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"Sports work" and Regulatory Techniques: the Different Approaches of France and Italy

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1. *Methodological introduction*

The reform of employment relationships in the sports sector implemented by the Italian legislature has aroused interest in labour law doctrine in this issue[1].

The matter is now governed by Legislative Decree No. 36 of 28 February 2021 – as amended first by Legislative Decree No. 163 of 5 October 2022 and then by Legislative Decree No. 206 of 4 September 2023[2] – which

[1] Several Authors have recently engaged with the topic: see LAMBERTUCCI, *Il lavoro sportivo subordinato tra disciplina speciale e normativa generale di tutela: prime considerazioni sulla riforma del 2021*, in *ADL*, 2024, I, p. 1 ff.; FRAIOLI, *La riforma del lavoro sportivo di cui al d.lgs. n. 36/2021*, in *MGL*, 2023, p. 55 ff.; GRAGNOLI, *Le ultime novità sul contratto di lavoro degli sportivi*, in *RDES*, 2023, p. 85 ff.; GRAGNOLI, *I nuovi profili di specialità del rapporto di lavoro degli sportivi professionisti*, in *RDES*, 2021, p. 263 ff.; VETTOR, *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 *MGL*, 2023, p. 129 ff.; ZOLI, *La riforma dei rapporti di lavoro sportivo tra continuità e discontinuità*, in *RGL*, 2022, I, p. 41 ff.; BIASI, *Causa e tipo nella riforma del lavoro sportivo. Brevi osservazioni sulle figure del lavoratore sportivo e dello sportivo amatore nel d.lgs. n. 36/2021*, in *LDE*, 2021, no. 3; ZOLI, ZOPPOLI L., *Lavoratori, volontari e amatori tra sport e terzo settore*, in *WP C.S.D.L.E. "Massimo D'Antona"* - 443/2021.

[2] The decree-law No. 71 of 31 May 2024, containing urgent provisions on sport, has again amended the matter concerning public administration workers and the sports volunteer. Moreover, at the time of writing, the conversion law has not yet been enacted.

introduced several notable innovations, first and foremost the declination of a type of "sports worker" (Article 25), indifferent to the historically relevant distinction between the professional and amateur sectors.

The primary purpose of this paper is to analyse and assess the regulatory solutions adopted from a comparative perspective. First, this is done to better understand the Italian model, which will be seen to be characterised by marked peculiarities of discipline and an unusual legislative technique. The analysis of this special regulation through the lens of comparison allows to address fundamental issues of Italian labour law, starting with the longstanding problem of legal classification[3] and the related issues in terms of worker protection. Then, it is to reflect on the most significant emerging differences, especially with regard to the regulatory approach.

To this end, a premise of a methodological nature is required, starting with some necessary considerations on the most authentic meaning of "comparison"[4].

Paraphrasing a recent essay on the topic[5], the reason for comparing different legal systems is not in the comparison of foreign models of law. The aim is to measure the influence of a different legal culture on the development of a discipline by considering the various political, socio-economic, and cultural differences typical of each national context.

Those differences – which, according to Montesquieu, represented an insurmountable obstacle to the so-called "transplantation" of legal institutions, causing the inevitable "rejection" of the implanted external body[6] – seem to have progressively faded away. Moreover, as Kahn-Freund argues, such differences are eroded by the relentless advancement of globalisation[7]. The only exception is represented by the political factor, which, in Khan-

[3] For an overview of the different positions concerning sports work, see SPADAFORA, *Diritto del lavoro sportivo*, Giappichelli, 2012, p. 69 ff.

[4] On the role of comparison in general, see SOMMA, *Dialogo tra esperienze giuridiche e comparazione: verso nuovi paradigmi?*, in GRAZIADEI, SOMMA (eds.), *Esperienze giuridiche in dialogo. Il ruolo della comparazione*, Sapienza Università Editrice, 2024, p. 11 ff.; from the labour law perspective see, in the same volume, MENEGATTI, *Diritti collettivi e* gig economy*: il ruolo dello Statuto dei lavoratori italiano in chiave comparata*, p. 171 ff.; DELFINO, *Legal orders in dialogue and the "resources" of the Italian Workers' Statute*, in this journal, 2023, p. 91 ff.

[5] See GAETA, *La comparazione nel diritto del lavoro italiano*, in SOMMA, ZENO-ZENCOVICH (eds.), *Comparazione e diritto positivo*, Roma TrE-Press, 2021, p. 183 ff.

[6] *De l'esprit des lois*, 1748, vol. I.

[7] KAHN-FREUND, *On the Use and Abuse of Comparative Law*, in *RTDPC*, 1975, p. 785 ff.

Freund's view, is abstracted from the others and is considered the only one capable of "preventing or frustrating" the rigid grafting of norms or institutions in different countries[8].

More recently some emphasis has been placed on the relevance of the economic element, which, as said[9], in the context of a "multilevel system" such as the Italian one, gets "close to the legal systems and often directly influences them".

The comparison deals with all these aspects. However, regarding this paper, the "political" component seems to have a particular incidence, which will be better highlighted later (see paragraph 4).

The comparison will be made with France since, on the one hand, it is a country with similar roots and legal traditions in which sport is substantially interpreted similarly as a relevant phenomenon from a cultural and socio-economic side of view[10]. On the other hand, in the French legal system, an opposite regulatory technique for sports labour relationships is used.

As previously mentioned, comparison is particularly useful to address the issue of legal classification. This issue remains highly relevant, especially in this era where the "stability" of traditional categories of subordinate work and self-employment is strongly challenged by deep socio-economic transformations. As a matter of fact, these changes inevitably impact labour law and the rigidly binary framework on which it was constructed during the twentieth century[11]. Therefore, the analysis aims to assess its stability and coherence in the sports sector.

[8] Kahn-Freund, *cit.*, p. 791 ff.

[9] Treu, *Metodo comparato e diritto del lavoro*, in Corti (ed.), *Il lavoro nelle Carte internazionali*, Vita e Pensiero, 2016, p. 350; also, Treu, *Comparazione e circolazione dei modelli nel diritto del lavoro*, in *DLRI*, 1979, p. 167 ff.

[10] On the Constitutional value of sport in Italy, see Vettor, *Sport and Constitution in the framework of recent legal reforms in Italy*, in *ILLEJ*, 2024, p. 279 ff.

[11] See Perulli, *Beyond Subordination: Four Arguments*, in Vv.Aa., *Defining and Protecting Autonomous Work. A Multidisciplinary Approach*, Palgrave Macmillan, 2022, p. 51 ff.

2. *The regulatory approach of the French legislator: the (almost complete) reference to the general discipline*

French legal system provides for a structured discipline of sport, contained in a special code, the *Code du Sport*[12], aimed at regulating every aspect of the sporting phenomenon[13].

From the labour law's point of view[14], thanks also to the well-known dichotomous vision of labour relations, which are brought back to the rigid alternative of subordination-autonomy[15], the regulatory procedure undertaken by the transalpine legislator is nevertheless relatively simple and linear. The general discipline of subordinate employment applies almost integrally, with the only exception of the provisions on fixed-term employment contracts[16]. These specific provisions apply only to two exact figures, outlined in Article L. 222-2 of the code: the *sportif professionnel salarié* and the *entraîneur professionnel salarié*[17] (i.e. subordinate professional athletes and coaches).

[12] The *Code du Sport* – adopted in 2004 on the initiative of the then Ministry of Youth, Sport, and Associative Life (now the Ministry of Sport) – arises from a broader process of codification aimed at improving the accessibility and intelligibility of French law.

[13] On French sports law see, most recently, Buy, Marmayou, Poracchia, Rizzo, *Droit du sport*, LGDJ, 2023.

[14] See recently Karaquillo, *La modification contractuelle dans le secteur des activités sportives salariées: una pratique usuelle aux multiples facettes*, in *RDT*, 2022, p. 365 ff.

[15] Moreover, as well-known, French doctrine has long debated the necessity of categories different from those of subordination and autonomy: see, for all, Supiot, *Au-delà de l'emploi*, Flammarion, 1999; Lyon-Caen, *Le droit du travail non salarié*, Sirey, 1990, p. 302 ff. For a useful and accurate survey of the various positions see, also for the necessary bibliographical references, Zoppoli I., *I* travailleurs ubérisés*: meglio qualificati o meglio tutelati in Francia?*, in *RIDL*, 2020, p. 778 ff.

[16] Article L. 222-2-1. For a critique of this derogatory discipline see Rabu, *Le nouveau contrat de travail des sportifs et entraîneurs professionnels*, in *RDT*, 2016, p. 32 ff, which highlights a problem of incompatibility with the development of the jurisprudence of the *Court de cassation*, *Chambre sociale*. According to the latter, the succession of fixed-term contracts must be justified by the existence of "concrete" and "precise" elements establishing the temporary nature of these employment relationships, and which cannot result from the reference to the "sporting risk" and the result of competitions (*Soc. 17 décembre* 2014 No. 13-23.176). Furthermore, the Author emphasises doubts of compatibility with the framework agreement on fixed-term work of 18 March 1999, implemented by Directive 1999/70/CE. The jurisprudence of the Court of Justice of the European Union (CJEU 4 July 2006 C-212/04) moves in the same direction. See also Karaquillo, *L'applications des dispositions du Code du travail au contrat de travail du sportif professionnel*, in *RDT*, 2011, p. 14 ff.

[17] On the notions of subordinate professional athlete and coach see again Rabu, *cit.*, p. 32-33; recently see also Buy, Marmayou, Poracchia, Rizzo, *cit.*, p. 321 ff.

The first figure is defined as any individual whose remunerated activity consists of exercising a sporting activity in the context of a relationship of legal subordination with a sports association or company referred to in Articles L. 122-2 and L. 122-12.

As regards this aspect, it is worth highlighting how the law, while making textual reference to the *status* of "professional", attributes to it an exclusively formal relevance. The distinctive features of the figure are, instead, the "onerous" nature of the sports performance and the presence of a *lien de subordination juridique*. As will be more evident later (paragraph 3), such *status* offers a first stimulating key to a comparative interpretation of the different characteristics of professional sports in Italy and France, with direct and immediate consequences on the classification issue.

Moving on to the second figure, the subordinate professional coach is described as any individual whose main paid activity consists in preparing and supervising the sporting activity of one or more subordinate professional athletes in a relationship of legal subordination with a sports association or club referred to in Articles L. 122-2 and L. 122-12, and who holds a professional qualification or certificate of qualification provided for in Article L. 212-1.

The provision is structurally more articulate and detailed than the previous one, even though it is strictly connected since it links the identification of the figure of *sportif professionnel salarié*. As seen before, a sufficient regulatory prerequisite for the classification of *entraîneur professionnel salarié* is not the presence of a *lien de subordination juridique,* which is in any case required, but rather the preparation or supervision of the activity of one or more subordinate professional athletes. Therefore, the inapplicability to the operational perimeter of the rule of those who prepare or supervise the sporting activity of one or more autonomous athletes is derived. Besides the doubts that such settlement inevitably generates[18], it is necessary to underline the reference to the main character of the remunerated activity, a reference that instead does not assume any classifying relevance regarding the athletes' performance. Moreover, it is worth emphasising that the definition of the criteria based on which the activity is to be considered as "main" is referred by the law to national collective agreements, which have (or, instead, are entitled to have) a role that is crucial in the

[18] See RABU's critique, *cit.*, p. 33.

definition of at least one of the two figures of the sports worker provided by the law[19].

These are all aspects that will be deeply analysed later since, in terms of classification, they highlight an apparent "contradiction" between athletes and coaches, which is similar to the Italian legal system.

3. *The "sports worker" type in the Italian model*

Moving on the Italian model, it is characterised by certain marked peculiarities, both in terms of the legal classification of the so-called "fattispecie" or type and in terms of the consequent discipline[20]. The regulatory framework outlined by the national legislator is much more complex and articulated than the French one just examined. With specific regard to the "sports worker" type, some Authors speak of a "trans-typical" type[21] and of so-called "concentric circles" discipline[22] or "variable geometry"[23].

Indeed, as mentioned before, Article 25, Legislative Decree No. 36/2021 seems to configure a specific type of sports worker, finally indifferent to gender and sectoral differences[24], and identifiable through the use of different regulatory techniques: on the one hand, the punctual indication of "typical"

[19] See, regarding the aspect of remuneration, the table in Article 12.6 of the *Convention collective nationale du sport du 7 juillet* 2005, which distinguishes between four "classes" of coaches. For each class, in addition to the minimum remuneration amount, "tasks", "autonomy", "responsibility" and "technicality" are detailed.

[20] See the doctrine already cited in footnote 1.

[21] BIASI, *cit.*, p. 4.

[22] V. GRAGNOLI, *I nuovi profili*, cit., p. 263 ff.

[23] BIASI, *cit.*, p. 4.

[24] Consistently with the provisions of Article 5, Law No. 86 of 8 August 2019, and in line with the extensive jurisprudence of the CJEU: see, for all, the well-known *Bosman* ruling (CJEU 15 December 1995 C-415/1993), according to which – as reported by BIASI, *cit*, p. 10 – the European notion of worker (whether in sports or not) cannot allow an external element to condition access to the guarantees falling within the shadow of European law: what matters is only that there is an exchange between a service capable of economic evaluation and compensation". Moreover, on the European notion of the worker see MONDA, *The notion of the worker in EU Labour Law: "expansive tendencies" and harmonisation techniques*, in *DLM*, 2022, p. 93 ff.; MENEGATTI, *The Evolving Concept of "worker" in EU law*, in *ILLEJ*, 2019, p. 71 ff.; COUNTOURIS, *The concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope*, in *ILJ*, 2017, p. 192 ff.

figures of sportsmen and sportswomen (athletes, coaches, instructors, technical directors, sports directors, athletic trainers, referees)[25]. On the other hand, an open formulation includes anyone who is paid to perform tasks defined as "necessary for the performance of sporting activities", excluding those of an administrative-managerial nature. In terms of classification, it is also specified that the sporting activity may represent the subject of an employment relationship (including in the form of apprenticeship pursuant to Article 30, Legislative Decree No. 36/2021), of a self-employment relationship (including in the form of continuative and coordinated collaborations under Article 409, Civil Code), as well as occasional work, following current legislation (Article 25, paragraphs 2 and 3-*bis*).

In any way, the configuration of the "sports worker" type (for which the so-called "act of membership" remains essential[26]) implies the application of a largely derogatory regulation compared to the general one[27], especially regarding dismissals[28] and fixed-term contracts[29] (Article 26, paragraphs 1 and 2, Legislative Decree No. 36/2021).

However, it is worth emphasising here that, in addition to the classification rules[30] – which, as will be seen shortly, certainly facilitate access to the derogatory discipline of Article 26 only for professional athletes – there are still significant differences between the professional and amateur sectors[31]. This is the first and (perhaps) most relevant discrepancy between the Italian and French models considered, prompting inevitable reflection on the different *ratios* underlying these two *prima facie* dissimilar regulatory approaches.

[25] According to a formulation that follows the same regulatory technique already used in Law No. 91 of 23 March 1981 on professional sports.

[26] See Article 15(1) of Legislative Decree No. 36/2021: it represents the formal act by which the individual becomes a subject of the sport organisation and is authorised to carry out sports activities.

[27] See, most recently, LAMBERTUCCI, *cit.*, p. 1 ff.

[28] In general, on the discipline of dismissals in the Italian legal system see, most recently, LUCIANI, *I licenziamenti individuali nel privato e nel pubblico*, Giappichelli, 2024.

[29] On fixed-term contracts in Italy see SARACINI, ZOPPOLI L. (eds.), *Riforma del lavoro e contratti a termine*, Editoriale Scientifica, 2017.

[30] See Articles 27(2) and (3) and 28(2) of Legislative Decree No 36/2021.

[31] About the differences between professional and amateur sectors before the reform see FERRARO, *Il calciatore tra lavoro sportivo professionistico e dilettantismo*, in LDE, 2019, no. 3; TOSI, *Sport e diritto del lavoro*, in *ADL*, 2006, I, p. 717 ff.; BELLAVISTA, *Il lavoro sportivo professionistico e l'attività dilettantistica*, in *RGL*, 1997, I, p. 521 ff. More recently see also DE MARTINO, *Sulla distinzione tra professionismo e dilettantismo nel lavoro sportivo*, in *RIDL*, 2022, II, p. 42 ff.

As seen before, the French legislator is entirely indifferent to the need for a specific regulation for the so-called *amateurs*, who are equated in all respects to professionals in the presence of a demanding and subordinate relationship. The notion of professional loses any relevance, as for the correct classification of the employment relationship, the emphasis is placed on verifying the existence of the subordination constraint and the actual exercise of directive power by the employer[32].

Conversely, the Italian legislator (re)assigns to CONI and the individual federations – based on criteria they establish, and not based on the concrete modalities in which the relationship is articulated – a peculiar classification power to define the boundary between professionalism and amateurism, with direct regulatory impacts[33], primarily resulting in the application of a *different* and *particular* presumptive classification regime[34]. "Different" because, while in amateurism there is a presumption of self-employment for all sports workers in the form of coordinated and continuous collaboration, in professionalism, although only for athletes, there is instead a presumption of subordination. "Particular" because, in both cases, criteria based on "temporal" elements take central relevance, which, at least *prima facie*, seem entirely unrelated from verifying the concrete modalities of the relationship and from the existence of hetero-direction.

This is reflected in Articles 27(2) (3) and 28(2) of Legislative Decree No. 36/2021, referring, in this order, to professionals and amateurs. On the one hand, Article 27 outlines only for professional athletes a "peculiar" presumption of subordination not based on the profile of hetero-direction but rather on the "principal" or "prevalent" and "continuous" nature of the sporting performance, i.e. on the "occasionality"[35], to which the three different cri-

[32] See Rebu, *cit.*, p. 33.

[33] See Article 27 for professionals and Article 28 for amateurs.

[34] For an in-depth analysis of the "mechanism of presumptions" outlined by the Legislative Decree No. 36/2021 it is allowed to make a reference to Ruffo, *Il lavoro sportivo tra teoria della subordinazione e ambigue novità legislative*, in *RGL*, 2023, I, p. 141 ff., where the purely "relative" nature of presumptions is emphasized.

[35] Regarding the relevance of "occasionality" for the legal classification of the sports worker fattispecie or type another reference is allowed to Ruffo, *L'occasionalità nei rapporti di lavoro sportivo*, in Cordella (ed.), *Occasionalità e rapporti di lavoro. Politiche del diritto e modelli comparati*, Editoriale Scientifica, 2023, p. 184 ff. But already, even if in different terms, Ichino, *Il lavoro subordinato: definizione e inquadramento*, in *Comm. Schlesinger*, Giuffrè, 1992, p. 97 ff.

teria of Article 27(3)[36] can briefly be referred. On the other hand, Article 28 establishes that the amateurs' sports performances are presumed to be the subject of a continuative and coordinated collaboration when, besides being "coordinated under the technical-sports profile"[37], they have a duration that, although continuous, does not exceed twenty-four hours per week.

Therefore, the absolute relevance of the "occasional" nature of the sports performance – to be understood essentially as the logical-legal opposite of the labour notion of "habitual"[38] and whose "presumptive-classifying value" is quite evident[39] – emerges very clearly, mainly where the legislator develops precise criteria that derive the presumption from whether certain temporal thresholds are exceeded (although in the amateur sector, the predetermined threshold is relatively high).

The situation is different for other professional sports workers besides athletes, for whom the inclusion of the relationship within the framework of subordination or autonomy follows, as in France, the traditional codified classification criteria (Articles 2094 and 2222, Civil Code).

Here, severe doubts of constitutional legitimacy arise, which will be examined later (paragraph 4). However, it is now worth focusing on the aspect of most significant interest arising from the comparison with the French system concerning the role "played" by the element of hetero-direction as a distinctive feature of subordination in sports labour relationships.

[36] That imply, conversely, a presumption of self-employment: a) the activity is practiced in the context of one or more events related within a short period of time; b) the athlete is not contractually bound regarding the attendance at preparation or training sessions; c) the performance which is the subject of the contract, despite having a continuous nature, does not exceed eight hours per week, five days per month or thirty days per year.

[37] It should be noted that the "coordination" in question, although its systematic placement requires at least some alignment with that of Article 409 of the Code of Civil Procedure, does not seem to coincide with it, as it may well express itself in the modalities of subordination. Of a similar opinion is Ferraro, *Studio sulla collaborazione coordinata*, Giappichelli, 2023, p. 133, according to which, if understood *latu sensu*, the technical-sports coordination should be considered inherent to every sports relationship and even to volunteer work, rendering the regulation unconstitutional due to the violation of the principle of the non-negotiability of the type.

[38] On which see Casillo, *Riflessioni sull'occasionalità del lavoro*, in *DLM*, 2023, p. 454 ff.; Cordella, *Spunti operativi (e non solo) sulla comunicazione di avvio del lavoro autonomo occasionale*, in *DLM*, 2022, p. 348 ff.

[39] Ruffo, *L'occasionalità nei rapporti*, cit., p. 192.

4. *The role of hetero-direction for classification purposes*

Concerning the issue of hetero-direction, it is now necessary to ask why the Italian legislator, about both professional athletes and the entire category of amateurs, "seems" to continue to consider this element as a non-determinative factor for subordination.

This choice contrasts with the French example, which, as seen, through the normative reference to the *lien de subordination juridique* – clearly defined in the historic *Cass. Soc.* 13 *November* 1996 No. 94[40] – emphasises the absolute relevance of the employer's directive power as an inescapable feature of the type, even in the context of sports work.

However, as anticipated, this assumption appears to waver concerning the figure of the *entraîneur professionnel salarié*, who, similarly to the provisions made by the Italian legislator for professional athletes, is defined based on the "principal" nature of the remunerated activity. In this regard, while it seems almost paradoxical that the coach, along with "other" figures different from athletes, falls within the sports workers category for whom the Italian legislation refers to traditional codified criteria of classification, the French approach could be more pertinent, as the coach plays a crucial managerial role in the "organisation" of sports practice, almost like a manager[41]. Moreover, it has also been said that is difficult to understand the need to anchor the identification of such a "sportsman" to that – deemed structurally antecedent – of the subordinate athlete, as this establishes a prerequisite inexplicably disconnected from the methods of performance and, *de relato*, from the verification of the existence of hetero-direction. Conversely, referring to national collective agreement for a clear definition of the "principal" nature of the activity can undoubtedly be useful, primarily to specify the inevitably open meaning of such a phrase, which is challenging to control interpretatively[42].

This last aspect highlights another marked difference in regulatory ap-

[40] According to which the *lien de subordination* is characterised by working under the authority of an employer who has the power to issue orders and instructions, to supervise their execution and to punish failures.

[41] On the issues related to the legal classification of managers, see Galardi, *Il dirigente d'azienda. Figure sociali, fattispecie, disciplina*, Giappichelli, 2020; Zoppoli A., *Dirigenza, contratto di lavoro e organizzazione*, ESI, 2000; Tosi, *Il dirigente d'azienda*, Franco Angeli, 1974.

[42] See footnote 19.

proach compared to the Italian model, which, e.g., refers first and foremost to federal regulations for clarifying the semantic content of the so-called "necessary" tasks referred to in the aforementioned Article 25, asserting (here as elsewhere) its autonomy.

In light of this intriguing "mirror game", it is worth noting how very different regulatory techniques are used for the exact figure of the sports worker, whose performance modalities are nearly identical in the countries examined, at least on a phenomenal level[43].

The question is as to the possible reason for these differences.

One answer might lie in the different relationship between the sports system and the state system within the two legal systems[44].

In the analysis of the French case, the prevailing doctrine highlights the weak autonomy of the sports system concerning the state system and, in any case, the very high degree of "integration" between the two systems[45]. This would explain a more straightforward and more linear approach by the legislator who, despite some apparent peculiarities, essentially refers to the general regulation of labour relationships, "entrusting" the definition of some more specific aspects to the competence of national collective agreements[46] and only subordinately to the regulation of the individual sports federation.

In the Italian case, however, the sports system has always claimed a broad, if not total, sphere of autonomy[47], which still manifests itself in numerous provisions (see Articles 15[48], 25[49] and 27, paragraph 5[50]). Despite the (today

[43] On the interpretation of a legal concept of sport see MARMAYOU, *Le sport: notion juridique*, in *Encyclopédie Droitdusport.com*, étude no. 106. See also, by the same A., *Définir le sport*, in *Gazette du Palais*, 19-21 octobre 2008.

[44] See CARBONI, *L'ordinamento sportivo italiano nel diritto comparato*, in *feralismi.it*, 2021, p. 49 ff.

[45] FISCHER, *France*, in HALLMANN, PETRY, *Comparative Sport Development - Systems, Participation and Public Policy*, Springer, 2016, p. 62.

[46] Called upon to establish, e.g., the conditions under which a fixed-term contract of less than 12 months can be concluded (Article L. 222-2-4).

[47] On the relations between the state system and the sports system in Italy, see DI NELLA, *Il fenomeno sportivo nell'ordinamento giuridico*, ESI, 1991; see also BELLOMO, *Introduzione*, in VV.AA., *Lineamenti di diritto sportivo*, Giappichelli, 2024; INDRACCOLO, *Rapporti e tutele nel dilettantismo sportivo*, ESI, 2008.

[48] In the part where it requires the act of membership for the subject to access the protections and regulations of the sports system.

[49] When the definition of "necessary" tasks for sports practice is left to technical regulations of each individual sports discipline.

[50] Which makes the effectiveness of the sports employment contract subject to approval

more successful than ever) attempts of the state system to breach the "wall" dividing the two "worlds", sports work continues to maintain its marked "specificity"[51] – explicitly reaffirmed in paragraph 1-*bis* of Article 25 of Legislative Decree No. 36/2021 – which is reflected in a more pronounced "speciality" of its regulation[52].

Here the relevance of the political factor aforementioned in paragraph 1 becomes evident. Since sports work has a well-defined phenomenal connotation, which does not change between the contexts examined, one would expect an identical classification in general terms, in the theory of general law. Instead, the difference operates on an eminently political level, understood in its multifaceted connotation that embraces and includes "economy", an unmistakably "conditioning" element[53] of political decisions.

In Italy, as seen, a political evaluation is made that favours national sports federations, to which, through the attribution of a peculiar classification power between professionals and amateurs, the "selection" of subjects who can benefit from facilitated access to subordination or autonomy is entirely entrusted. There are indeed "privileged" intersections between professionalism and subordination on one side and between amateurism and independence on the other, the latter especially being the result of (economic) policy evaluations aimed at safeguarding the economically less "relevant" sector[54].

Such a setup inevitably raises some constitutional legitimacy doubts regarding violating the principle of equality under Article 3 of the Constitution. One cannot help but observe that the distinction between professionals and amateurs, which the law does not define and leaves to individual federations, becomes decisive without any evident reasonableness[55]. This issue in-

(within seven days of signing) by the National Sports Federation or the Associated Sports Discipline.

[51] Regarding the "specificity" of sport, especially at the European level, see Colucci, *L'autonomia e la specificità dello sport nell'Unione europea*, in *RDES*, 2006, p. 15 ff.

[52] On the "speciality" of sports work see the thesis of Gragnoli, *I nuovi profili*, cit., p. 263 ff.

[53] See the statement by Treu, *Metodo comparato e diritto*, cit., p. 350.

[54] Mezzacapo, *Il rapporto di lavoro degli atleti c.d. professionisti di fatto: questioni aperte e prospettive di riforma*, in *LPO*, 2019, p. 604, recalls how Coni has indicated the significant economic relevance of the phenomenon as a decisive condition for the establishment of the professional sector.

[55] Of the same opinion is Gragnoli, *Le ultime novità*, cit., p. 91 ff.

tersects with the problem of the non-negotiability of the type[56], albeit with the peculiar reduction of protections accompanying sports work.

It is a marked anomaly, highlighting all the limits of using a temporal criterion based on occasionality as a decisive element – even if it must be reiterated subsequently to the "federal filter" – from which to deduce the legal nature of work performance. This leads to questioning the revision of the typical criteria of the type, substantially reaffirmed in the "nearby" French model.

5. Following. *Is it only an apparent gap?*

However, the disparity between the two frameworks is less stark if one adopts a more in-depth reading of the temporal-criteria and the notion of "occasionality" aforementioned. This reveals, as hinted at several points, the only "apparent" irrelevance of hetero-direction for classifying purposes even in the Italian system.

The "time factor" assumes a peculiar classifying value when understood as an indicator of the "stability" of sports worker's insertion in the organisation of the sports company or association. "Stability" measures, on the one hand, the degree of "organic integration" of the sports worker into the organisational structure and, on the other hand, the degree of the employer's power to intervene and impact the execution of the sports activity.

The marked "specificities" of sports work (particularly of the athlete) mentioned earlier emerge briefly. A different measurement of the employer's power to guide the athlete's performance would undoubtedly lend itself to incontrovertible complexities. The content of the sports activity, and especially the sports gesture, enhances the personal and individual component of the athlete, which is resistant to submission within the group or to being confined within the employer's rigid directives[57]. Therefore, the lack of "stability" in the performance is taken as a presumptive element of the absence of submission and, thus, of subordination[58]. In other words, in the reconstruction outlined, the limit between the categories of autonomy and sub-

[56] D'Antona, *Limiti costituzionali alla disponibilità del tipo contrattuale nel diritto del lavoro*, in *ADL*, 1995, I, p. 63 ff.

[57] Zoppoli A., *cit.*, p. 135.

[58] Ruffo, *L'occasionalità nei rapporti*, cit., p. 187 ff.

ordination remains indicated, as in France, by the verification of hetero-direction, which is "presumed" to exist in the case of sports work performed with "habituality" – that is, as a principal or prevalent and continuous activity (Article 27, paragraph 2) – or, conversely, its absence in the case of sports work performed with "occasionality" – that is, as a marginal/non-habitual activity identified by the presence of at least one of the criteria of Articles 27(3) and 28(2).

In these terms, the normative use of the temporal criterion for presumptive-classifying purposes finds its complete legitimacy in Article 2094, Civil Code, which, seemingly in the background, returns to centre stage[59], preserving its role as a cornerstone norm in the classification of employment relations.

Thus, the seemingly vast disparity with the French model is, if not eliminated, at least diminished. In both models, despite the relevant specificities of the sport, the legal classification of the sports worker type is still anchored to the central categories of subordinate work and self-employment[60], although in the Italian model with some adjustments, especially in terms of regulation. However, these adjustments on regulation result in a lower level of protection offered to Italian sports workers compared to the standard employee prototype, unlike in France, where an almost undifferentiated protection is provided (except for the rules on fixed-term contracts).

Finally, there remains one last crucial difference between the two legal systems, which lies in the defining methods and the related legal consequences of the perimeter of professionalism. In France, the *status* of a professional (or amateur) takes on, as seen, a purely descriptive value entirely irrelevant to the nature of the relationship. In Italy, the determination of the two areas (professionalism-amateurism), despite the relatively presumptive nature analysed, guides the legal classification of the work performance (and the applicable regulation), unreasonably subordinating the outcome to an external and abstract factor (the decision of the Federation)[61], lacking a connection with the concrete methods of work performance.

[59] On the continuing centrality of Art. 2094 of the Civil Code, see Caruso, Del Punta, Treu, *Manifesto per un diritto del lavoro sostenibile*, in *WP C.S.D.L.E. "Massimo D'Antona"*, 2020, p. 21.

[60] Moreover, in Italy, art. 2(2) of Legislative Decree No. 81 of 15 June 2015 has (re)introduced the non-applicability of the regulation of hetero-organized collaborations to amateur sports collaborations.

[61] Biasi, *cit.*, p. 9.

Therefore, apart from the only seemingly different "weight" exerted by hetero-direction on the classifying level, there remains a certain distance between the regulatory approaches of the two observed countries. This distance traces its "matrix" in the "political" factor, whose ability to "frustrate or prevent" the "legal homogenisation" of institutions and/or regulatory techniques[62], even between phenomenologically very similar systems, finds here clear and unequivocal confirmation.

[62] Well highlighted in the aforementioned Kahn-Freund thought.

Abstract

The essay aims to analyse the different regulatory techniques of France and Italy concerning employment relations in the sports sector and the consequences of these differences in classification. Central importance in this sense is assumed by the incidence of the status of a professional sportsman, which, while in France assumes a purely formal meaning with no influence on the nature of the relationship, in Italy, it represents, even if limited to athletes, a sort of passe-partout for the access to the "fattispecie" or type of subordinate sports employment and the relative particular regulation. The author identifies a decisive weight in this difference in the political factor.

Keywords

Sports work, Italy, France, Classification, Professionalism.