

VINCOLO DI GIUSTIZIA SPORTIVA

Dispute resolution clause acting like a statutory rule in the sport system. According to this policy the member of the sport federations must renounce the common justice to settle dispute arising in sport matters.

In other words the so called vincolo di giustizia sportiva is a clause of arbitration consisting of a mandate given jointly by the parties to arbitrators so that they can define the dispute (Court of Cassation nr. 6423 of 2008).

The sport federation can inhibit or expel members who appeal before the state justice instead of the sport justice in these matters.

This arbitration clause is defined in the statutes and regulation set by CONI and sport federations.

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In the statutes of sport federation is also stated that the federal sport council for serious reasons of opportunity, may authorize the use of state jurisdiction (see for example art. 30, comma 4, Statute of Italian Football Federation of 2014).

This authorization is not required for criminal matters, for enforcement of provisions and for compensation of damage because in these areas the sports court is not competent. Consequently the absence of a decision of the state court in these fields would lead to a lack of protection.

On the issue of damages in order to act before the state court should be concluded the sport judgment. In fact, Article 1227, comma 2, of the Italian Civil Code states the non-indemnifiability of the avoidable damage.

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Contractual autonomy - the voluntary nature of membership and the resulting voluntary submission to this constraint (Court of Cassation, nr. 11270 of 2012).

Art. 2 Cost. The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed.

Art. 18 Cost. Citizens have the right to form associations freely and without authorization for those ends that are not forbidden by criminal law.

Celerity of the decision.

Court experts in the field.

Independence of sports (a decision of the state judge in this field for a part of the doctrine is a true disaster in the world of sport).

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Art. 24 Cost. Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. Defense is an inviolable right at every stage and instance of legal proceedings.

Art. 25 Cost. No case may be removed from the court seized with it as established by law.

Art. 113 Cost. The judicial safeguarding of rights and legitimate interests before the bodies of ordinary or administrative justice is always permitted against acts of the public administration.

Such judicial protection may not be excluded or limited to particular kinds of appeal or for particular categories of acts.

Act n. 280 of 2003

1) GENERAL STATEMENT

Article 1, comma 1, sanctions the autonomy of the Italian sport order as a branch of the international sport order referring the IOC

Article 1, comma 2, such independence is limited to cases that involve rights and legitimate interests.

2) ARTICLES THAT DIVIDE THE COMPETENCE OF THE TWO ORDERS (SPORT ORDER - STATE LAW ORDER) AND POINT OUT IN THE LEGAL SYSTEM AREA OF INTERVENTION THE LEGAL ORGANS IN CHARGE OF THE DECISION

Article 2 leaves to the sports order any jurisdiction over technical and disciplinary matters.

Article 3

- with regard to financial questions that may arise among athletes, associations and clubs these fall within the jurisdiction of the ordinary court of justice.

- once the sport system has followed and exhausted its own course, the controversies over acts done by CONI or by sport federations fall within the jurisdiction of the administrative law, particularly the Lazio regional administrative court of law.

JURISDICTION OF SPORT ORDER

TECHNICAL MATTER regard the rules that determine the result of a sport competition (for example the norms about offside).

And this is why the United Sections of the Cassation in sentence nr. 4399 of 1989 had stated that "the State system has an indifferent behavior towards this matter, and that moreover is governed by the norms issued by the sports groups: these norms, despite being relevant in the context of the system that expressed them, are not subject to the legal system in the context of the general system". This because in these matters for the Court there are not rights or legitimate interests.

DISCIPLINARY MATTER involve behavior which is relevant in disciplinary terms and the issuing and application of the relative sports disciplinary sanction (for example suspension from the sport practice). In this matter there are case of objective liability of the clubs (Pro ensure that clubs act to avoid negative events, deterrent against the supporters of the team. Contro the ordinary provision of the lack of gross negligence or willful misconduct seem to go against the basic principles of legal culture).

THE DISCIPLINARY SPORT SANCTIONS

- 1) the Court of Lazio proposed several times a restrictive interpretation of letter b) of comma 1 of art. 2 of the law (which assigns to the sports judge the task of defining matters relating to "behavior which is relevant in disciplinary terms and the issuing and application of the relative sports disciplinary sanction" (TAR Lazio, Roma, nr. 7331 of 2006, TAR Lazio, Roma, nr. 5645 of 2007).
- 2) the State Council was firm in interpreting this clause literally (State Council nr. 5782 of 2008).
- 3) this contrast led to proposing the matter of the constitutionality of this provision by the Court of Lazio (TAR Lazio, Roma, nr. 241 of 2010)
- 4) with sentence no. 49 of 2011 the Constitutional Court professed to resolve the matter with a interpretive sentence of dismissal. The Court admitted openly that disciplinary sports sanctions affect constitutionally protected rights.

THE DISCIPLINARY SPORT SANCTIONS

Despite this, the Court was able to avoid declaring unconstitutional the reserve clause stating that, when an act of sports bodies influences the legal positions which are relevant for the State legal system, an appeal to annul said act is not admissible, but is possible to act only to obtain the indemnification protection "not operating any reserve in favor of sports law, before which the indemnification claim cannot even be availed of".

According to the Court this setup would identify "a diversified mode of legal protection" which represents a "not unreasonable balance" among the needs of individual protection and of group cohesion (Constitutional Court nr. 49 of 2011).