FOR ATHLETES PRIVATE DATA

by *Zia Akhtar*

With improvements in technology more and more data about sporting events is being recorded and several stakeholders claim to ‘own’ such data including the players themselves under the notion that it would not exist if they were not participants. The software companies who manufacture the data consider it as the product of their own technical and analytical ability and claim to be the owners of its the source. In Europe the sui generis database rights are recognised for those who make a substantial investment in obtaining, verifying and presenting data to obtain an intellectual property right in the resultant database into which it is stored. This raises an issue in sport events for data gatherers who are collecting more particular data such as, for example, “man of the match” award for which the collector is not likely to obtain a database right. The argument in this paper is that data from a sports event cannot be protected against breach under the General Data Protection Regulation 2016, because it is an unquantifiable and a spontaneous act and that the established rights in the personal data of registered athletes need greater protection under public interest.

INTELLIGENZA COLLETTIVA E VALORE DI MERCATO DEI CALCIATORI: IL CASO *TRANSFERMARKT*

di *Marco Di Domizio, Raul Caruso, Bernd Frick*

Il presente lavoro si propone di analizzare il ruolo dell’Intelligenza Collettiva nella definizione dei valori di mercato dei calciatori di Serie A stimati e prodotti dal sito web tedesco *Transfermarkt*. Sono stati analizzati dati su 1.620 calciatori che hanno disputato le partite di Serie A dalla stagione 2007/08 al 2016/17, per un totale di 4.486 osservazioni. Utilizzando le tradizionali variabili che catturano le caratteristiche degli atleti e delle loro *performance*, ed inserendo tra le covariate

⁸ J. DE DIOS CRESPO PÉREZ, “...the Government legislated on the special labor relationship of professional athletes through Royal Decree 1006/1985, dated 26th June”, in https://www.sportslawandpolicycentre.com/Bulletin_1_2014_TEASER.pdf.

anche i salari percepiti dai calciatori, è stata confermata la significatività statistica dell'età, delle partite giocate, e dei gol realizzati nella determinazione del valore di mercato stimato da *Transfermarkt*. A questa si è aggiunta una associazione positiva, seppure anelastica, tra l'ingaggio percepito ed il valore di mercato. La stima dei modelli con effetti fissi per club e per stagione ci ha permesso, inoltre, di identificare il valore aggiunto prodotto, in termini di valore di mercato nelle valutazioni degli esperti di *Transfermarkt*, da ogni singola squadra, fino a definirne un vero e proprio *ranking*. L'introduzione degli effetti fissi per stagione, inoltre, ha chiaramente dimostrato come il valore di mercato dei calciatori della Serie A si è drasticamente ridotto nel periodo oggetto di indagine, aprendo le porte ad una seria minaccia per la sopravvivenza finanziaria delle squadre di Serie A sempre più legata alle possibilità di realizzare plusvalenze dalla cessione dei calciatori.

L'INTERPRETAZIONE DI UNA NORMA SPORTIVA: *LEX MINUS DIXIT QUAM VOLUIT?*

di *Gabriele Toscano*

L'autore commenta il provvedimento della Corte Sportiva di Appello della Federazione Italiana Pallacanestro (F.I.P.) n. 16 del 26 febbraio 2020 con la quale è stata revocata la squalifica di 1 gara ad un atleta in seguito alla sua espulsione.

Nella pronuncia in oggetto un atleta di un importante *club* italiano, dopo essere stato espulso per aver commesso nell'arco della gara un fallo tecnico ed un fallo antisportivo, veniva squalificato per 1 gara dal Giudice sportivo nazionale per essere rimasto a contatto visivo della gara sostando nel tunnel di accesso agli spogliatoi, anziché recarsi negli spogliatoi.

Il Giudice sportivo nazionale ha applicato alla lettera il regolamento di giustizia (R.G.) il quale prevede all'art. 36 *ipso iure* la squalifica per 1 gara, o l'inibizione per 7 giorni nel caso in cui un atleta espulso, per un qualunque motivo, non lasci il terreno di gioco recandosi o negli spogliatoi, o se lo desidera, fuori dall'impianto sportivo, in combinato disposto con l'art. 38.3.2 del regolamento tecnico della pallacanestro (R.T.).

La Corte Sportiva di Appello invece, ha accolto il reclamo del *club* e per effetto ha annullato la squalifica, sostituita da ammenda pecuniaria, per il giocatore comminata dal Giudice sportivo, temperando la propria decisione sulla condotta posta in essere dall'atleta nei momenti successivi all'espulsione.

Questa decisione gioco-forza costituisce un precedente che avrà un impatto nei prossimi anni, soprattutto nei campionati minori dove sono molto frequenti queste squalifiche, con la conseguenza che ogni giocatore espulso, purché ponga in essere un comportamento corretto, potrà sentirsi legittimato a non recarsi più negli spogliatoi, e a continuare ad assistere dalle tribune (o a ridosso del terreno di gioco) la gara fino al termine della stessa, *bypassando* la disposizione dell'art. 36 R.G. e dell'art. 38 R.T.

OSSERVAZIONI, A PRIMA LETTURA, SULLE CONCLUSIONI DELL'AVVOCATO GENERALE PRESSO LA CORTE DI GIUSTIZIA CIRCA LA NATURA DELLE FEDERAZIONI SPORTIVE (rese il 1° ottobre 2020 nelle cause riunite C-155/19 e C-156/19)

di *Piero Sandulli*

L'Autore analizza le conclusioni rese dall'Avvocato generale presso la Corte di giustizia europea, in relazione ai quesiti sottoposti dal Consiglio di Stato sulla natura giuridica delle federazioni sportive, rimessi con ordinanza n. 1006/2019.

Prendendo le mosse dai precedenti giurisprudenziali esistenti sul tema, l'articolo sottolinea come tali osservazioni, in realtà, appaiano in contrasto con la decisione resa dalla stessa Corte di Giustizia europea in data 11 settembre 2019, nonché con l'attuale assetto dello sport italiano, che è radicalmente mutato dopo la creazione della nuova "Sport e salute".

L'auspicio è, dunque, quello che la Corte di giustizia possa rendere un parere dopo aver considerato anche gli elementi apparentemente non affrontati dall'Avvocato generale, così da suggerire al giudice italiano remittente una indagine più approfondita sul tema della natura delle Federazioni sportive.

LA NATURA GIURIDICA DELLE FEDERAZIONI SPORTIVE: The game must go on!

di *Ilaria Sticchi*

La Corte di Giustizia, su rinvio pregiudiziale del Consiglio di Stato, è stata chiamata nuovamente ad accertare se la Federazione Italiana Giuoco Calcio ("FIGC") possa essere considerata organismo di diritto pubblico ai fini della disciplina europea in materia di appalti pubblici, e come tale sottostare alla richiamata disciplina e alle norme nazionali che traspongono quest'ultima nel diritto interno, al fine dell'applicazione della disciplina dei contratti pubblici per l'acquisto di lavori, forniture e servizi oltre una determinata soglia. Il giudice interno dubita che una federazione sportiva possa essere equiparata ad una pubblica amministrazione, e quindi possa applicarsi la disciplina dei contratti pubblici nei bandi di gara. L'avvocato generale si è espresso nel senso del riconoscimento della natura di organismo pubblico delle federazioni. Se la Corte di Giustizia adottasse le conclusioni dell'avvocato generale, si creerebbe una situazione altalenante all'interno della stessa Corte di Giustizia che non rispetterebbe il principio della coerenza tra le pronunce ed il valore del precedente. Per quanto attiene a livello interno, forse sarebbe opportuno utilizzare l'occasione della riforma del CONI e dell'ordinamento sportivo in generale "*(to) clarify and say once and for all*" la natura giuridica delle federazioni sportive, anche e soprattutto alla luce delle conseguenze economiche che tale qualifica comporta.