

IN TEMA DI RISARCIMENTO DEL DANNO DERIVANTE DA UNA INGIUSTA SANZIONE SPORTIVA: TRA VECCHIE QUESTIONI E NUOVI PROFILI DI COSTITUZIONALITÀ

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ABSTRACT: The author refers both to the Italian law dealing with the respective jurisdiction power of sporting, ordinary and administrative judges as well as to the constitutional court's case law which has left behind some needy clarity with persisting flaws in the jurisdiction competences between the ordinary/state justice and the autonomous sports jurisdictions.

This paper notes that the Regional Administrative Court of Lazio has yet again referred to the Constitutional Court a question of constitutionality of some provisions of the law n° 280/2003, which regulated the above mentioned partition of judicial competences among the domestic law of the sports federations, the state ordinary judges and the administrative ones.

The point is that the Italian Supreme Court previous decision has apparently not solved all the questions and doubts raised by lawyers and judges on the exclusion of the ordinary judges from dealing with the damages compensations for athletes, who got sporting sanctions, which affect their personal rights. Furthermore, the author raises the question of the limited competence of the administrative judges. These latter are competent in reviewing and deciding on the damages compensation but they are firmly excluded from any attempt to revise the sporting ruling which damaged the athletes.

In closing his work, the writer solicits the responsible authorities to update the provisions of the 1981 law, which still maintains an obsolete qualification of the two sport status of amateur and professional. A reform of this matter is urgent.

Keywords: domestic, exclusive jurisdiction – ordinary law- sports law – administrative justice and sports - constitutionality.

SOMMARIO: 1. Posizione del tema – 2. La genesi del riparto in materia di Giustizia Sportiva – 3. Origine della tutela del risarcimento del danno alla luce della decisione n. 49 del 2011 della Corte Costituzionale – 4. La decisione del TAR del Lazio in tema di risarcimento dei danni – 5. La sentenza del Consiglio di Stato n. 3065 del 2017 – 6. Il risarcimento del danno e la giurisdizione esclusiva – 7. L'ordinanza del TAR del Lazio n. 10171 dell'11 ottobre 2017, nuovi profili di costituzionalità – 8. Conclusioni

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