

Sport and Constitution in the framework of recent legal reforms in Italy.

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Abstract

Constitutional Law No 1/2023 positions sport among the values protected by the Italian Constitution. To that end, this same law adds a further paragraph to Article 33 of the Constitution which underlines: firstly, the educational value of sport and its links with the formation and development of the person; secondly, the social value of sport, as sport contributes to the aggregation and inclusion of individuals (or of groups of individuals) who face various kinds of disadvantage; and thirdly, the value of promoting the psychophysical well-being of individuals which connects sport to health, where health is intended in its broadest sense and not just as lack of disease. The last paragraph of Article 33 of the Constitution refers to “sport in all its forms”. This means that the disposition is generic in scope and does not take into account the type of activity carried out or the individuals engaged in it. Hence the deduction that sport may be among the primary fundamental rights of the individual, as common interpretative guidelines had already stated before L. 1/2023. The new constitutional provision is also prescriptive in scope, in the sense that it commits the Legislator and other State powers (including social entities providing services of general interest) to pursue the implicit purposes deriving from the recognition of sport’s value, and may constitute a basis for invalidating legislative provisions that go against it. Finally, L. 1/2023 anchors the new wording of the Constitution to a wide range of sources in the supranational and national legal systems. In this regard, the acts, guidelines and instruments from the UN, the Council of Europe and the EU should be taken into account. While at a national level, the recent reform that carried out a comprehensive and structural review of the sporting legal system in Italy is particularly interesting, the new constitutional framework equally appears consistent with the provisions relating to sport found in foreign constitutions.

Keywords: Sport; Constitution; Values; Principles; Fundamental Rights; Work in Sport.

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1. Constitutional Law No 1/2023.

The original 1948 text of the Italian Constitution did not contain any specific reference to sporting activities. Two factors probably contributed to this. Firstly, the experience of fascism, which had made sport one of its main instruments of propaganda and the vehicle of its ideology, and secondly, the legacy of difficult economic and social conditions left to Italy by the Second World War.¹

Indeed, it was only with the enactment of L. 3/2001 reforming Title V that sport entered the Constitution for the first time, albeit for the limited purpose of allocating legislative powers between the State and the Regions,² since, by common opinion, some of its provisions related only indirectly to sporting activities. The following articles of the Constitution are worthy of particular consideration: Art. 2, which protects the rights of the person, both as an individual and in the social groups where they expressed their personality; Art. 3(2), which favours the full development of the human person; Art. 18, which affirms the right to freedom to form associations; Art. 32, which recognises health as a fundamental right of the individual and as an interest of the community; Art. 33 and Art. 34, which promote education and culture; Art. 1, Art. 4 and Art. 35, on law and the protection of employment in all its forms and applications.³

Against the backdrop outlined above, L. 3/2001 inserted a further paragraph into Article 33 of the Constitution, according to which “The Republic recognises the educational and social value of sport in all its forms as well as its capacity to promote the psychophysical well-being of individuals” (*La Repubblica riconosce il valore educativo, sociale e di promozione del benessere psicofisico dell’attività sportiva in tutte le sue forme*).

It should be noted that some bills aimed at ensuring the recognition of sport in the Constitution had already been presented in previous legislatures. In particular, in the 18th legislature,⁴ a constitutional bill which proposed the same content that was subsequently transposed by the new provisions of the Constitution, almost completed the legislative procedure.⁵ The bill in question obtained the first of two approvals in both Chambers as well

¹ Both aspects are echoed in the work of the Constituent Assembly. On this subject, *see*, among others, Pittalis M., *Sport e diritto. L’attività sportiva tra performance e vita quotidiana*, Cedam, Padua, 2023, 23; Valori G., *Il diritto nello sport*, Giappichelli, Turin, 2016; Sannoner V., *La Costituzione italiana e lo sport*, in Mastrangelo D. (ed), *Aspetti giurpubblicistici dello sport*, Cacucci, Bari, 1994, 12 ff.

² Following on from previous legislative examples of constitutional status contained in two special statutes – namely that of the Friuli Venezia Giulia Region in 1963 (Article 4(1) and (4)) and that of Trentino-Alto Adige in 1972 (Article 9(11)), which are still in force – the new version of the Constitution includes sport (i.e. ‘the sports system’) among the matters of shared competence. *See*, among others, Malfatti E., *Legge costituzionale 18 ottobre 2001, n. 3. (Riforma del Titolo V)*, in Pizzorusso A., Dal Canto F., Ferrua P., Grosso E., Malfatti E., Basile S., Rossi E. (eds), *Leggi costituzionali e di revisione costituzionale (1994-2005)*, Zanichelli e Roma Società Editrice del Foro Italiano, Bologna, 2006, 293 ff.

³ On this subject, *see*, among others, Liotta G., Santoro M., *Lezioni di diritto sportivo*, Giuffrè, Milan, 2023, 29 ff.; Sandulli P., *Principi e problematiche di giustizia sportiva*, Aracne, Rome, 2018, 29 ff.

⁴ Relating to years 2018-2022.

⁵ The constitutional bill in question was ddl C. 3531-A, approved by the Senate in a unified text (S. 2478 and relevant documents). The Constitutional Affairs Committee of the Chamber of Deputies concluded its examination at the meeting of 27 April 2022, without making any changes to the text approved by the Senate. The bill aimed to modify Article 33 to position sport among the values protected by the Constitution. *See*

as the second approval by the Senate, but did not reach the last necessary step, namely, the second resolution of the Chamber of Deputies, due to the government crisis in summer 2022 and the early dissolution of the two assemblies.

In the 19th legislature, ddl AS 13, which in the Chamber assumed the number A.C. 715-B, had a smoother trajectory, quickly obtaining the favourable vote of both Chambers of Parliament in the four readings required by Article 138 of the Constitution.⁶ Therefore, the Constitutional Law was promulgated on 26 September 2023 and published in the Italian Official Journal on 7 October 2023 and entered into force on 22 October 2023.⁷

2. The value(s) of sport.

L. 1/2023 positions sport among the values protected by the Constitution. To this end, it adds a further paragraph to Article 33 of the Constitution, pursuant to which the axiological content of sport⁸ is composed of three elements which do not have a hierarchical relationship, but rather an equal and complementary relationship.⁹ More specifically, these elements are the educational value of sporting activities, the social value of sporting activities, and the promotion of psychophysical well-being.

The first element is the educational value of sport, which binds sporting activities to other assets protected by Article 33 of the Constitution,¹⁰ such as education and, broadly speaking, culture. As a result, sporting activities are drawn into the educational sphere and, in particular, play a role in education which is entrusted not just to family, but also to the public and private institutions referred to in Articles 33 and 34 of the Constitution. From this perspective, sport can be considered as an integral part of education, especially in the case of young people, for the development of the individual personality.

The educational value of sporting activities is complemented by their social value. Indeed, sporting activities serve as promoters for community in various ways. As mentioned above,

dossier, 18th legislature, *Modifica all'art. 33 della Costituzione, in materia di attività sportiva, A.C. 3531-A cost. ed abb*, 9 June 2022.

⁶ See dossier, 19th legislature, *Modifica all'art. 33 della Costituzione, in materia di attività sportiva. A.C. 715-B Cost.*, 17 July 2023, <https://documenti.camera.it/leg19/dossier/pdf/CU0020b.pdf> (last accessed 31 May 2024).

⁷ Italian Official Journal No 235 of 7 October 2023.

⁸ In his speech to the Chamber of Deputies, MP Barruto noted that the term *attività sportiva* (sporting activities) was preferred to *sport* because the latter word is of foreign origin (see Chamber of Deputies, sitting of the whole Chamber, 19th legislature, sitting No 82 of 4.4.2023, transcript, 41). Similarly, see dossier, 18th legislature, 9 June 2022, nt. (5), in which it is pointed out that the first linguistic expression was deliberately preferred to the second. Indeed, the word 'sport' derives from French *desport*, which means 'recreation, entertainment'. Later the word became *disport* in English, with the same meaning. Both words derive from Latin *deportare*, meaning 'to take out, far away'. See Pittalis M., nt. (1), 2.

⁹ See dossier, 19th legislature, 17 July 2023, nt. (6).

¹⁰ In this regard, it should be noted that the protection of sporting activities was originally included in Article 32 of the Constitution. Subsequently, Article 33 was considered to be the most suitable legislative provision because of its broader content (art, science, education, higher culture). Indeed, as is made clear in the explanatory memorandum to the bill that underpins the reform of the Constitution, Article 32 has a single purpose (the right to health) and adding further legal elements or principles to it could have seemed inconsistent. Besides, this would also have ended up accentuating only one of the various functions of sport that the constitutional legislator had decided to highlight. See dossier, 19th legislature, 17 July 2023, nt. (6).

sport represents “an aggregating factor; an instrument for the inclusion of individuals (or of groups of individuals) who face various kinds of disadvantage, such as those of a socio-economic, ethnic-cultural, or physical-cognitive nature.”¹¹ Consequently, sporting activities are bound to the guarantees already set out in Articles 2 and 18 of the Constitution, in so far as they offer a means of expression for the individual’s personality within a community – an element deserving of protection. More importantly, sporting activities are also linked to the broad task of removing obstacles to effective freedom and equality referred to in Article 3(2) of the Constitution and, even more broadly, to the various forms of social constitutionalism (perhaps most obviously work)¹² with reference to the rules protecting the right to employment and to the free choice of an activity which aids the material and spiritual progress of society, within the meaning of Articles 1, 4 and 35 of the Constitution.

Finally, the value of promoting the individual’s mental and physical well-being links sport to an aspect already protected by Article 32 of the Constitution, as there is an undeniable correlation between sporting activities and the right to health, where it is understood in its broadest sense as a person’s complete mental and physical well-being and not just in terms of the absence of disease.¹³

3. The object of constitutional protection.

According to the wording of the last paragraph of Article 33 of the Constitution, the object of constitutional protection is sporting activities “in all their forms” (*in tutte le sue forme*). This phrase is intended to make it clear that the law is all-encompassing in its scope, and pays no heed to the characteristics of the activity pursued, be it at a professional or amateur level or in any other form of physical education any individual may decide to practice. Similarly, the law operates independently of the subjective aspects of those who practice it, such as gender or other personal conditions.¹⁴

This seems to be further confirmed by the use of the verb “recognise” (*riconoscere*) to indicate the kind of approach the Republic must adopt towards sporting activities. The explanatory memorandum for the Senate Assembly states that the verb clearly refers to Article 2 of the Constitution, revealing that sporting activities were seen as a ‘pre-existing’ and, in some ways a ‘pre-legal’, reality of which the public authorities are called upon to take note, while also protecting and promoting them. Ultimately, this constitutes another way of emphasising that sporting activities are a way of exercising the fundamental freedoms of the

¹¹ See MP Barruto’s intervention (Chamber of Deputies, sitting of the whole Chamber, 19th legislature, sitting No 82 of 4 April 2023, transcript, 41). See also Minister for Sport Abodi’s assertion that sport can be understood as “a social immune defence” (Chamber of Deputies, sitting of the whole Chamber, 19th legislature, sitting No 165 of 20 September 2023, transcript, 36).

¹² See, with a similar meaning, Olivetti M., *Sport e Costituzione: la Legge Costituzionale n. 1/2023*, in *il Quotidiano Giuridico*, 28 November 2023.

¹³ In this regard, see the statement by MP A. Rossi: “Lo sport è salute [...] porta ad adottare stili di vita sani, che aiutano a migliorare la spesa pubblica (sport is health [...], it leads to healthy lifestyles, which help to improve public spending)” in Chamber of Deputies, sitting of the whole Chamber, 19th legislature, sitting No 82 of 4 April 2023, transcript, 43.

¹⁴ See dossier, 19th legislature, 17 July 2023, nt. (6).

person already generically guaranteed by Articles 2 and 3 and (in so far as an individual performs sporting activities together with others) by Article 18 of the Constitution, even if the new constitutional provision does not go so far as to proclaim a right to sport.¹⁵

Finally, it should be underlined that the subject of the verb *riconoscere* referred to in the last paragraph of Article 33 of the Constitution is the ‘Republic’, which includes at least all the territorial political bodies referred to in Article 114 of the Constitution (State, regions, metropolitan cities, provinces, municipalities), without excluding that the term may be interpreted in a broader sense to include all social entities providing services of general interest, according to Article 118(3) of the Constitution. Therein lies an important aspect of the new, last paragraph of Article 33 of the Constitution. Like all other constitutional provisions, it provides not only a set of values, but also an obligation, committing the subject (in any of the senses outlined above) to take any and all appropriate initiatives to pursue the goals set out in the same constitutional rule. At the same time, this may constitute a basis for invalidating legislative provisions that prove to be contrary to it.¹⁶

4. Sport in the sources of international and European legal systems.

L. 1/2023 takes into account a wide range of legal sources at a supranational and national level.

A first, decisive impulse to consider sport in its multidimensional aspects, thus reflecting the changing common perception of sporting activities, is to be found in the acts of the United Nations (UN), though the International Charter on Physical Education, Physical Activity and Sport of 1978 stands out particularly.¹⁷ According to the Charter, the practice of sport is a fundamental right for all, is indispensable for the development of the human person, and can bring a variety of individual and societal benefits.¹⁸ Reference might also be made to the UN Conventions,¹⁹ Resolutions²⁰ and Guidelines,²¹ which consider sport to be a vehicle for promoting health, well-being, inclusion, integration, social and economic development, education and culture, solidarity, intercultural dialogue and peace between nations.²²

¹⁵ See the third paragraph.

¹⁶ See dossier, 19th legislature, 17 July 2023, nt. (6).

¹⁷ The document was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and subsequently updated. UNESCO, *International Charter of Physical Education, Physical Activity and Sport*, 2015, available at <https://unesdoc.unesco.org/ark:/48223/pf0000235409>.

¹⁸ See Art. 1(1) and (2).

¹⁹ In particular, see the following conventions: Convention on the Elimination of All Forms of Discrimination against Women (1979), International Declaration against Apartheid in Sports (1977), International Convention against Apartheid in Sports (1985), Convention on the Rights of the Child (1992) and Convention on the Rights of Persons with Disabilities (2006).

²⁰ See, among many, Resolution 67/296 of 23 August 2013, through which the UN General Assembly established the International Day of Sport, which takes place every year on 6 April.

²¹ In particular, reference is made to specific guidelines, which are published and updated regularly by the World Health Organization (WHO), i.e. the UN specialised agency for health issues.

²² See Pittalis M., nt. (1), 22, who references, among others, Stelitano J., *Evoluzione del concetto di diritto dello sport negli atti internazionali rilevanti*, in Tognon J., Stelitano A. (eds), *Sport, Unione europea e diritti umani. Il fenomeno sportivo*

The Council of Europe is of equal relevance and, in particular, the 1975 European Sport for All Charter, which was subsequently transposed and furtherly developed by the 1992 European Sports Charter. The 1992 Charter contains a specific definition of ‘sport’ intended to, among other things, promote the improvement of physical and mental health and the development of social relationships.²³ The European Sports Charter also stands out for the fact that it pays particular attention to the principles of equality and non-discrimination, principles which may equally be implemented through specific promotional measures, in order to promote integration and inclusion in the field of sporting activities.²⁴

When it comes to European Union (EU) law, at least the following acts should be mentioned. Firstly, declaration 29 attached to the 1997 Treaty of Amsterdam²⁵ emphasises the social significance of sport and the role it plays in forging identity and bringing people together. Secondly, decision No 291/2003/EC of the European Parliament establishing the ‘European Year of Education through Sport’²⁶ stresses in the preamble to the act the way in which sport, through the values it conveys, is fundamental to educating young people and developing their personality, the way in which sport is able to overcome the barriers of racism and xenophobia as well as sport’s beneficial effects on psychophysical well-being. The 2007 White Paper on Sport²⁷ is based on a series of four-year action plans drawn up by the Council of Ministers for the development of the European dimension in sport and offers a range of proposals for EU action in this specific area. The most recent of these plans covers the period from 2021 to 2024, but, most importantly, defines ‘sport’ as the synthesis of multiple functions, in the same vein as the European Sport Charter.²⁸

Finally, with the Treaty of Lisbon, on the basis of the judgements of the European Court of Justice (ECJ),²⁹ the European Union became increasingly committed to the phenomenon of sport, emphasising the specific nature of the various social, cultural, educational and economic functions which it performs simultaneously and which are also the basis for its legal recognition under the Treaty on the Functioning of the European Union (TFEU).³⁰

e le sue funzioni nelle normative comunitarie e internazionali, Cooperativa Libreria Editrice Università di Padova, Padua, 2011, 205 ff.

²³ See Article 2(1), which states that sport means “all forms of physical activity which, through casual or organised participation, are aimed at maintaining or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels.”

²⁴ See Article 4.

²⁵ OJ C 340, 10/11/1997.

²⁶ Decision No 291/2003/EC of the European Parliament and of the Council of 6 February 2003, *establishing the European Year of Education through Sport 2004*, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003D0291&from=it> (last accessed 6 June 2024).

²⁷ Commission of the European Communities, *White Paper on Sport*, 11 July 2007, COM(2007) 391 final.

²⁸ See Art. 2(1).

²⁹ See Leo L., *Sport e costituzione: un legame da rivedere*, in *Cammino Diritto*, 2, 2021, 9 and, therein, extensive references to the case-law of the European Court of Justice.

³⁰ See Article 6(e) TEU and Article 165(1)(2) TFEU. On aspects related to EU law, see Casini L., *Il diritto globale dello sport*, Giuffrè, Milan, 2010, 126; Carbone S.M., *Lo sport ed il diritto dell’Unione europea dopo il Trattato di Lisbona*, in *Studi sull’integrazione europea*, 3, 2010, 597 ff.; Persch S., *Sportförderung in Europe: Der neue Art. 165 AEUV*, in *Neue Juristische Wochenschrift*, 2010, 1917 ff.; Rangeon F., *Le Traité de Lisbonne: acte de naissance d’une politique européenne du sport?*, in *RMCUE*, 2010, 302 ff.

5. The reform of the sporting legal system: D.lgs 36/2021 and subsequent amendments and additions.

As far as the Italian legal system is concerned, the first signs of a sensitivity towards sport can be found, at the very latest, from the 1970s, in some ordinary regional statutes, where the importance of sports appeared, from time to time, in relation to health, education, social integration and social and economic development.³¹

Among many examples of more recent national legislation, it seems essential to refer to the recent provisions that lead to an organic and integral review of the sporting legal system. More specifically, what comes to the fore is Delegation Act No 86/2019,³² pursuant to which five implementing legislative decrees were approved by the Government, namely, D.lgs. 36 to 40,³³ and subsequent supplementary and corrective measures, as referred to in D.lgs 163/2022 and 120/2023.³⁴

These decrees constitute a broad set of provisions which, taken as a whole, underpin an articulated system of values concerning sport, as well as important principles and rights.³⁵ In this regard, given their relevance here, it is worth considering the provisions contained in D.lgs 36/2021,³⁶ starting with the definition of “sports practice for all” (*pratica sportiva per tutti*),³⁷ which, in line with the International Charter on Physical Education, Physical Activity and Sport of 1978,³⁸ seems to provide the basis for considering the existence of right to sport within the primary legal sources in Italy.³⁹ In addition, reference might be made to the provision outlining the concept of ‘sport’ which, like the 1992 European Social Charter on Sport,⁴⁰ links sporting activity to a plurality of functions, such as those aimed at the development of personality, without necessarily identifying them with competitions.⁴¹

But there is no doubt that the meaningful substance of sport can be work itself. Indeed, work also seems to be the most important aspect of the reform of the Italian sporting legal

³¹ In this regard, the statutory provisions establishing the following Regions are of particular interest: Piedmont, Lombardy, Veneto, Tuscany, Campania, Puglia, Basilicata. See dossier, 19th legislature, 17 July 2023, nt. (6). Other examples of similar regional statutory rules that have been issued since then can be found in Olivetti M., nt. (12).

³² In the Italian Official Journal No 191 of 16 August 2019. For a comment, see, among others, Rapacciuolo D., *La riforma italiana dello sport fra critiche, paventate illegittimità, paure e best practices*, in *Rivista di Diritto ed Economia dello Sport*, 2, 2019, 9 ff.

³³ All approved on 28 February 2021 and published in the Italian Official Journal No 67 of 18 March 2021 (D.lgs 36 and 37) and No 68 of 19 March 2021 (D.lgs 38, 39 and 40). For a complete examination of these texts, see, among others, Pittalis M., *L’attuazione della legge delega 8 agosto 2019, n. 86 in tema di ordinamento sportivo, professioni sportive e semplificazioni*, in *il Corriere Giuridico*, 6, 2021, 737 ff. In addition, a possible comparison with Vettor T., *Pari opportunità, lavoro, agenti nel settore sportivo*, in Pittalis M. (ed), *Ripartire con lo sport, impianto valoriale di una riforma “in progress”*, Ledizioni, Milan, 2022, 53 ff.

³⁴ Published respectively in the Italian Official Journal No 2022 of 02 November 2022 and in the Official Journal of 4 September 2023.

³⁵ See Pittalis M., nt. (33).

³⁶ “Attuazione dell’art. 5 della legge 8 agosto 2019, n. 86, recante riordino e riforma delle disposizioni in materia di enti sportivi professionistici e dilettantistici, nonché di lavoro sportivo”.

³⁷ See Article 2(1)(e) of D.lgs 36/2021.

³⁸ See paragraph 4 above.

³⁹ See Pittalis M., nt. (1).

⁴⁰ See paragraph 4 above.

⁴¹ See Article 2(1)(n) of D.lgs 36/2021.

system.⁴² In this regard, the extensive rules contained in Chapter I of Title V of D.lgs 36/2021 are of particular relevance, especially the concept of work in sport. The main novelty is that this concept seeks to achieve perfect symmetry between the professional and amateur sectors and between genders.⁴³

The concept is based on the findings of the case-law of the Court of Justice of the European Union, which, incidentally, played a decisive role in the ‘communitisation’ of sport.⁴⁴ The findings, in particular, concern a series of decisions on cases relating primarily to the free movement of persons, workers and services and the principle of non-discrimination.⁴⁵ In addition, where gender equality is concerned, reference must be made to the provisions of international law and EU law, including those contained in the 1979 Convention on the Elimination of All Forms of Discrimination against Women, in the 1992 European Charter on Sport and in the White Paper on Sport.⁴⁶

Equality and inclusion are, moreover, the values underpinning many other areas regulated by the reform on sport, including those which aim to promote the support of women’s sports in the professional sector,⁴⁷ access to sport, and inclusion of women in management positions in the sports sector⁴⁸ as well as other areas relating to other personal conditions protected by anti-discrimination law.⁴⁹

6. Sport in foreign constitutions: Comparative profiles.

Alongside the elements explored above, reference should also be made to the provisions that foreign Constitutions have already provided for sport for some time, underlining its *favor* or, even, providing for an articulated discipline at various levels.

The Constitutions of Greece,⁵⁰ Spain,⁵¹ and Portugal⁵² offer examples from among Member States of the EU, while the Constitutions of Mexico⁵³ and Switzerland⁵⁴ provide examples from the rest of the world.

Considering an example from within the EU first, the Constitution of Greece positions sport as a social right of the individual and provides for the assumption of a financial

⁴² A possible comparison with Vettor T., *La nuova riforma del lavoro sportivo: prime analisi alle disposizioni integrative e correttive al d.lgs. n. 36/2021 (d.lgs. n. 163/2022)*, in *Massimario di Giurisprudenza del Lavoro*, 1, 2023, 129 ff.

⁴³ See Article 25(1) of D.lgs 36/2021.

⁴⁴ See paragraph 4 above.

⁴⁵ See, among many, CJEU, *Bosman*, C-415/93, 15 December 1995; CJEU, *Delège*, joined cases C-51/96 and C-191/97, 11 April 2000; CJEU, *Lehtonen*, C-176/96, 13 April 2000; CJEU, *Kolpak*, C-438/00, 8 May 2003; CJEU, *Meca-Medina*, C-519/04, 18 July 2006; previously, CJEU, *Walrave*, C-36/74, 12 December 1974; CJEU, *Donà*, C-13/76, 14 July 1976. For discussion on the subject, see, among others, Dentici L. M., *Il lavoro sportivo tra professionismo e dilettantismo*, in *Europa e Diritto Privato*, 4, 2009, 1078 ff.

⁴⁶ See paragraph 4 above.

⁴⁷ See Article 39 of D.lgs 36/2021.

⁴⁸ See Article 40 of D.lgs 36/2021.

⁴⁹ See Article 43 ff of D.lgs 36/2021. See also Article 16 of D.lgs 39/2021.

⁵⁰ Dating back to 1975, see Article 16.

⁵¹ Dating back to 1978, see Article 43.

⁵² Dating back to 1976, see Article 64.

⁵³ See Articles 3, 4 and 18.

⁵⁴ Dating back to 1848. It codified the right to sport in Article 68.

commitment on the part of the public authorities for its actual implementation.⁵⁵ Turning to Constitutions of States outside the European area, Mexico, after the 2011 revision, now recognises the right to sport as a fundamental right aimed at social reintegration, and, at the same time, entrusts the State with the task of promoting sport.⁵⁶

Without detailing other examples,⁵⁷ it should be noted that one of the main distinguishing factors between the various constitutions concerns the legislative position of the provisions relating to sport. From a summary comparative survey, the main distinction seems to be the inclusion of sport within the context of the ‘cultural Constitution’ or within provisions concerning health. For example, the Swiss Constitution opts for education and content concerning sport is found in the section dedicated specifically to education and culture.⁵⁸ The constitutions which, on the other hand, opt for health include, for example, the Spanish Constitution, where sport is addressed in the provision recognising the right to health.⁵⁹

7. Summary and final considerations.

The Italian Constitution, did not contain an explicit recognition of sporting activity in either its original text or after the approval of L. 3/2001 reforming Title V. However, Italian L. 1/2023 intervened on this matter, adding a paragraph to Article 33 of the Constitution in order to position sport among the values protected by the Constitution. This paragraph underlines the educational value of sport, in as far as it contributes to the formation and development of the person. This is accompanied by an assertion regarding sport’s social value, as sporting activities contribute to the aggregation and inclusion of individuals (or of groups of individuals) who face various kinds of disadvantage. Finally, the value of promoting the psychophysical well-being of individuals connects sport to health, intended not just as lack of disease, but in its broadest sense.

According to the wording of the last paragraph of Article 33 of the Constitution, sporting activities “in all their forms” (*in tutte le sue forme*) are the object of constitutional protection. This means that the provision in question is generic in its scope, considering sporting activities without reference to the type of activity carried out or to the people engaged in it. This interpretation stems from the choice of the verb “recognise” (*riconoscere*) within the new constitutional provision, which indicates the approach that the State must have towards sporting activities. Indeed, the verb recalls the wording of Article 2 of the Constitution, revealing that sporting activities are seen as a ‘pre-existing’ and, in some ways a ‘pre-legal’,

⁵⁵ See Panagiotopoulos D., *The Institutional Problem of the Greek, Sport Federation: Structure, Organization, Legal Nature and Function*, in *Marquette Sports Law Journal*, 5, 1995, 244 ff.

⁵⁶ In this regard, see in particular Article 4. For a commentary on the constitutional rules of this country relating to sport, see Flores Fernández Z., *La cultura física y la práctica del deporte en México. Un derecho social complejo*, in *Cuestiones constitucionales*, 40, 2019, 185 ff.

⁵⁷ See Leo L., nt. (29), 3; Olivetti M., nt. (12); and dossier, 19th legislature, 17 July 2023, nt. (6).

⁵⁸ See Article 68, according to which “the Confederation shall promote sport, in particular sports education. It operates a sports school, can issue regulations on youth sport and declare the teaching of sport in schools compulsory.” It follows that, in the Federal Constitution, sport is understood as a crucial element for the education and development of youth. With the same meaning, see Leo L., nt. (29), 5.

⁵⁹ See Article 4.

reality, of which the ‘Republic’ is called upon to take note, while also protecting and promoting them. Hence, the possibility that sport may be one of the primary fundamental rights – even if the new constitutional provision does not go so far as to proclaim a right to sport. According to the common interpretative guidelines, this was clearly highlighted, albeit indirectly, even before L. 1/2023, by Articles 2, 3 and 18 of the Constitution and, in the specific field of work, by referring to the rules establishing the right to work and the free choice of any activity that aids the material and spiritual progress of society within the meaning of Articles 1, 4 and 35 of the Constitution.

Moreover, the new constitutional provision has in principle the same legal effect as all the others contained in the Constitution. Therefore, the new constitutional provision is also prescriptive in scope, in the sense that it commits the Legislator and other State powers (including social entities providing services of general interest referred to in Articles 114 and 118(3) of the Constitution) to pursue the implicit purposes deriving from the recognition of the value of sport set out in the last paragraph of Article 33 of the Constitution, and may, at the same time, constitute a basis for invalidating legislative provisions that go against it.

Finally, L. 1/2023 anchors the new wording of the Constitution to a wide range of sources in the supranational and national legal systems, which consider sport to be a composition of important values, principles and rights, and usefulness to individuals and society. In this regard, the acts, guidelines and instruments from the UN, the Council of Europe and the EU should be taken into account. While, at a national level, the provisions of the recent reform that carried out a comprehensive and structural review of the sporting legal system in Italy are particularly interesting, the new constitutional framework appears consistent with the provisions relating to sport to be found in foreign constitutions.

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