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**CONSTITUTIONAL RECOGNITION OF SPORT IN LIGHT  
OF ARTICLE 33 OF THE ITALIAN CONSTITUTION**

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*Ai miei nonni, Luisa,  
Giorgio, Patrizia e Elena.*



## **ABSTRACT**

This thesis delves into the constitutional reform of Article 33, paragraph 7 of the Italian Constitution, which officially recognized the educational and social value of sporting activity in all its forms and its role in supporting physical and psychological well-being. This reform represents a pivotal moment in the advancement of Italy's legal framework, toward the recognition of the importance of sport for the development of individuals and society as a whole.

The first part of this study outlines the extensive journey that lasted over two decades and culminated with the adoption of Constitutional Law No. 1 on September 26, 2023. This legislative process began in May 1997, during the 13th legislative term, when Bill no. 2414, titled "Constitutional Protection of the Right to Sports and Recreational Activity" was adopted. The following years saw a succession of different proposals and debates that shaped the final wording of Art. 33. By choosing to amend Art. 33, on the right to education and the freedom of art, science, and research, the reform connects sport to education and cultural development. However, its placement in Art. 33, though symbolic, falls short of granting it the status of a fundamental right. This represents an initial step toward the ambitious aim of making sport accessible to all, a principle outlined in Art. 2 of the Olympic Charter but still distant from being fully realized.

The second part of the present thesis conducts a comparative analysis of how other countries have included sport in their constitutions. Such a comparison offers a broader international perspective on the various models approved to norm sports activities.

The present thesis concludes by highlighting the challenges in translating this important constitutional reform into action and making sport accessible to all Italian citizens. There are significant geographic and socio-economic disparities in the access to facilities and opportunities to practice sports, with sizeable deficits in rural and underprivileged urban neighborhoods. Making sport accessible to everyone requires the adoption of comprehensive policy measures, and a collaborative approach between all stakeholders: legislative and executive branches, European and International organizations, local communities, educational institutions, and sports associations. Investing in and promoting sport is beneficial not only for individual health and well-being but also to foster a more active and inclusive society.

## ABSTRACT

Questa tesi effettua un'analisi della riforma costituzionale dell'articolo 33, settimo comma, della Costituzione italiana, che ha riconosciuto esplicitamente il valore educativo, sociale e di promozione del benessere psicofisico dell'attività sportiva in tutte le sue forme. Tale riforma rappresenta un momento cruciale nell'evoluzione del quadro giuridico italiano, sottolineando l'importanza dello sport per lo sviluppo individuale e sociale.

La prima parte del presente studio ripercorre il lungo percorso, durato oltre due decenni, culminato con l'adozione della Legge costituzionale 26 settembre 2023, n. 1. L'iter legislativo è iniziato nel maggio 1997, durante la XIII legislatura, con la proposta di legge n. 2414, "Tutela costituzionale del diritto all'attività sportiva e ricreativa". Negli anni successivi si sono susseguite varie proposte di legge che hanno contribuito alla formulazione finale dell'art. 33. Scegliendo di intervenire su tale articolo, che riguarda il diritto all'educazione e la libertà dell'arte, della scienza e della ricerca, la riforma collega lo sport all'educazione e allo sviluppo culturale. Tuttavia, la sua collocazione nell'art. 33, per quanto simbolica, non gli conferisce lo status di diritto fondamentale. Tale modifica costituzionale rappresenta un primo passo verso l'ambizioso obiettivo di rendere lo sport accessibile a tutti, principio delineato dall'art. 2 della Carta olimpica ma ancora lontano dall'essere pienamente realizzato.

La seconda parte della tesi conduce un'analisi comparativa delle modalità di inclusione dello sport da parte di altri paesi nelle loro costituzioni, offrendo una prospettiva più ampia sulla posizione dell'Italia. Questo confronto mette in

evidenza i vari modelli e quadri normativi sviluppati in Europa e nel mondo per riconoscere lo sport.

La tesi si conclude mettendo in luce le persistenti sfide per attuare in pratica questa importante riforma costituzionale e rendere lo sport accessibile a tutti i cittadini italiani. In Italia, esistono significative disparità geografiche e socioeconomiche nell'accesso alle strutture e alle opportunità di praticare sport, con deficit importanti nelle zone rurali e nelle periferie dei grandi centri urbani. Per garantire che lo sport sia veramente accessibile a tutti, richiede un intervento mirato, attraverso l'adozione di misure e politiche efficaci e un approccio collaborativo tra tutti gli attori coinvolti: autorità pubbliche, organizzazioni europee e internazionali, comunità locali, scuole e associazioni sportive. Investire e promuovere lo sport non solo favorisce la salute e il benessere individuale, ma è uno strumento fondamentale per promuovere una società più attiva e inclusiva.





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## INTRODUCTION

September 20, 2023, was a historic day for Italian sports, as the House of Representatives finally approved Constitutional Bill No. 715.<sup>1</sup> This bill explicitly recognized the constitutional relevance of sport in education, society, and health, thereby cementing its acknowledgment within the constitutional framework.

Since its origins, sport has served as an avenue for social integration and entertainment, as well as, a vehicle for the development and transmission of social values, particularly among younger generations. During the last centuries, sport has developed into a real industry that creates new social, political, and legal challenges, so much so that sports law is now recognized as a key area of law.

This contribution aims to conduct an in-depth study of the *right to sport*: the fundamental right of all individuals to engage in sport without discrimination or unnecessary restriction. The right to sport encompasses the right to access sports facilities and engage in physical activity, as well as the duty of regulatory agencies to prevent and suppress discrimination, particularly on the basis of ethnicity, age, sex, physical capacity, or socioeconomic status. The right to sport also promotes the recognition of sport to foster diversity and inclusion by encouraging the participation of individuals of all backgrounds and abilities.

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<sup>1</sup>

Constitutional Bill of 20 September 2023, no. 715-B

In the first chapter, this thesis includes a comprehensive analysis of the right to sport from an international, European, and Italian perspective. Sport has been regulated and fostered by international organizations, sports institutions, and political authorities at a global, continental, and national level. The value of sport has been recognized, in the sense that physical activity and sport are means both to positively express individual and social identity – including cultural and ethnic – and to foster mental and physical wellbeing.

Following the adoption of several crucial *soft-law* documents, a number of international treaties and conventions that recognize the right to sport as a fundamental right were ratified. In 1987, the United Nations Educational, Scientific and Cultural Organization (UNESCO) went so far as to declare sport a human right.<sup>2</sup> In honor of the adoption of the International Charter for Physical Education and Sports, UNESCO introduced, under Art. 1, the principle that the practice of sport is a human right and that individuals should have the opportunity to practice sport according to their needs, as a “fundamental right for all.”<sup>3</sup>

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<sup>2</sup> The UNESCO in the International Charter of Physical Education, Physical Activity and sport states the following:

- 1) “the practice of physical education and sport is a fundamental right for all”;
- 2) “that to preserve and develop the physical, intellectual and moral powers of the human being improves the quality of life at the national and the international levels”;
- 3) “that physical education and sport should seek to promote closer communion between peoples and between individuals, together with disinterested emulation, solidarity and fraternity, mutual respect and understanding, and full respect for the integrity and dignity of human beings”;
- 4) “that responsibilities and obligations are incumbent upon the industrialized countries and the developing countries alike for reducing the disparity which continues to exist between them in respect of free and universal access to physical education and sport”;
- 5) and that “this International Charter for the purpose of placing the development of physical education and sport at the service of human progress, promoting their development, and urging governments, competent non-governmental organizations, educators, families and individuals themselves to be guided thereby, to disseminate it and to put it into practice.”

<sup>3</sup> Art. 1 of the UNESCO International Charter of Physical Education, Physical Activity and sport, adopted by the General Conference at its twentieth session, Paris, 21 November 1978



The Court of Justice of the European Union (CJEU) first intervened in sport in the 1970s, with the Walrave and Donà judgments,<sup>4</sup> which addressed the issue of the compatibility of sport legislation with EU law. The 1995 Bosman case marked a radical change in the player transfer system, extending the principles of freedom of movement within the EU and laying the groundwork for further significant pronouncements on the EU's relationship with sport.<sup>5</sup>

In terms of EU law, sport received its first major endorsement in the draft of the 2004 European Constitution, wherein an entire section was devoted to it.<sup>6</sup> Art. III-282 stipulated that Member States must dedicate themselves “to developing the European dimension of sport” and that efforts should be made by the EU and Member States to promote “cooperation with third countries and international organizations responsible for education and sports.”<sup>7</sup> However, only with the Lisbon Treaty did the protection of sport find express recognition within the framework of primary EU legal sources.<sup>8</sup> Specifically, this occurred with two norms: Art. 6(1)(e) TFEU, which includes in the list of areas of the Union's action also sports,<sup>9</sup> and more fundamentally, with Art. 165 TFEU, which incorporates, without any substantive changes, the text of Art. III-282 of the Constitutional Treaty.<sup>10</sup>

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<sup>4</sup> cfr. Chap. 1, Par. 3

<sup>5</sup> cfr. Chap. 1, Par. 3

<sup>6</sup> Draft of the Treaty establishing a Constitution for Europe, *Official Journal* of the European Union, C 310, vol. 47, 16 December 2004, 2004/C 310/1

<sup>7</sup> Art. III-282 of the Draft of the Treaty Establishing a Constitution for Europe

<sup>8</sup> Lisbon Treaty, *Official Journal* of the European Union, C-306, vol. 50, 17 December 2007

<sup>9</sup> Art. 6, Par. 1(e) TFEU

<sup>10</sup> Art. 165 TFEU

In Italy, the constitutional value of physical activity was explicitly recognized only recently, with the amendment of Art. 33 Const.<sup>11</sup> The Republican Constitution of 1948 initially lacked an express and direct reference to sport. Despite the growing interest in the culture of sport throughout the years, its social importance was only officially acknowledged at the constitutional level in September 2023. Prior to that, the only clause mentioning sport was related to the allocation of legislative powers between the State and the regions, in Art. 117 Const., revised during the 2001 Reform of Title V of Part Two Const.<sup>12</sup> However, the fact that sport received no explicit reference in the Constitution does not mean that it was not protected; sport was in fact protected indirectly in the Italian Constitution, particularly Arts. 2, 3, 4, 13, 18, 32, 33, 34, and 35.

In the second chapter of this thesis, we examine the process that led to the adoption of Constitutional Law No. 1 of September 26, 2023,<sup>13</sup> which introduced sport in the Italian Constitution. This was the culmination of a 25-year legislative process beginning in May 1997, during the 13th legislative term, when Bill no. 2414, “Constitutional Protection of the Right to Sports and Recreational Activity,” was presented.<sup>14</sup> This bill replaced Art. 32 Const. with a new text which acknowledged, alongside the right to health, “the right to the performance of sports and recreational activities.” The attempt to introduce sport in the Constitution through Bill No. 2414 was followed by other legislative proposals, some of which were similar to the aforementioned proposal aiming to amend Art. 32 Const., centered on the right to health. Other proposals referred

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<sup>11</sup> Art. 33 Const.

<sup>12</sup> Constitutional Law October 18, 2001, no. 3, in *Official Journal* no. 248 of 24 October 2001

<sup>13</sup> Constitutional Law September 26, 2023, no. 1, in *Official Journal* no. 235 of 7 October 2023

<sup>14</sup> Constitutional Bill no. 2414, *Tutela costituzionale del diritto all'attività sportiva e ricreativa*, on the initiative of Senators Maceratini, Servello, and Bucciero (members of the Alleanza Nazionale party), communicated to the Senate Presidency on May 8, 1997, assigned on May 20, 1997

to Art. 33, recognizing the freedom of artistic and scientific expression, and to Art. 9, on the promotion of culture and scientific and technical research.

The third chapter of this thesis examines the different constitutional approaches to the right to sport in European and non-European Countries. This comparison offers, on the one hand, examples of constitutions that establish an immediate and direct link between the right to sport and to health, making the former indispensable to the latter; on the other hand, some constitutions emphasize the autonomous value of the right to sport.

The fourth and final chapter of this thesis looks into the future of Art. 33 Const. and its potential impact on the nation's sporting landscape. The amendment of this article holds the potential to foster the growth of sport and expand access to it for a broader segment of the population. However, the reform alone is not enough; the State must actively intervene to implement Art. 33 to enforce its principles with a series of legislative initiatives to promote and ensure universal access to sports for all people, regardless of their circumstances or background.



## **I. HISTORICAL EVOLUTION OF THE RIGHT TO SPORT.**

### **1) Overview.**

Examining the evolution of the right to sport allows us to understand how, over the last century, the importance of sport has been progressively acknowledged. Sport has evolved from being marginalized and often associated with military activities and training to being recognized as a vital means for the prevention of health problems, essential for the promotion of social inclusion, and contrasting discrimination.

Internationally, the importance of sport has rapidly increased over the last two centuries. In 1894, the Interministerial Committee of the Olympic Games (now International Olympic Committee [IOC]) was established. In 1908 the adoption of the Olympic Charter, declared “the practice of sport is a human right.”<sup>15</sup> Similarly, in 1987 UNESCO introduced under Art. 1 the principle that the practice of sport is a “fundamental right for all.”

The European Union has made significant contributions to the legal framework of sport through the CJEU’s rulings. Among these, the Bosman

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<sup>15</sup> Olympic Charter, adopted by the International Olympic Committee, 1908.

decision, granted professional soccer players the right to free movement. Moreover, the EU has stressed the significance of sport in several documents. In 1997, the EU signed the Amsterdam Treaty,<sup>16</sup> which stressed the social importance of sport. In 1999, the Helsinki Report on Sport was published,<sup>17</sup> emphasizing the value and importance of physical education in school, as well as, its educational dimension.

In Italy, sport was not considered as a juridical system for many years; however, thanks to its increase in popularity at all levels and the consequent impact on the economy and labor, the attention of the State shifted toward the world of sports. After the Second World War, sport was undoubtedly not a priority; it also had a much lesser dimension than it has today. However, as sports influence spread across the country, the government felt compelled to regulate this field. The framework for sports in Italy was shaped by a number of legislative acts, such as Law March 23, 1981, no. 91,<sup>18</sup> on professional sports, which asserted State legislative authority over the regulation of relationships between sports practitioners, clubs, and federations concerning employment in the sports industry.

However, only following the Reform of Title V, Part Two Const. in 2001<sup>19</sup> did the sports system, become part of the Constitution. In fact, the new wording of Art. 117, Par. 3 includes the subject of *ordinamento sportivo* among those assigned by the legislator to the “concurrent competence” of the State and the regions.

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<sup>16</sup> Treaty of Amsterdam amending the Treaty on European Union, *the Treaties establishing the European Communities and certain related acts*, *Official Journal C 340 of 10 November 1997*

<sup>17</sup> The Helsinki Report on Sport from the Commission to the European Council, Brussels, December 10, 1999, COM(1999) 644 final

<sup>18</sup> Law March 23, 1981, no. 91, “Norme in materia di rapporti tra società e sportivi professionisti,” *Official Journal*. 27 March 1981, no. 86

<sup>19</sup> Constitutional Law Oct. 18, 2001 no. 3

## **2) Evolution of the international sport discipline and the right to sport.**

For centuries sport has been recognized internationally as an important tool for social cohesion, education, health, and promotion of peace. In 1894, Pierre de Coubertin created the IOC, a non-governmental organization whose objective was to restore the Olympic Games of Ancient Greece, through a sports competition every four years where athletes from all countries could meet and compete. The IOC is a driving force for cooperation within the whole Olympic movement.<sup>20</sup>

The IOC's role today is to administer the development of the Olympic movement, promote ethics and take action against discrimination and violence in sport, encourage and support fair play, sustainable development of sport, and employ sport to improve the general well-being and promote peace.<sup>21</sup> The creation of the IOC prompted countries worldwide to form national Olympic committees in their respective states to develop and promote the Olympic movement nationally and protect its ideals.

The Olympic Charter is the codification of the fundamental principles of Olympism. In particular, the charter states that “the practice of sports is a human right” and that “every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity, and fair play.”<sup>22</sup>

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<sup>20</sup> Regarding the origins of the IOC cfr. *History of the IOC* <https://olympics.com/ioc/history>

<sup>21</sup> cfr. *IOC – International Olympic Committee*, on [Olympics.com, https://olympics.com/ioc/mission](https://olympics.com/ioc/mission)

<sup>22</sup> Par. 4 of the Preamble of the Olympic Charter

Beyond the Olympic movement lies the governing network or framework of international sports legislation. The last century has witnessed major international conventions that recognize the value of physical education and sport for society. In 1978, UNESCO adopted the International Charter of Physical Education, Physical Activity, and Sport. This Charter has no binding effect on the Member States and consists of 11 articles. The first article says that “the practice of physical education, physical activity, and sport is a fundamental right for all.”<sup>23</sup> For the realization of its provisions, the General Conference of UNESCO established the Comité intergouvernemental de l’éducation physique et du sport and the Fonds international pour le développement de l’éducation physique et du sport. The committee’s primary goal is to promote physical education, rather than competition, although these are inextricably linked.<sup>24</sup>

The European Sports Charter (ESC) sets basic principles for national sports policies in Europe, facilitating citizens’ access to sport under defined conditions. Most importantly, in Art. 2, Par. 1 of the ESC, the European Council defines “sport” as “all forms of physical activity which, through casual or organized participation, are aimed at maintaining or improving physical fitness and mental wellbeing, forming social relationships or obtaining results in competition at all levels.”<sup>25</sup> The ESC has been a reference point for the development of sport in Europe. However, while adopted in 1992, it has not been significantly updated since 2001; given the rapid changes and new challenges to the sports world, a need exists for revision and new policies.

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<sup>23</sup> Art. 1 of UNESCO

<sup>24</sup> Regarding the International Charter of Physical Education, Physical Activity and Sport cfr. J. A. R. NAFZIGER, *International Sports Law: A replay of characteristics and trends*, *American Journal of International Law*, Vol. 86, no. 3, pp. 489-518, 1992, page 493, L. LEO, *Sport e Costituzione: Un legame da Rivedere*, on *Rivista di informazione giuridica*, 2021, M. D’AMICO, *Lo Sport come Diritto della Persona: Analisi dei Progetti di Revisione Costituzionale*, on *Associazione Gruppo di Pisa Fasc 2022/01*, 2022, pages 165-166.

<sup>25</sup> Art. 2, Par. 1 of the European Sports Charter



### 3) **Development of the right to sport in Europe**

#### *i. Case law of the Court of Justice of the European Union on sport*

The Court of Justice of the European Union made its first interventions in the sport world in the 1970s. The debate over whether EU law applies to sports in terms of the freedom of movement of workers' has its roots in the Walrave and Donà judgments.

In the Walrave case,<sup>26</sup> the Court provided an initial and basic framework for the delicate question of how EU law and sports interact. In its decision, the Court upheld two key principles that would eventually form the foundation of the relationship between sport and European law. First, the Court recognized that the relevance of sport for the community lies essentially in the possibility of considering sports employment as an economic activity. Second, the Court stated that the private nature of sports federations does not exempt them from compliance with EU law. Sports professionals are thus subject to the application of the rules of the Treaty whenever they constitute an activity of an economic nature.

The Court came to the same conclusion in the Donà case,<sup>27</sup> where the Federazione Italiana Giuoco Calcio (Italian Football Federation) had established

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<sup>26</sup> Judgment of the Court of Justice of the European Union of December 12, 1974. B.N.O. Walrave and L.J.N. Koch v Association Union cycliste internationale, Koninklijke Nederlandsche Wielren Unie and Federación Española Ciclismo

<sup>27</sup> Judgment of the Court of Justice of the European Union of July 14, 1976, Gaetano Donà v Mario Mantero, Case C-13-76

a regulation preventing players who did not have Italian citizenship from being registered. The Court concluded that since the activities of football players were of an economic nature if they were citizens of a Member State, the EU rules on freedom of movement were applicable.<sup>28</sup>

Although these rulings were undoubtedly significant, little weight was initially attributed to them. They were, however, rediscovered, 20 years later with the Bosman case.<sup>29</sup> This 1995 ruling marks the beginning of the EU's involvement in sports regulation. This judgment radically changed the discipline regarding the transfer of professional soccer players. It allowed players to be moved free of charge at the conclusion of their contract from one EU club to another.<sup>30</sup> The CJEU made clear that the principle of freedom of movement found in Art. 48 of the European Community Treaty<sup>31</sup> (now Art. 45 TFEU) prohibits the application of regulations by sports federations that allow soccer clubs to play a restricted number of professional players who are citizens of other Member States in matches they organize.

The Bosman judgment also addressed the economic mechanisms that govern the “transfer” of professional athletes. It stated that Art. 48 of the EC Treaty prohibits the implementation of regulations by sports federations that allow a professional soccer player who is a citizen of one state to be recruited by another Member State's club only after the former has paid a transfer, training,

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<sup>28</sup> Regarding the Walrave and Donà judgments cfr. PARRISH R., *Sport and the European Court of Justice*, page 85-89

<sup>29</sup> Judgment of the Court of Justice of the European Union of December 5, 1995, Union Royale Belge v Bosman, Case C-415/93

<sup>30</sup> Union Royale Belge v Bosman, Case C-415/93

<sup>31</sup> Art. 48, Pars. 1 and 2 of the European Community Treaty of March 25, 1957:

- “1. Freedom of movement for workers shall be secured within the Community.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.”

and promotion fee to the original club. Thanks to the Bosman ruling, athletes now have the same freedom of movement as all other professionals within the EU.<sup>32</sup>

After the Bosman ruling, there was a brief but significant period from 1996–2000 during which the CJEU issued three important rulings (Agostini, Deliege, and Lehtonen).<sup>33</sup> Two primary tendencies define this post-Bosman period. Firstly, there has been significant pressure to limit sport's autonomy; the CJEU has aimed to restrain the excessive application of the Bosman decision. However, sports federations have persisted in their refusal to comply with EU law, frequently using the recreational character of sports as justification for their behavior.

As a result of the Lehtonen and Delière judgments, the relationship between sport and EU law has further developed. The rulings reiterate that the goal of abolishing obstacles to the free movement of persons and services would be undermined if limitations imposed by federations could neutralize the removal of state barriers. However, the Court recognizes the specificity of sport and approaches the issue from this perspective.<sup>34</sup>

The Agostini case demonstrates attempts to distort the Bosman decision. In this case, the Court affirmed that participation in sporting activities cannot be restricted by citizenship. However, it also set forth that the choice of athletes to represent their nation is regarded as an exemption to EU law because it is driven by sporting reasons rather than legal considerations. These rulings represent a

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<sup>32</sup> Regarding the Bosman ruling of the Court of Justice of the European Union cfr. M. PAPALUCAS, *Giurisprudenza della Corte di Giustizia delle C.E.*, 2008, PARRISH R., *Sport and the European Court of Justice*, page 91-101. D. DIXON, *The Long Life of Bosman – A Triumph of Law over Experience*, <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume6/number2/dixon>, E. LUBRANO, L. MUSUMARRA, *Diritto dello Sport*, Discendo Agitur, 2017, page 189-192

<sup>33</sup> Case C-176/96 Lehtonen et al. v FRSSB, C-51/96 and C-191/97 Delière, and C-9/98 Agostini v Ligue francophone de judo

<sup>34</sup> cfr. PARRISH R., *Sport and the European Court of Justice*, page 101-105

balance between sporting and economic purposes, recognizing the specificity of sport but without excluding it from the application of EU law.

A subsequent key decision of the CJEU regards the Meca Medina case,<sup>35</sup> where the Court extended its jurisdiction to include all sports regulations, evaluating each one's compliance with EU principles. In this instance, the Court recognized the impossibility of predetermining rigid categories of sports rules (purely sporting rules and economically relevant norms). The Court thus chose to use a case-by-case approach in light of the wide range of sports regulations, their frequent revisions, and the challenges associated with defining them. In other words, the CJEU held that the qualification of a rule as purely sporting is not sufficient to exclude it from EU law where it has economic repercussions.<sup>36</sup>

Recently, the CJEU returned to the topic of sport with the judgment regarding the Super League, stating that the International Federation of Association Football (FIFA) and the Union of European Football Associations (UEFA) rules on the prior approval of club soccer competitions, such as the Super League, are contrary to EU competition law and freedom to provide services.<sup>37</sup> This ruling is important; it will allow other entities other than international football federations to organize parallel competitions.

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<sup>35</sup> Judgement of the Court of Justice of the European Union (Third Chamber) of July 18, 2006, David Meca-Medina and Igor Majcen v Commission of the European Communities, Case C-519/04 P

<sup>36</sup> cfr. G. INFANTINO, *Meca-Medina: a step backwards for the European Sports Model and the Specificity of Sport?*, 2006, P. IBÁÑEZ COLOMO, *The Application of EC Treaty Rules to Sport: the Approach of the European Court of First Instance in the Meca Medina and Piau cases*, <http://go.warwick.ac.uk/eslj/issues/volume3/number2/colomo/>, p. 1

<sup>37</sup> Judgment of the Court of Justice of the European Union of December 21, 2023, European Superleague Company, Case C-333/21

ii. *The European Union's sports regulations*

In recent decades, there has been growing recognition within the European Union on the “sports phenomenon.” Sport is now widely acknowledged as more than just physical activity; it serves as a catalyst for social interaction, the encouragement of a healthy lifestyle, and the promotion of core values such as justice and solidarity.

From a historical point of view, the European Community's first act concerning sport was the Adonnino Report of 1985 on a “People's Europe.”<sup>38</sup> The report urged the Commission and Member States to take the appropriate actions to protect citizens' rights (culture, youth, education, and sports) within their respective purviews. The Adonnino report served as a foundation for initiatives aimed at using sports as a means of communication and to raise awareness among citizens about their membership in the European Community.

In June 1997, 2 years after the Bosman verdict, which had completely overturned all previously accepted sports rules, the Member States ratified the Amsterdam Treaty, which is the first “official” document that recognizes and highlights the role of sports. In fact, Declaration No. 29 of the Treaty states, “[T]he Conference emphasizes the social significance of sport, in particular its role in forging identity and bringing people together. The Conference thus calls on the bodies of the EU to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport.”<sup>39</sup> Despite its non-

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<sup>38</sup> Report from the ad hoc Committee on a People's Europe to the European Council, Brussels, March 29–30, 1985, Bulletin of the EC 3-1985

<sup>39</sup> Treaty of Amsterdam amending the Treaty on European Union, *the Treaties establishing the European Communities and certain related acts*, *Official Journal C 340 of 10 November 1997*

binding nature, this Declaration has been an important stepping stone for the enhancement of the sports phenomenon in society.

The following year, the European Council convened in Vienna and invited the Commission to prepare a paper to be presented to the Helsinki Council addressing the European sports model. The 1999 Helsinki Report demonstrates the intention of “safeguarding current sports structures and maintaining the social function of sports within the community framework.”<sup>40</sup> The Report reaffirms the value of physical education in school, as well as the educational role of sports, and condemns the phenomena of violence in stadiums, the expansion of antidoping practices, and the exploitation of young athletes for profit.<sup>41</sup>

In its 2004 attempt to draft a European Constitution, the EU introduced sport as one area to coordinate and support, allocating a section of the document to youth, education, sport, and vocational training.<sup>42</sup> In particular, Art. 282 stated that “the Union shall contribute to the promotion of European sporting issues while taking account of the specific nature of the sport, its structures based on voluntary activity, and its social and educational function.”<sup>43</sup>

The Bosman judgment led to a debate on sport between the EU and the sports federations, which resulted in the adoption of the White Paper on Sport by the Commission. The EU dialogue was mostly with European federations, European Olympic and Paralympic committees, and the IOC. The White Paper was adopted by the European Commission on 11 July 2007 and was one of the most significant EU contributions in this field.<sup>44</sup> The White Paper on Sport

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<sup>40</sup> The introduction to the Helsinki Report on Sport of October 10, 1999

<sup>41</sup> cfr. R. CARMINA, *Il Tramonto del Sistema Sportivo Monopolistico in Chiave Europea*, in *Rivista Italiana di Diritto Pubblico Comunitario*, Anno XXVI Fasc. 3-4, 2016, page 773-785

<sup>42</sup> Art. 17 of the Treaty Establishing a Constitution for Europe 2004/C 310/1

<sup>43</sup> Art. 282 of the Treaty Establishing a Constitution for Europe

emphasized how participation in sports plays a social, cultural, and recreational role, and has an important educational dimension, while also promoting the health of all citizens. For the first time, the White Paper suggested a comprehensive policy framework for the industry. It provided an action plan for the implementation of guidelines on physical activity, the fight against the use of performance-enhancing substances, against social exclusion, and the suppression of racism, discrimination, and xenophobia. The Commission then discusses the health benefits of sports, highlighting that inactivity increases the risk of illnesses and diseases that lower the quality of life. As a result, the Commission urged Member States to support an active lifestyle by working with competent associations such as the World Health Organization (WHO).<sup>45</sup> It also touched upon the promotion of the sustainable development of sports, while also addressing the economic dimension of sports, which comprises 3.7% of the GDP in the EU.

The significance of the White Paper was acknowledged by the Lisbon Treaty, in force since December 1, 2009, which not only underlined the social role of sport but recognized its specificity. In fact, Art. 124 states that “the Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.” The Treaty included sport among the matters of EU competence and included sport in the EU’s primary law. In particular, Art. 6 TFEU prescribes that “the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at the European level, be... education, vocational training, youth, and sport.” Art. 165 TFEU grants the EU a “supportive competence” in sports, assigning it the task of implementing actions to support, coordinate, or supplement the actions of Member States.<sup>46</sup> In 2011,

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<sup>44</sup> European Commission, White Paper on Sport, Bruxelles, 11 July 2007, COM(2007) 391 def.

<sup>45</sup> Regarding the White Paper on Sport cfr. E. LUBRANO, L. MUSUMARRA, *Diritto dello Sport*, Discendo Agitur, 2017, page 239-257

<sup>46</sup> Art. 165 of the Lisbon Treaty of December 1, 2009:

the Commission reiterated the White Paper's strategy in communication,<sup>47</sup> emphasizing the value of sport for society, promoting the European dimension of sport, combating doping, and defending workers' rights in the sports industry.

The first work plan for sport (2011–2014) was adopted by the Council in 2011.<sup>48</sup> On December 1, 2020, the Council of European Ministers of Sport adopted the fourth EU Work Plan for Sport (2021–2024).<sup>49</sup> With this plan, the EU envisions the creation of sport opportunities for all generations. The plan also aims to strengthen “the recovery and the crisis resilience of the sports sector during and in the aftermath of the COVID-19 pandemic.”<sup>50</sup>

On August 23, 2013, the United Nations General Assembly, by Resolution 67/296, proclaimed April 6<sup>th</sup> (the date of the opening of the First

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“1. The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at... developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organizations in the field of education and sport, in particular the Council of Europe.”

cfr. E. LUBRANO, L. MUSUMARRA, *Diritto dello Sport*, Discendo Agitur, 2017, page 257-265.

<sup>47</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, January 18, 2011, COM(2011) 12 final

<sup>48</sup> Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council, on a European Union Work Plan for Sport for 2011-2014, 2011/C 162/01, *Official Journal C* 162/1

<sup>49</sup> Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council, on the European Union Work Plan for Sport, January 1, 2021–June 30, 2024, 2020/C 419/01, *Official Journal C* 419/1

<sup>50</sup> Par. 9 of the Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council on the European Union Work Plan for Sport (2021-2024)



Olympic Games in Athens in 1896) as the “International Day of Sports for Development and Peace.” In this resolution, the UN “invites States, the United Nations system and, in particular, the United Nations Office on Sport for Development and Peace, relevant international organizations, and international, regional and national sports organizations, civil society, including nongovernmental organizations and the private sector, and all other relevant stakeholders to cooperate, observe and raise awareness of the International Day of Sport for Development and Peace.”

#### **4) Navigating the Italian sports system**

##### ***i. The Italian sports system***

The laws enacted by the Italian State to govern this industry adhere to the guiding principles outlined in the regulations provided by international bodies.

At the summit of the global sports framework stands the IOC, dedicated to the organization and global promotion of sports. National Olympic committees across various countries, such as the Italian National Olympic Committee (CONI) in Italy, align themselves with the IOC and work toward the same goal at the national level. The dependence on the IOC of national Olympic committees is evidenced by their duty to follow super-national sports organizations’ requirements when drafting laws and rules for sports. To be more precise, if a national sports organization disregards the directions of international sports organization bodies, it runs the risk of being banned by them; national athletes and sports teams would thus be unable to compete internationally.

Both the international and Italian sports systems follow the same hierarchical structure. At the top of the national sports structure sits CONI, responsible for coordinating, directing, and overseeing the entirety of the competitive sports sector. CONI was founded in Rome in 1914. The Committee today recognizes 45 national sports federations, 19 associated disciplines, 14 national sports promotion bodies, and one territorial one. At the base of this framework lie the leagues, sports promotion bodies, clubs and sports associations, and athletes. As a result, there is an organizational structure rooted in public-private cooperation between the federations, disciplines, and bodies (private bodies) and CONI (a public entity).<sup>51</sup>

First and foremost, CONI is responsible for overseeing and regulating sports-related activities. Secondly, it is in charge of national representation within the IOC. Lastly, CONI has jurisdiction over higher sports courts, such as the National Court of Arbitration for Sports and the High Court of Sports Justice, which are the last-instance courts of sports proceedings.

CONI was originally established as a permanent, private corporation, which persisted until the enactment of Law No. 426 of February 16, 1942, reclassifying it as a public organization.<sup>52</sup> Art. 2, Par. 1 of Legislative Decree No. 242/1999 delineates the functions of CONI, including organizing and strengthening national sports, taking measures to prevent and suppress the use of substances that alter the natural physical performance of athletes, and promoting the widespread participation in sports activities.<sup>53</sup>

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<sup>51</sup> Regarding the structure of the Italian and International sports system cfr. E. LUBRANO, L. MUSUMARRA, *Diritto dello Sport*, Discendo Agitur, 2017. and G. VALORI, *Il Diritto nello Sport*, ed. 3, Giappichelli, 2017, Chapter 1, pp. 3-6

<sup>52</sup> Law No. 426 of February 16, 1942 (*Official Journal* No. 112 of 11 May, 1942)

<sup>53</sup> Art. 2, Par. 1 of Legislative Decree No. 242 of July 23, 1999 (*Official Journal* General Series No. 176 of July 29, 1999):  
“CONI shall conform to the principles of the international sports order, in harmony with the resolutions and guidelines issued by the International Olympic Committee, hereinafter referred to as the IOC. The body looks after the organization and strengthening of national sport, and in particular the preparation of athletes and the provision of suitable means for the Olympics and all other national or international sporting events aimed at Olympic preparation. It also oversees, within the framework

National sports federations possess legal personality and operate as nonprofit entities, to which amateur sports associations, clubs, and (in some cases) individual members are affiliated. They serve as the cornerstone of the country's sports system by providing the necessary services for sports participation and spreading the ideals of fairness, equality, justice, and respect for the rules.

Local governments are also essential in the Italian system; they are actively engaged in the management of sports to improve the education and aggregation of individuals and to raise the standards of overall health and well-being within their jurisdictions. Local governments must guarantee the citizen's right to practice sports as a source of human development and social benefit, as stipulated in Presidential Decree No. 616/77.<sup>54</sup>

The focus of discussion and analysis regarding the sports phenomenon has traditionally centered on the nature of the national sports system, conceptualized as a "sectional" or "sectorial" system. From this perspective, as well as at the level of positive law, the currently accepted solution acknowledges the Italian manifestation of a larger autonomous framework. This framework possesses an international dimension and corresponds to an organizational structure beyond the State, acknowledged by the Republic's order and overseen by the IOC. According to the Constitutional Court, the foundation for this autonomy stems from Arts. 2 and 18 Const. It is asserted that sports associations represent significant "social formations where [man] develops his personality,"

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of the sports system, the adoption of measures to prevent and suppress the use of substances that alter the natural physical performance of athletes in sports activities, as well as the promotion of the widest possible dissemination of sports practice, within the limits established by Presidential Decree No. 616 of July 24, 1977."

<sup>54</sup> Regarding the role of local governments in sports cfr. ANDRIANI, regioni ed enti locali nello sport, on Uff. Sport An, <https://www.civile.it/sportivo/visual.php?num=58379#:~:text=IL%20RUOLO%20DEGLI%20ENTI%20LOCALI&text=Gli%20Enti%20locali%20debbono%20garantire,di%20crescita%20della%20persona%20umana,2003> and F. BLANDO, Il Ruolo e le Competenze delle Regioni nello Sport, Vol. V, Fasc 1, on Rivista di diritto ed economia dello sport, 2009 pp. 31-54

and thus the right of individuals to freely associate for sports objectives should be acknowledged.<sup>55</sup>

The relationship between the State and the sports system is governed by Law Decree No. 220 of August 19, 2003, which was converted into Law No. 280 of October 17, 2003. The decree codified the legal relevance of interests and the autonomy of the national sports system as an expression of the international sports system. Additionally, it stipulated that, after all sports justice avenues have been explored, the Administrative Judge (T.A.R. Lazio) has exclusive jurisdiction over matters pertaining to acts of CONI and the national sports federations, with the exception of “property disputes between ordained equals,” which fall under the purview of the Ordinary Judge. Conversely, technical issues and disciplinary matters are reserved for sports justice, establishing a sort of “presumption of irrelevance” of such matters, unless they assume relevance outside the sports system.<sup>56</sup>

*ii. Reasons behind the failure to recognize sport in the Italian Republican Constitution of 1948*

After World War II, sports did not receive much social attention, with priorities focused on issues such as health, welfare, education, and social security. Only cycling, thanks to the athlete Bartali’s exploits, had significant

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<sup>55</sup> cfr. Constitutional Court Judgment no. 49 del 2011; more recently, Judgment no. 160 del 2019

<sup>56</sup> E. LUBRANO, *Ordinamento Sportivo e Giustizia Statale un rapporto ancora controverso*, on *Rivista Amministrativa della Repubblica Italiana*, pp. 593-635, 2001, pp. 7-19

popularity. Nevertheless, the inclusion of sports in the Constitution seemed unthinkable in 1946–47. During this period, the country faced challenging economic and social challenges, which meant that the limited resources available were directed toward major reconstruction initiatives. In that moment, the State had to safeguard other rights, such as education, healthcare, and a general improvement in economic and social conditions.

However, the main reason why sport was not included in the 1948 Republican Constitution was the desire to break away from the past. Sport was almost repudiated as a legacy of the Fascist regime, from which society and institutions felt compelled to distance themselves. Sport was commended by Fascism as a means of educating youth, for the enhancement of the race, and to fortify the state's military abilities. In a speech held in the House of Representatives, Pd-Idp deputy Mauro Berruto noted the deliberate decision made by Italy's Constituent Fathers and Mothers not to incorporate the acknowledgment of sports in the Constitutional Charter. This decision aimed to break away from a misguided interpretation of sports, which, in the preceding two decades, had been utilized as a tool for propaganda and fostering division among people.

In 1926, Augusto Turati, secretary of the Fascist Party, outlined in the December 4 Order Sheet the position of CONI as an organ subordinate to the party itself. Throughout the Fascist regime, policies aimed at transforming soccer into mass sporting events were implemented, accompanied by the construction of large-scale sports facilities. The regime promoted the spread of sport in the belief that it was essential for the creation of the “new man” and could change both the body and character of Italians.<sup>57</sup> The emergence of sports media outlets was crucial in promoting nationalism and celebrating sporting victories as emblems of racial and national revival. These programs were significant for not only the sports world but also for propaganda and the founding of the Fascist government.<sup>58</sup>

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<sup>57</sup> E. FONZO, E. LANDONI, *Storia e Storiografia dello Sport durante il Fascismo*, on *Storia dello Sport*, Vol. 4 no. 1, 2022

<sup>58</sup> M. CANELLA, S. GIUNTINI, *Sport e Fascismo*, 2007, p. 169-196

The desire to break away from the Fascist regime and its values was evident when, in 1946, the government appointed the lawyer Giulio Onesti as CONI's liquidating commissioner, with the aim of removing any traces of the Fascist past. However, Onesti did not completely dismantle the Committee, instead, he recognized its social significance and potential impact. Retaining a sports organization, despite its ties to the previous regime, meant recognizing the value of sports beyond political spheres and preserving a heritage that transcended the ideologies of the past.<sup>59</sup>

The only mention of sport during the deliberations of the Constituent Assembly was made by deputy Giuliano Pajetta, brother of Giancarlo Pajetta, on April 19, 1947, during the discussion on Art. 31. Notably, in his speech, Pajetta referred to sports solely in the context of safeguarding children's health, distancing himself from what he termed its "martial aspect." In particular, during this session, Pajetta highlighted the "issue of sports seen as a means to ensure the healthy development of youth in our nation. It is no longer about viewing sports as a preparation for war or advocating for physical prowess over intellectual capacity; rather, it is about preventing the diseases that are wreaking havoc in our society." However, this perspective has since become outdated. Today, quite the opposite is evident: sports, notwithstanding occasional deviations, serve as tools for inclusion and peace, while also promoting health and enhancing quality of life.

### *iii. Implicit constitutional protection of sport in Italy*

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<sup>59</sup> E. LUBRANO, *Il diritto allo sport come diritto fondamentale in prospettiva anche costituzionale*, in *dirittifondamentali.it*, fasc. II, 2020, p. 238

Despite the lack of recognition of sport in the Italian Constitution for over half a century, sport was undoubtedly the subject of implicit recognition in the context of other fundamental rights. Sport was protected indirectly through a number of constitutional provisions, including Arts. 2, 3, 13, 18, 32, 33 Const., and those specifically dedicated to professional sports, such as Arts. 4 and 35.

Art. 2 Const., which upholds each person's inalienable rights both as an individual and within social formations, offers fertile ground for the protection of sports. Serving as both a "closing" and an "open" clause, this article can implicitly include the protection of sports as a tool for human and social promotion.<sup>60</sup> Art. 18 highlights the constitutional significance of structured sports participation, encouraging the emergence of sports associations and the voluntary association of individuals wishing to practice sport in an organized and permanent manner, thus highlighting another form of indirect protection. The fundamental right to health enshrined in Art. 32 also includes the individual's right to practice sport for their physical and mental well-being, offering further constitutional grounding to the protection of sports. In fact, a number of legislative proposals have also suggested an intervention on Art. 32 Const., examined in subsequent chapters. Art. 3 implicitly recognizes the significance of sport for society and pledges the Republic to promote the growth of sports by removing social and economic barriers to it.

The landscape of constitutional provisions supporting sport is enhanced by Art. 4, which acknowledges the right to work and to choose an activity that advances society's material and spiritual well-being. This includes sport, implicitly, as a means of enhancing an individual's physical and spiritual well-being. The personal freedom guaranteed by Art. 13 is closely linked to the

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<sup>60</sup> V. ZAGREBELSKY, R. CHENAL, L. TOMMASI, *Manuale dei diritti Fondamentali in Europa*, third edition, il Mulino, Bologna, 2022, pg. 64. The Constitutional Court has held that Art. 2 Const. contains an open formula that does not exclusively contain the rights expressly mentioned in Art. 13 ff. Const., meaning that other fundamental rights can be derived from it; this begins with Const. Court. No. 561/1987, on sexual freedom.

freedom to engage in sport according to one's inclinations and desires, conferring an additional layer of indirect protection.<sup>61</sup>

Despite the lack of an explicit reference, the indirect protection offered by the Constitution through these articles remained an important pillar for guaranteeing the rights of sportsmen and women and promoting the practice of sport as an integral part of Italy's national society and culture. Until 2001, the sole specific mentions of sport in constitutional sources in Italy were in two statutes: one concerning Trentino-Alto Adige (Art. 9, No. 11), which allocates concurrent legislative authority over "sports and recreational activities along with associated facilities and equipment," and another regarding Friuli-Venezia Giulia (Art. 4, No. 14), which assigns primary regional legislative competence over "sports institutions."

In 2001, Art. 117, Par. 3 Const. was amended by the constitutional reform of Title V, which identifies, among the subjects of concurrent legislative competence, precisely the sports system, thus effectively inserting an explicit reference to sports without, however, assigning it a specific meaning.<sup>62</sup>

#### ***iv. The journey toward the formal codification of sport in the Italian Constitution***

During the last two centuries, Italy has demonstrated a growing awareness for the role of sport in the personal development of individuals. In

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<sup>61</sup> In relation to the implicit constitutional protection of sport cfr. L. LEO, *Sport e Costituzione: Un legame da Rivedere*, in *Rivista di informazione giuridica*, 2021

<sup>62</sup> Constitutional Law October 18, 2001, no. 3, *Official Journal* October 24, 2001, no. 248



fact, beginning in the 19th century, the State implemented a number of programs and initiatives to promote and increase the practice of sporting activities. In 1872, Antonio Scaiola, an Italian Minister, established a commission to restructure gymnastics in Italy, which played a key role in organizing and promoting sports. In particular, the commission established a school in Turin to prepare teachers for this subject. Three years later, a similar school was opened in Bologna, demonstrating the State's dedication to hiring qualified instructors and encouraging the practice of gymnastics across the country.

The first national Olympic committee was established in 1907 and received the IOC's recognition the following year. This event marks a significant step in the history of Italian sport; it indicates a formal and institutional commitment to the organization and promotion of sporting activities at the national and international levels. Another significant turning point was the Daneo Law of 1909,<sup>63</sup> which implemented Minister Gallo's bill of 1889. This bill acknowledged the value of sport in the educational and training environment of young Italians by establishing sports fields in schools.

In addition to the legislature's interest in the topic, the Italian Constitutional Court also weighed in on sports-related matters, acknowledging the significant social role that sports play. The Constitutional Court, in ruling No. 57/1976, specifically addressed the case of a farmland owner who refused a bird watcher entry to his property. Under Art. 42 of the Civil Code, only hunters are allowed access to someone else's land under certain conditions. The Court reiterated that the restriction on property (in accordance with Art. 42) is justified; hunting remains a socially relevant activity. Access to another person's land is essential to exercise the right to hunt, and the restrictions imposed are thus justified on social grounds. Moreover, the Constitutional Court, in this ruling, defines sport as a "human activity recognized as having such a public interest as to require its protection and encouragement by the State." The Court thus clearly

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<sup>63</sup> Law December 26, 1909, no. 805, *Daneo Law, on the teaching and the teachers of physical education*, *Official Journal* January 8, 1910, no. 5

emphasizes the importance of sport as a human activity of public interest that requires state protection and encouragement.<sup>64</sup>

Furthermore, in Judgment No. 517/1987,<sup>65</sup> the Court addressed the matter, stating that sports activities should be distinguished according to their competitive or non-competitive nature. The former would fall under the subject matter of “sports organization” of the State and sports bodies, while the latter would be of certain regional attribution, based on Presidential Decree No. 616/1977.

Art. 56, Par. B of Presidential Decree No. 616/77 assigned to the regions the responsibility for the “promotion of sports and recreational activities,” while maintaining CONI’s authority to organize promotional and competitive events across all levels. Initially, the State and the regions were endowed with differing levels of competency depending on whether the planned sporting events were competitive or non-competitive.<sup>66</sup> Law No. 59 of March 15, 1997, sets forth the regulations governing the interactions between public bodies, particularly the State and the regions in the domain of sports.<sup>67</sup> Currently, however, only the regions are accountable for sports facilities (refer to Legislative Decree 112/1998),<sup>68</sup> according to Art. 157, Pars. 1 and 2.

Following these interventions, Art. 117.3 Const. was reworded as part of the Title V reform. In assigning to the State and the regions the powers inherent to the exercise of legislative power, Art. 117 inserts the subject matter

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<sup>64</sup> cfr. Constitutional Court Judgment March 12, 1976, no. 57, *Official Journal* March 31, 1976, no. 5

<sup>65</sup> Constitutional Court Judgement December 17, 1987, no. 517, *Official Journal* June 22, 1988, I special series, no. 25

<sup>66</sup> Presidential Decree July 24, 1977, no. 616, *Official Journal* July 26, 1977, no. 203, *Implementation of the delegation of authority under Art. 1 of Law no. 382 of July 22, 1975*

<sup>67</sup> Law March 15, 1997, no. 59, *Official Journal* March 17, 1997, no. 56

<sup>68</sup> Legislative Decree March 31, 1998, no. 112, *Official Journal* April 21, 1998, no. 92, s. o. no. 77/L.

*ordinamento sportivo* among those assigned by the legislator to the so-called concurrent competence of the State and the regions.<sup>69</sup>

Although it has not been recognized as a true fundamental right at the constitutional level, the performance of sports activities has been codified as a freedom at the primary source level. Under Law No. 91 dated March 23, 1981 (pertaining to relationships between corporations and professional athletes), Art. 1 of the legislation acknowledges the principle of unrestricted participation in sports: “[T]he exercise of sporting activity, whether carried out individually or collectively, professionally or as an amateur, is unrestricted.”<sup>70</sup>

The legislative body further acknowledged the existence of a tangible “right to sports” through Law No. 205/2017, which affirms the assurance of the “right to engage in sports as an essential form of the child’s personal development” (Art. 1, Par. 369(e)). The right to sports for minors was subsequently reaffirmed by Law No. 86/2019. Although the legislature did not explicitly recognize a “right to sports,” this provision implies a recognition of the value of sports and physical activities for children and underscores the need to establish a series of guarantees and assurances for their access to and participation in sporting disciplines.<sup>71</sup>

The enactment of Law No. 145 on December 30, 2018, introduced a substantial reform within the national sports framework. This reform established a new government entity, Sport e Salute S.p.A., which replaced CONI Servizi S.p.A. The management of this new entity falls under the purview of a three-member Board of Directors, appointed by the Government Authority responsible for sports, together with the Ministers of Health, Education, University, and Research, as well as the Ministry of Economy and Finance.

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<sup>69</sup> cfr. Constitutional Law October 18, 2001, no. 3, *Official Journal* October 24, 2001, no. 248 and M. F. SERRA, *Ordinamento Sportivo e Autonomia Regionale*, on Rivista giuridica on-line, no. 3/2020

<sup>70</sup> E. LUBRANO, *Il diritto allo sport come diritto fondamentale in prospettiva anche costituzionale*, in *dirittifondamentali.it*, fasc. II, 2020, p. 248

<sup>71</sup> A. BUSACCA, *Diritti del Minore e “Diritto allo Sport,”* in *Actualidad Juridical Iberoamericana* no. 17 bis, December 2022, p. 1122-1153

This reform entailed a significant reallocation of public funds, previously allocated to CONI Servizi, to Sport e Salute, reducing the funding allocated to CONI and restricting its role only to the management of the Olympic preparation. This change highlights a new political and cultural approach to sports, with the State undertaking greater responsibility for the management and allocation of resources for amateur sports. Furthermore, this reform emphasizes the importance attributed by legislators and policymakers to grassroots sport as a key element in promoting the right to health, especially among young people.<sup>72</sup>

In recent years, the Constitutional Court has continued to show keen interest in sports-related issues. In Judgment No. 160 of 2019, the Court deliberated on the interplay between “sports justice” and jurisdiction concerning disputes involving sports disciplinary penalties. This ruling reaffirmed what was already established in 2011 in Judgment No. 49 and offered further clarifications, particularly regarding precautionary measures. Furthermore, in the latest ruling, No. 184/2023, the Court deemed unconstitutional the regulation imposing term constraints on presidents and officials of national sports federations and associated sports disciplines (previously restricted to three terms).

It is essential to highlight a significant recent reform, known as the “sports reform.” The enactment of Legislative Decree 120/2023,<sup>73</sup> published in the Official Gazette on September 4, 2023, introduced the second corrective measure to the sports reform, which comprises five decrees issued in 2021.<sup>74</sup> The

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<sup>72</sup> Regarding the establishment of the new “*Sport e Salute Spa*” cfr. E. LUBRANO, *Il diritto allo sport come diritto fondamentale in prospettiva anche costituzionale*, in *dirittifondamentali.it*, fasc. II, 2020, p. 249-250

<sup>73</sup> Legislative Decree August 29, 2023, no. 120, *Official Journal* no. 206 of September 4, 2023, *Supplementary and corrective provisions to Legislative Decrees No. 36, 37, 38, 39 and 40 of February 28, 2021*

<sup>74</sup> The five decrees issued in 2021 are as follows:

- Legislative Decree February 28, 2021, n. 36 provisions on sports bodies and sports labor;
- Legislative Decree February 28, 2021, n. 37 provisions on sports agents;
- Legislative Decree February 28, 2021, n. 38 provisions on sports facilities;
- Legislative Decree February 28, 2021, n. 39 provisions on simplifications for entities; and

reform acknowledges rights and dignity in sports labor, with the primary goal of creating a more equitable, sustainable, and inclusive sports environment for all Italian citizens.<sup>75</sup> The reform aims to achieve several objectives: increasing focus on amateur sports and promoting healthy lifestyles; securing more resources for Italian sports through an automatic funding mechanism and increased allocations to sports bodies; and simplifying the operation of the sports system by reducing bureaucracy, enhancing transparency, and eliminating potential conflicts of interest.

Most recently, with the National Recovery Plan (in Italian: PNRR), the Government allocated a total of €1 billion to the sports sector. Specifically, the plan encompasses two main funding streams: within Mission 4, Component 1.1, Investment 1.3, aimed at enhancing school sports infrastructure (with a budget of €300 million), and within Mission 5, Component 2.3, Investment 3.1, directed toward the revitalization of urban areas through investments in sports facilities and the establishment of equipped urban parks. This initiative seeks to promote social inclusion and integration, particularly in marginalized areas, with a special focus on disadvantaged individuals, with an allocation of €700 million.

## 5) Conclusion

In conclusion, the analysis of the historical evolution of the right to sport reveals a nuanced path that has profoundly impacted the international, European,

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- Legislative Decree February 28, 2021, n. 40 safety provisions for winter sports.

<sup>75</sup> cfr. *I correttivi della Riforma dello Sport pubblicati in Gazzetta Ufficiale*. (n.d.). Dipartimento per Lo Sport. <https://www.sport.governo.it/attivita-nazionale/riforma-dello-sport/i-correttivi-della-riforma-dello-sport-pubblicati-in-gazzetta-ufficiale/>

and national sports scenes. Over the past century, sport has gone from being considered a marginal activity to being acknowledged as an essential element for the promotion of social integration and health and to combat discrimination.

Internationally, the value of sport has been increasingly acknowledged and emphasized. A turning point was the approval of the Olympic Charter in 1908, which stated that “the practice of sport is a human right,” and the founding of the Interministerial Committee of the Olympic Games in 1894, which would later become the IOC. Similarly, in 1987, UNESCO established the notion that participating in sports is a “fundamental right for all.”

The EU has also made significant contributions to sports regulation through the rulings of the CJEU, including the well-known Bosman ruling revolutionizing the transfer of professional football players, the EU has made a substantial contribution to the regulatory framework of sport. The Court, as well as the Amsterdam Treaty and the Helsinki Report on Sport, have contributed to the definition of the legal framework and acknowledgment of the role that sport plays in the formation of the European identity.

In Italy, sport gradually emerged as an object of state interest, especially after World War II, due to its impact on the economy and society. The legal framework for sports in Italy has been progressively established through legislative measures, such as the law on professional sports of 1981 and the 2001 revision of Title V Const., which incorporated the sports system into the nation’s fundamental charter. The 1948 Italian Constitution did not specifically acknowledge sport, but it did still provide implicit protection through other articles that safeguarded essential rights such as the freedom of movement, personal health, and employment. Furthermore, sports were confirmed to be an important subject in the national legislative framework when Title V Const. was reformed to include them as a matter of shared competence between the State and regions.

Italy has increasingly recognized the significance of sport in individual development, evident from initiatives dating back to the 19th century. The formation of the first national Olympic committee in 1907 marked a pivotal

moment, institutionalizing the organization and promotion of sports activities. Legislative interventions, such as the Daneo Law of 1909, further underscored the value of sports in education. Over time, the Constitutional Court's rulings, such as No. 57/1976 and No. 184/2023, affirmed the societal importance of sports, shaping legal perspectives on sports-related matters. The recent legislative reform, highlighted by the publication of Legislative Decree 120/2023, prioritizes equitable, sustainable, and inclusive sports environments, aiming to bolster grassroots sports, streamline funding mechanisms, and enhance transparency while eliminating conflicts of interest.

In conclusion, the evolution of the right to sport reflects the change in perspective toward sport as a fundamental element of society, health, and national and European identity. Through an increasingly complex path of recognition and regulation, sport has emerged as a fundamental right and a pillar of contemporary social and cultural life.

## **II. PARLIAMENTARY WORKS AND LEGISLATIVE DECISION-MAKING TO AMEND ARTICLE 33 OF THE ITALIAN CONSTITUTION**

### **1) Overview**

The proposed constitutional revision was ultimately endorsed on second reading by both the Chamber of Deputies and the Senate of the Republic. The addition of a new final paragraph to Art. 33 Const. acknowledging the educational, social, and health-promoting importance of sports in all forms occurred through Constitutional Law no. 1 of September 26, 2023,<sup>76</sup> the “Amendment to Article 33 of the Constitution Regarding Sports Activities.”

This reform emerged from an extensive legislative journey that saw the succession of several constitutional reform proposals and bills, which are analyzed in detail in the following sections. This process, which began with the submission of Bill No. 2414 in 1997, sought to recognize the right to sport and recreational activities within the constitutional framework. Over the years, various proposals and bills were submitted, each emphasizing the educational, social, and health-related benefits of sport.

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<sup>76</sup> Constitutional Law of September 26, 2023, No. 1, in Official Gazette No. 235 of October 7, 2023, provided by Art. 1, Par. 1 for the insertion of this paragraph



The new paragraph mirrors the contents of the various texts submitted in both the Senate and the Chamber of Deputies. The main difference among them concerned which article to intervene on. The prevailing inclination (since the previous legislative term) was to intervene on Art. 33, rather than on alternative options such as Arts. 9 and 32, driven by the desire to provide a comprehensive and fitting normative foundation for recognizing the importance of sports. By introducing sport into Art. 33, alongside guarantees for education, art, science, and research, Italy acknowledges its multifaceted role in promoting individual well-being and societal development. This introduction sets the stage for a deeper exploration of the legislative journey and the importance of sports within the Italian constitutional context.

## **2) Legislative proposals and parliamentary works to amend Article 33 of the Italian Constitution**

The introduction of the final paragraph to Art. 33 Const. marks the conclusion of an extensive legislative process spanning 25 years. The endeavor began during the XIII Legislative Term with the submission of Bill no. 2414,<sup>77</sup> “Constitutional Protection of the Right to Sports and Recreational Activity,” on May 8, 1997. This bill, sponsored by Senators Maceratini, Servello, and Bucciero of the Alleanza Nazionale party, aimed to amend Art. 32 Const. to include the right to participate in sport and recreational activities as an essential component of the right to health.<sup>78</sup> The wording of this bill was presented again

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<sup>77</sup> [Senate of the Republic, XIII legislative term, Bill No. 2414, submitted on May 8, 1997](#), “Tutela costituzionale del diritto all’ attivita’ sportiva e ricreativa” (Constitutional protection of the right to sports and recreational activity)

<sup>78</sup> L. SANTORO, *L’inserimento dello Sport in Costituzione: Prime Osservazioni*, on Fondazione Bologna University Press, *Diritto dello Sport*, Vol. 04 n. 02, pp. 9-23, 2023, Pg. 9-11

in three subsequent proposals during the same legislative term.<sup>79</sup> Initially, these bills sought to amend Art. 32 Const. by incorporating the right to participate in sport and recreational activities alongside the right to health. However, this approach was reconsidered, leading to the emergence of several subsequent bills advocating for the inclusion of sport in Art. 33, alongside art and science, as a freely practiced activity with educational value.

During the XIV Legislative Term, Bill no. 318/2001,<sup>80</sup> introduced by Carla Mazzuca Poggiolini, placed sport alongside art and science, emphasizing its educational value. This change influenced the content of the constitutional revision, shifting it from a mere recognition of the “right to sporting activity” to a broader perspective highlighting the “educational and social value of sporting activity... and its role in supporting physical and psychological wellbeing.”

In 2009 (XVI Legislative Term), the Honorable Manuela Di Centa introduced a bill aimed to draw Parliament’s attention to the issue. The bill stated (translated verbatim into English), “The Republic promotes and enhances sport in all its forms, taking into account the various disciplines, the structures in which it is articulated and in particular those based on voluntary work, and its civil, social, educational and health protection function.”<sup>81</sup> This proposal

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<sup>79</sup> cfr. [Chamber of Deputies, XIII legislative term, Bill No. 4862 submitted on June 17, 1998](#) “Modifica all’ articolo 32 della Costituzione, concernente la tutela della salute e il diritto all’ attivita’ sportiva e ricreativa” (Amendment to Art. 32 Const. on the protection of health and the right to sports and recreational activity); [Chamber of Deputies, XIII legislative term, Bill No. 5358 submitted on November 30, 1998](#) “Modifica dell’articolo 32 della Costituzione in materia di tutela del diritto all’ attivita’ sportiva e ricreativa” (Amendment of Art. 32 Const. on the protection of the right to sports and recreational activity); [Chamber of Deputies, XIII legislative term, Bill No. 5246 submitted on 23 February, 1999](#), “Modifica dell’articolo 32 della Costituzione concernente la tutela del diritto all’ attivita’ sportiva e ricreativa” (Amendment of Art. 32 Const. on the protection of the right to sports and recreational activity)

<sup>80</sup> [Chamber of Deputies, XIV legislative term, Bill No. 318 submitted on 4 July 2001](#) “Modifiche all’ articolo 33 della Costituzione in materia di tutela e promozione delle attivita’ sportive” (Amendments to Art. 33 Const. on the protection and promotion of sports activities)

<sup>81</sup> [Chamber of Deputies, XVI legislative term, Bill No. 2276 submitted on March 11, 2009](#), Amendment to Art. 33 Const. on the promotion and enhancement of sports

reached the Chamber of Deputies but progressed no further in the legislative process.

During subsequent legislative terms, further proposals arose to incorporate sports into Art. 33, emphasizing its educational and social value, as well as its role in promoting mental and physical well-being.<sup>82</sup> These legislative proposals demonstrated a widespread interest in the matter transcending specific political affiliations. Additionally, some of these initiatives suggested amendments to Art. 32, introducing the right to sport alongside the right to health. During the XVII Legislative Term, there was a notable absence of proposals focusing on introducing the recognition of the right to sports in Art. 32. Instead, all three bills presented on the subject proposed a constitutional revision to Art. 33 Const., focusing on the promotion and advancement of sport.<sup>83</sup>

In the XVIII Legislative term, a significant development occurred, when a bill merged six proposals regarding the inclusion of sports in the Constitution.<sup>84</sup>

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<sup>82</sup> [Chamber of Deputies, XV legislative term, Bill No. 2006 submitted on 16 January, 2007](#), “Modifiche agli articoli 33 e 117 della Costituzione in materia di riconoscimento dello sport” (Amendments to Arts. 33 and 117 Const. on the recognition of sports)

<sup>83</sup> L. SANTORO, *L’inserimento dello Sport in Costituzione: Prime Osservazioni*, on Fondazione Bologna University Press, *Diritto dello Sport*, Vol. 04 No. 02(2023), 2023. Pg. 12-13

<sup>84</sup> The bills combined in the unified text are as follows:

- [Senate of the Republic, XVIII legislative term, Bill No. 747 submitted on March 22, 2022](#), “Modifica all’articolo 33 della Costituzione, in materia di attività sportiva” (Amendment to Art. 33 Const. on sports activities);
- [Senate of the Republic, XVIII legislative term, Bill No. 2262 submitted on March 22, 2022](#), “Modifica all’articolo 33 della Costituzione, in materia di promozione e valorizzazione dello sport” (Amendment to Art. 33 Const. on the promotion and enhancement of sports);
- [Senate of the Republic, XVIII legislative term, Bill No. 2474 submitted on March 22, 2022](#), “Modifica all’articolo 9 della Costituzione, in materia di promozione dello sport” (Amendment to Art. 9 Const. on the promotion of sports) approved under the new title “Modifica all’articolo 33 della Costituzione, in materia di attività sportiva” (Amendment to Art. 33 Const. on sports activities);
- [Senate of the Republic, XVIII legislative term, Bill No. 2478 submitted on March 22, 2022](#), “Modifica all’articolo 32 della Costituzione in materia di promozione della pratica sportiva” (Amendment to Art. 32 Const. on the promotion of sports) approved with the new title “Modifica all’articolo 33 della Costituzione, in materia di attività sportiva” (Amendment to Art. 33 Const. on sports activities);

This unified bill advanced through the initial stages and came close to the end of the legislative process, receiving approval from one of the two chambers of Parliament in the first and second readings. The consolidated text, comprising various proposals to amend Arts. 9, 32, or 33 Const., opted for the latter, emphasizing the “value of sporting activity” over the “right to sport.” This decision, outlined in the accompanying report, was taken to prevent any deviation from the fundamental principles outlined in Art. 9. Furthermore, Art. 33 covers all aspects of sports, unlike Art. 32, which primarily addresses the right to health.

The deliberation regarding the paired bills S. 747 and S. 2262 began in the Senate during the session of the Constitutional Affairs Committee on December 15, 2021. During the same session, the Committee agreed to hold a series of informal hearings, which occurred on December 21–22, 2021. Constitutional Bills Nos. 2474, 2478, 2480, and 2538 were combined during the examination. On December 22, 2021, the Committee formed a Restricted Committee to consolidate the bills into a unified text. Following deliberations, on February 16, 2022, the Committee endorsed the unified text proposed by the rapporteur as the main document for subsequent review. The Committee continued its deliberations during the following sessions on March 1–2, 2022, focusing on examining the 11 proposed amendments. Following these discussions, a unified text was presented to the Assembly, with a single alteration from the original document, concerning the term “sporting activity.” In particular, the Committee endorsed a constitutional revision to include the specification “in all its forms” to the term “sporting activity,” to ensure the broadest possible interpretation of this concept. The Assembly of the Senate approved the unified text put forward by the Committee during its session on

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- [Senate of the Republic, XVIII legislative term, Bill No. 2480 submitted on March 22, 2022](#), “Modifica all’articolo 33 della Costituzione, in materia di attività sportiva” (Amendment to Art. 33 Const. on sports activity); and
  - [Senate of the Republic, XVIII legislative term, Bill No. 2538 submitted on March 22, 2022](#), “Modifica all’articolo 32 della Costituzione in materia di diritto allo sport” (Amendment to Art. 32 Const. on the right to sports) approved with the new title “Modifica all’articolo 33 della Costituzione, in materia di attività sportiva” (Amendment to Art. 33 Const. on sports activities).

March 22, 2022. The bill was passed with 213 votes in favor, five against, and 13 abstentions.

The Chamber of Deputies' I Committee initiated its first-reading review of Bill C. 3531,<sup>85</sup> which had been approved by the Senate during its session on April 21, 2022, along with several related bills (C. 586,<sup>86</sup> C. 731,<sup>87</sup> C. 1436,<sup>88</sup> C.

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<sup>85</sup> [Chamber of Deputies, XVIII legislative term, Bill C. 3531 Transmitted by the Senate on March 23, 2022](#); combined with C. 586, C. 731, C. 1436, C. 2998, C. 3220, C. 3536

<sup>86</sup> [C. 586](#), resulting from the initiative of the Council of the Marche Region, proposed on May 9, 2018, regarding “Modifica dell’articolo 33 della Costituzione, in materia di promozione e valorizzazione dello sport” (Amendment to Art. 33 Const. on the promotion and elevation of sports), which states in Art. 1, “All’articolo 33 della Costituzione sono aggiunti, in fine, i seguenti commi: La Repubblica promuove lo sport nella varietà delle sue discipline e manifestazioni e ne sostiene la funzione civile, sociale, educativa e di tutela della salute. Valorizza l’associazionismo sportivo in particolare nelle forme del volontariato” (The Republic promotes sport in the variety of its disciplines and manifestations and supports its civil, social, educational, and health protection functions. It strengthens sports organizations, particularly in volunteer roles).

<sup>87</sup> [C. 731](#): Prisco and others, submitted on June 14, 2018, on “Modifica all’articolo 32 della Costituzione, in materia di promozione dell’accesso alla pratica sportiva” (Amendment to Art. 32 Const. on the promotion of access to sports practice); which states in Art. 1, “All’articolo 32 della Costituzione è aggiunto, in fine, il seguente comma: La Repubblica tutela la salute anche mediante la promozione delle attività volte ad impegnare e a sviluppare le capacità psicomotorie della persona ed agevola l’accesso alla pratica sportiva” (The Republic shall also protect health through the promotion of activities aimed at engaging and developing the psychophysical capacities of the person and facilitate access to sports practice).

<sup>88</sup> [C. 1436](#): Butti and others, presented on December 11, 2018, on “Modifica all’articolo 9 della Costituzione, in materia di diritto all’esercizio dell’attività sportiva” which states in Art. 1, “All’articolo 9 della Costituzione è aggiunto, in fine, il seguente comma: Riconosce e garantisce il diritto all’esercizio dell’attività sportiva, svolta in forma individuale o collettiva, anche quale parte integrante del diritto fondamentale alla salute sancito dall’articolo 32” (In Art. 9 Const., the following paragraph shall be added at the end: Recognizes and guarantees the right to exercise sports activity, carried out individually or collectively, including as an integral part of the fundamental right to health enshrined in Art. 32).

2998,<sup>89</sup> C. 3220,<sup>90</sup> C. 3536<sup>91</sup>). During the same session, Bill C. 3531 Const., previously approved by the Senate in its initial deliberation, was endorsed as the primary text for further review. All parliamentary groups simultaneously reached a consensus to forego the deadline for the proposal of amendments. During its session on April 27, 2022, considering the positive feedback from Committees VII and XII, the Committee decided to authorize the rapporteur to present a favorable report to the Assembly on the measure, maintaining the same text as approved by the Senate.

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<sup>89</sup> [C. 2998](#) Giusy Versace and others, presented on April 6, 2021 on “Modifiche all’articolo 32 della Costituzione in materia di diritto allo sport” (Amendments to Art. 32 Const. on the right to sports); this bill of 2021 aimed to include the right to sports in the Italian Constitution by amending Art. 32. The bill provided in Art. 1 as follows: “All’articolo 32 della Costituzione, dopo il secondo comma è aggiunto il seguente: La Repubblica riconosce, promuove e tutela il diritto allo sport nella sua accezione educativa e sociale. Essa garantisce le condizioni che agevolano e rendono effettivo l’accesso alla pratica sportiva e l’esercizio della stessa” (In Art. 32 Const., after the second paragraph the following shall be added: The Republic recognizes, promotes and protects the right to sport in its educational and social significance. It ensures the conditions that facilitate and enable access to and practice of sports).

<sup>90</sup> [C. 3220](#): Belotti and others, presented on July 22, 2021, a proposal on “Modifica all’articolo 32 della Costituzione, in materia di diritto allo svolgimento dell’attività sportiva e ricreativa” (Amendment to Art. 32 Const. on the right to engage in sports and recreational activities), which states in Art. 1, “All’articolo 32 della Costituzione sono aggiunti, in fine, i seguenti commi: La Repubblica riconosce e favorisce il diritto allo svolgimento dell’attività sportiva e ricreativa. La legge assicura la realizzazione degli strumenti idonei a garantire l’esercizio libero e gratuito dell’attività sportiva e ricreativa ai sensi del terzo comma” (The following paragraphs are added at the end of Art. 32 Const: The Republic recognizes and promotes the right to engage in sports and recreational activities. The law shall ensure the implementation of appropriate measures to guarantee the free and unrestricted exercise of sports and recreational activities in accordance with the third paragraph).

<sup>91</sup> [C. 3536](#): Gagliardi and others, presented on March 25, 2022, a proposal on “Modifica all’articolo 32 della Costituzione, in materia di tutela dell’attività sportiva come fondamentale diritto dell’individuo e interesse della collettività” (Amendment to Art. 32 Const. on the protection of sporting activity as a fundamental right of the individual and interest of the community), which states in the article, “Al primo comma dell’articolo 32 della Costituzione, le parole: tutela la salute come fondamentale diritto dell’individuo e interesse della collettività,” replaced by the following: “tutela la salute e l’attività sportiva come fondamentali diritti dell’individuo e interessi della collettività” (In the first paragraph of Art. 32 Const., the words “protects health as a fundamental right of the individual and interest of the community” are replaced by “protects health and sporting activity as fundamental rights of the individual and interests of the community”).

Constitutional Bill C-715<sup>92</sup> was initially introduced in the Senate (Legislative Decree Oct. 13, 2022 No. 13,<sup>93</sup> which absorbed Legislative Decree Oct. 13, 2022 No. 135<sup>94</sup> and Legislative Decree Oct. 13, 2022 No. 152<sup>95</sup>) and subsequently passed its first reading in the session of Dec. 13, 2022, with widespread support (145 votes in favor, 4 abstentions). In the Senate, the proposal was consolidated with four identical constitutional bills: October 13, 2022 No. 212,<sup>96</sup> October 21, 2022 No. 423,<sup>97</sup> February 21, 2023 No. 904,<sup>98</sup> and October 13, 2022 No. 337.<sup>99</sup> The last bill differed from the others by proposing amendments to Art. 32 instead of Art. 33 Const. On March 8, 2023, the I Committee decided to adopt the proposed constitutional law C. 715 as the basic text, which had already been approved by the Senate, without making any constitutional revisions. The VII Committee provided a favorable opinion in consultation; the XII Committee did not issue any opinions. The referential examination was concluded on March 23, 2023, with the rapporteur tasked with reporting favorably to the Assembly.<sup>100</sup>

The approved text consists of a single article that amends Art. 33 Const., introducing a new last paragraph: “The Republic recognizes the educational and

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<sup>92</sup> [Atto Camera, XIX legislative term, Bill No. 715 Constitutional Proposal for a Constitutional Law, initiative of senators Iannone and others: “Modifica all’articolo 33 della Costituzione, in materia di attività sportiva” \(Amendment to Art. 32 Const. on sports activities\), approved in first deliberation by the Senate](#)

<sup>93</sup> [Atto Camera A.S. 13](#)

<sup>94</sup> [Atto Camera A.S. 135](#)

<sup>95</sup> [Atto Camera A.S. 152](#)

<sup>96</sup> [Atto Camera A.C. 212](#)

<sup>97</sup> [Atto Camera A.C. 423](#)

<sup>98</sup> [Atto Camera A.C. 904](#)

<sup>99</sup> [Atto Camera A.C. 337](#). Proposed constitutional law entitled “Modifica all’articolo 32 della Costituzione, in materia di promozione dell’accesso alla pratica sportiva” (Amendment to Art. 32 Const. on the promotion of access to sports practice)

<sup>100</sup> Regarding the legislative process that led to the adoption of Constitutional Law No. 1/2023 cfr. Deputies, C. D. (2018, March 23). Amendment to Art. 33 Const. on sports activities. Parliamentary Documents. [https://temi.camera.it/leg19/provvedimento/modifica-all-articolo-33-della-costituzione-in-materia-di-attivita-sportiva\\_d.html](https://temi.camera.it/leg19/provvedimento/modifica-all-articolo-33-della-costituzione-in-materia-di-attivita-sportiva_d.html)

social value of sporting activity in all its forms and its role in supporting physical and psychological wellbeing.” This wording reflects the text approved in both the first and second readings by the Senate during the XVIII Legislative term, and only in the first reading by the Chamber of Deputies. The legislative process remained incomplete due to the dissolution of the Chambers. The scheduled term of the XVIII Legislative term was set for March 2023, but it was dissolved prematurely by President Mattarella on July 21, 2022, 8 months ahead of schedule, in the wake of the government crisis under former president Draghi.

Constitutional Law no. 1 of 2023 marks a milestone in officially acknowledging sport as a fundamental value in the Italian constitutional framework. The legislative process, although intricate and prolonged, reflected a growing consensus on the recognition of sports as a constitutional value. The inclusion of sports activity in Art. 33 Const. represents a significant step in recognizing and fostering the importance of sports in Italian society.

### **3) Legislative decision-making and selection of the Constitutional article in which to intervene**

The wording used in the new last paragraph of Art. 33 Const. is largely consistent with the content of the various texts proposed, as discussed in the preceding section. The primary difference among these proposals was the decision regarding which article to intervene on. The prevailing choice, which originated in the Senate during the XVIII Legislative term and persisted into the current XIX legislative term, was to amend Art. 33, rather than intervening on alternative options such as Arts. 9 and 32. They avoided intervening on Art. 9 for two reasons: to refrain from interfering with the fundamental principles and because said article was already undergoing revisions in the field of



environmental protection, which could have led to problematic overlaps. Art. 33 was deemed more appropriate for the recognition of sport; it covers a broader spectrum of topics, including art, science, education, and culture. This provides a more suitable framework to incorporate concepts related to sport compared to Art. 32, which solely addresses the right to health. Integrating sports-related provisions into Art. 32 might have distorted its original purpose and focused only on one aspect of sport. As such, the decision to include this value in Art. 33 was driven by the aim of offering a more comprehensive and fitting normative foundation that reflects the complexity and importance of sport within the Italian constitutional framework.

As such, Art. 33 Const. is the framework within which sport was recently introduced. This article not only guarantees the right to education and upbringing but also emphasizes the freedom of art, science, and research. It ensures that education and vocational training are accessible to all individuals within their respective capabilities. Moreover, Art. 33 establishes the right to pursue higher education, granting everyone, regardless of economic or social background, the opportunity to pursue higher education. Additionally, the article advocates for the autonomy of schools, whether public or private, to uphold a higher standard of education. By emphasizing the importance of individual education and development, Art. 33 sets the stage for considering sport as an integral component of this framework. Sports play a significant role in promoting physical education, fostering well-being, and facilitating personal growth among citizens. Thus, within the context of Art. 33, sport can be viewed as a fundamental element contributing to the holistic development of individuals.

#### **4) Conclusion**

The lengthy and intricate journey to amend Art. 33 Const. to recognize the importance of sport has spanned 25 years. The journey began with proposals aimed at recognizing the right to sport and leisure activities within the constitutional framework, evolving through successive legislative terms. From initial attempts to amend Art. 32 and subsequent proposals to intervene on Art. 9, the focus eventually shifted to Art. 33, alongside art and science, emphasizing the educational and social value of sport. Throughout this process, diverse proposals emerged, reflecting a broad interest in recognizing sport within the constitutional framework. The decision to intervene on Art. 33, rather than alternative options such as Arts. 9 and 32, was driven by the desire to provide a comprehensive foundation to recognize the multifaceted role of sports. Art. 33, with its broader scope covering education, culture, and freedom of expression, offers a more suitable framework for incorporating sports-related provisions.

Ultimately, the approval of Constitutional Law No. 1 of 2023 represents a significant milestone in officially acknowledging sports as a fundamental value within the Italian constitutional framework. By introducing a new paragraph to Art. 33, emphasizing the educational and social value of sporting activity, Italy reaffirms its commitment to promoting individual well-being and societal development through sports. Art. 33 not only guarantees the right to education and upbringing but also recognizes the importance of physical education and personal development through sports. By integrating sport into this framework, Italy acknowledges the holistic role of sport in fostering physical and psychological well-being, contributing to the overall development of individuals and society as a whole.



### **III. THE CONTENTS AND OBJECTIVES OF THE CONSTITUTIONAL REVISION OF ARTICLE 33 OF THE ITALIAN CONSTITUTION.**

#### **1) Overview**

Constitutional Law no. 1/2023 consists of a single article, which amends Art. 33 Const. by adding a new paragraph. This new provision states,

The Republic recognizes the educational and social value of sporting activity in all its forms and its role in supporting physical and psychological well-being.

The normative text of Art. 33 underlines the importance of the educational dimension of sport, emphasizing its role in personal development and formation. Additionally, sport is recognized for its social value; it frequently serves as a unifying force and a means to promote inclusion. The introduction of the phrase “in all its forms” in the recognition of the value of sporting activities serves to explicitly include the sport in its various forms and expressions. Lastly, sport is closely intertwined with health, particularly as we understand it today, including the holistic well-being of individuals, beyond the mere absence of illness.

In addition, the amendment to Art. 33 must be considered in conjunction with Art. 114 Const., which empowers the Republic and its institutions to employ their authority to promote and defend the principles of sport. This joint

interpretation emphasizes the binding nature of the provision, which requires both individual citizens and public institutions to take concrete actions to uphold the values of sport thus recognized.

The constitutional reform has acknowledged the value of sport, although it has not yet categorized it as a right. Its inclusion in the Constitution marks a preliminary step toward the Department of Sports' overarching objective embodied in the motto "sport for all and by all."<sup>101</sup>

## **2) Unveiling the contents of the amendment to Article 33 of the Italian Constitution**

In addition to the decision concerning the placement of sport in the Italian Constitution, the selection of the content and language of the paragraph is a crucial step in the legislative process; it precisely defines the meaning and scope of the normative provisions. The constitutional reform under analysis intervened by adding a new last paragraph to Art. 33.

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<sup>101</sup> cfr. *Sport di tutti*. (2024, February 15). Sport E Salute S.p.A.  
<https://www.sportesalute.eu/sportditutti.html>

<sup>102</sup> For the sake of completeness, the textual datum of Art. 114 Const. is given: "The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution. Rome is the capital of the Republic. Its status is regulated by State Law."

i. *The subject: “The Republic”*

The Republic is entrusted with the task of recognizing the value of sporting activity, in accordance with what is specified in Art. 114 Const.<sup>102</sup> Here, the term “Republic” includes all its organs and their respective powers. The new final paragraph of Art. 33 must be read in conjunction with Art. 114, implying the involvement of all the constituent entities of the Republic, each tasked with leveraging its authorities and acknowledging the inherent values of sport, thereby contributing to its promotion and safeguarding. Through this combined interpretation of Arts. 33 and 114, the mandatory nature of the provision becomes apparent. The norm is immediately effective and requires both individuals and public bodies to take concrete actions to comply with it.

In light of this, it is important to recall the statement made during Examination Session no. 416, during which the following phrase (translated verbatim into English) was pronounced: “[T]his provision places the responsibility on the Republic to guarantee that sports practice is genuinely universal, accessible to everyone, without discrimination based on sex, race, language, religion, political opinion, personal and social circumstances. Furthermore, it is appropriate to implement all initiatives that ensure its protection and safety, while reinforcing its commitment to safeguarding minors, promoting comprehensive and healthy management, and ensuring gender equality.”<sup>103</sup> This statement underlines the responsibility of the Republic to

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<sup>102</sup> For the sake of completeness, the textual datum of Art. 114 Const. is given: “The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution. Rome is the capital of the Republic. Its status is regulated by State Law.”

ensure that sports practice is universally accessible without discrimination, emphasizing the need for initiatives to protect and promote sports, especially for minors.

ii. *The verb: “Recognizes”*

The use of the verb “recognizes” resonates with the language found in Art. 2 of the Italian Constitutional Charter with regard to fundamental rights.<sup>104</sup> This choice of wording suggests that sporting activity is viewed as an intrinsic element of society, as a pre-existing reality<sup>105</sup> that was important even before any legislative intervention. The term further implies that sport holds a significant place within Italian society and culture, independently from legislative actions. Thus, the Republic is tasked with acknowledging this reality and ensuring its protection and advancement.<sup>106</sup> This perspective highlights the importance of sport as a social and cultural phenomenon rooted in national history and identity, requiring constant efforts by institutions to preserve its value and foster its development. Notably, Art. 2 Const. has long served as a key reference point for

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<sup>103</sup> Emendamenti di Commissione relativi al DDL n. 2474, <https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=ListEmendc&leg=18&id=54641>

<sup>104</sup> For the sake of completeness, the textual datum of Art. 2 Const. is given: “The Republic recognizes and guarantees the inviolable rights of the person, as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.”

<sup>105</sup> In normative contexts, the verb “recognizes” is typically used to establish rights, affirm principles, or affirm values that, to some extent, exist independently of the legal dimension, having been acquired and deeply rooted in the social consciousness of citizens.

<sup>106</sup> G. LIOTTA, *Ordinamento statale e ordinamento sportivo*, in G. Liotta, L. Santoro, *Lezioni di diritto sportivo*, VI ed., Milano, Giuffrè, 2023, p. 26

legal scholars in justifying the constitutional relevance of sporting activity, even before its explicit recognition through the recent constitutional revision under analysis.

iii. *The object of recognition: The “value... of sports activity”*

The object of recognition by the Republic is the “value... of sports activity.” While the term “value” has previously been used in the constitutional text, it was only employed to refer to the legal status of a source (statutory value, legislative value).<sup>107</sup> However, in Art. 33, the term “value” is used for the first time with a substantive meaning, highlighting the importance of certain behaviors deserving legal protection.<sup>108</sup> By recognizing the value of sports activity, the revised article underlines the rationale behind such acknowledgment, attributing three specific qualities to this value: educational, social, and conducive to improving mental and physical well-being. This underlines the vital role of sports in educating youth, fostering social cohesion, and safeguarding health. The newfound protection serves as a means to achieve these specific objectives.

The choice of the term *attività sportiva* (sporting activity) instead of “sport” stems from a linguistic consideration. While “sport” is a commonly used word in the Italian language, it remains a foreign one, so it was not deemed appropriate to include it in the Constitution.<sup>109</sup> However, this decision seems

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<sup>107</sup> Arts. 75, 77, 87 and 127 Const. refer to the act having *valore di legge* (force of law); Art. 89 references acts having *valore legislativo* (legislative force).

<sup>108</sup> G. MARAZZITA, *Il riconoscimento del valore costituzione dell'attività sportiva*, January 10, 2024, on [Federalismi.it](https://www.federalismi.it) n. 1/2024, p. 121



somewhat ironic upon closer examination; the etymology of the word “sport” traces back to Latin roots (*deportare*, meaning “to go out” or engage in recreational activities). Moreover, the adjective “sporting” retains its foreign derivation, challenging the rationale behind its exclusion.<sup>110</sup>

iv. *The values of sport recognized by Article 33: “Educational and social value... and its role in supporting physical and psychological wellbeing”*

The axiological content of sports activity is delineated along three dimensions, each of which holds equal significance and complements the others without hierarchical precedence.<sup>111</sup> First and foremost, the focus is on the educational value, highlighting how sport contributes to personal development

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<sup>109</sup> [The Rules and recommendations for the technical formulation of legislative texts](#) (Circolare del Presidente del Senato del 20 aprile 2001) in Chap. 4 on terminology, Letter m): “È evitato l’uso di termini stranieri, salvo che siano entrati nell’uso della lingua italiana e non abbiano sinonimi in tale lingua di uso corrente” (The use of foreign terms is not allowed unless they have been assimilated into the Italian language and currently have no synonyms in Italian).

<sup>110</sup> M. DI MASI, *Dall’etica alla costituzionalizzazione dello sport. Brevi note sulla riforma dell’articolo 33 della Costituzione*, 6 September 2023, on [Federalismi.it](#) n. 22/2023, p. 131

<sup>111</sup> For the sake of completeness, the textual datum of the Senate’s Dossier attached to the legislative proposal (translated verbatim into English) is given (C. 715-B):

“The axiological essence of sporting activity is delineated along three dimensions, which exist in a mutually supportive and complementary manner rather than hierarchically. Firstly, as implied by its placement in Article 33, emerges its educational value, associated with personal development and growth. Alongside this, the social value becomes apparent: sport often serves as a unifying force and a tool for integrating individuals or communities facing various forms of disadvantage or marginalization, such as those of socio-economic, ethnic-cultural, or physical–cognitive nature. Lastly, sport is undeniably linked to health, particularly in its contemporary understanding as holistic psychological and physical wellbeing, rather than simply the absence of illness. The inclusion of the phrase ‘in all its forms’ in acknowledging the value of sporting activity aims to explicitly embrace the broad spectrum of sports.”

and growth. This value concerns the ability of sport to instill discipline, respect for others, meritocracy, and the development of personal and interpersonal skills. Emphasizing this value underlines the significant role of sport in shaping the character and maturity of individuals. This educational value extends beyond schools and youth, reaching families, communities, and media outlets, as well as therapeutic and re-educational programs within social and penal institutions. The decision to prioritize education is influenced by the placement of the amendment within Art. 33, which concerns personal development and education. Furthermore, one must consider the social value: sport frequently serves as a unifying force and a means of integration for individuals or groups facing various forms of disadvantage or marginalization, whether socioeconomic, ethnocultural, or physical–cognitive in nature. Additionally, an undeniable link exists between sport and health. Opting for the phrase “mental and physical well-being” over “health” signifies a more expansive and contemporary interpretation of health. This decision seeks to elevate a notion of well-being that extends beyond merely being free from illness, embracing instead a holistic perspective that emphasizes the harmony between mental and physical aspects.

Public authorities are called to recognize the practice of sport, only if it contributes to the education of youth, integration of society, and promotion of health. This imposes clear boundaries; sports activities that are detrimental to education, discriminatory, or harmful to health are not protected under Art. 33, Par. 7. Such activities may be deemed unlawful by legislative authorities: any sports activity that undermines education, disrupts social cohesion, or compromises mental and physical wellbeing is prohibited.<sup>112</sup>

v. *The meaning of the phrase “in all its forms”*

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<sup>112</sup> G. MARAZZITA, *Il riconoscimento del valore costituzionale dell’attività sportiva*, January 10, 2024, on [Federalismi.it](https://www.federalismi.it) n. 1/2024, p. 123

The inclusion of the phrase “in all its forms” in the recognition of the value of sporting activity serves to clarify that the provision encompasses sport in its widest possible interpretation.<sup>113</sup> This expression includes various forms of sport, whether officially recognized or not, spanning from professional to amateur, competitive to recreational, physical to virtual, and individual to team-based activities.

### **3) The meaning of the notion *attività sportiva* in Article 33 of the Italian Constitution**

The term “sporting activity” as outlined in Art. 33 Const. lacks a precise definition. It remains unclear whether the constitutional framers intended to interpret it within the framework of the sporting system or as coinciding with the definition established by the recent sports reform. The notion of sport in the constitutional revision seems to be reflected in legislative measures aimed at promoting participation in sports for educational, social, and health purposes. This also includes initiatives such as introducing physical education into the elementary school curricula. In an era when an increasing number of individuals engage in various forms of physical activity, such as running, fitness, dancing, and cycling, the notion of “sporting activity” extends far beyond traditional competitive engagements. The evolution of trends and lifestyles has led to a

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<sup>113</sup> Regarding the axiological content of sports activity cfr. Deputies, C. D. (2018b, March 23). Amendment to Art. 33 Const. on sports activity. Parliamentary Documents. [https://temi.camera.it/leg19/provvedimento/modifica-all-articolo-33-della-costituzione-in-materia-di-attivit-sportiva\\_d.html](https://temi.camera.it/leg19/provvedimento/modifica-all-articolo-33-della-costituzione-in-materia-di-attivit-sportiva_d.html); and L. SANTORO, *L'inserimento dello Sport in Costituzione: Prime Osservazioni*, on Fondazione Bologna University Press, *Diritto dello Sport*, Vol. 04 n. 02, pp. 9-23, 2023, Pg. 15

reinterpretation of the values associated with sports, which now include mental and physical well-being, social interaction, and the pursuit of a balance between mind and body.

Legislative Decrees No. 36/2021<sup>114</sup> and No. 37/2021<sup>115</sup> provide a definition of “sport” that includes organized physical activities with objectives that extend beyond mere competition. According to Art. 2, Par. 1, Letter nn of Legislative Decree No. 36/2021 (translated verbatim into English), sport is defined as “any form of physical activity governed by rules that, through organized or unorganized participation, aims to enhance physical and mental wellbeing, foster social interactions, or achieve competitive results at all levels.” These decrees define “sports” with a broader perspective, including organized physical activities. The WHO’ also proposes a definition that is general and inclusive, defining physical activity as consisting of “any bodily movement produced by skeletal muscles that requires energy expenditure – including activities undertaken while working, playing, carrying out household chores, traveling, and engaging in recreational pursuits.”<sup>116</sup> The definitions share similarities in recognizing the importance of physical activity for enhancing overall wellbeing, promoting social interactions, and contributing to a healthy lifestyle and both acknowledge the diverse forms and contexts in which physical activity occurs, whether through organized sports or everyday activities.

Along these lines, in discussing the “values of sport,” Prof. Luca Grion highlighted that while competition is indeed integral to sports, its excessive emphasis can lead to detrimental outcomes. Grion emphasized that sports embody a realm of constructive principles, such as integrity, loyalty, dedication, and personal development. When the sole focus shifts toward winning at any

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<sup>114</sup> Legislative Decree February 28, 2021, No. 36. Implementation of Article 5 of Law No. 86 of August 8, 2019, on reorganization and reform of the provisions on professional and amateur sports bodies and sports work.(Official Journal General Series No. 67 dated March 18th 2021).

<sup>115</sup> Legislative Decree February 28, 2021, No. 37 (Official Journal General Series No. 67 dated March 18th 2021)

<sup>116</sup> World Health Organization Fact sheet February 2014, No. 395, “Physical activity”

cost, it distorts the essence of sportsmanship, fostering an environment where the pursuit of victory overshadows the respect for opponents.<sup>117</sup> The primary objective is the education of students, prioritizing their development over the pursuit of competitive outcomes. The growing commercialization of sports and relentless pursuit of performance raises ethical and social concerns. The pressure to achieve outstanding results and performance can undermine the core values of sport and turn it into an exclusive rather than an inclusive activity.

Minister Abodi emphasized the significance of the constitutional revision, stressing the importance of a “sport for all and by all” approach. This transcends mere competitive achievement and promotes a culture of physical activity that is accessible to everyone. The concept of “sport for all” originated internationally and has evolved into a model of social intervention that promotes sports participation as a tool for education and social integration. Legislative proposals often aim to recognize sport as a fundamental right of citizenship, focusing on the importance of inclusivity and accessibility. This idea emphasizes the importance of various sports activities and the role of sports associations and highlights how these organizations encourage people to participate in sport at all levels of society.<sup>118</sup>

The constitutional reform could pave the way for greater attention to “sports citizenship,” recognizing sports practice as a right for all citizens. It is yet to be seen how this novelty will be translated into concrete actions at the governmental and legislative levels, whether it will materialize as a reference of collective demands or as an individually recognized subjective right.

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<sup>117</sup> cfr. L'intervento del prof. Luca Grion, *I valori dello sport*, April 3, 2024, in [https://www.uniud.it/it/ricerca/divulgazione-scientifica/raccontare-la-scienza/parliamo-di/copy\\_of\\_i\\_valori\\_dello\\_sport/ulteriori-approfondimenti/i-valori-dello-sport.pdf](https://www.uniud.it/it/ricerca/divulgazione-scientifica/raccontare-la-scienza/parliamo-di/copy_of_i_valori_dello_sport/ulteriori-approfondimenti/i-valori-dello-sport.pdf)

<sup>118</sup> cfr. *Il ministro Abodi ricevuto dal presidente Mattarella*. Dipartimento per Lo Sport <https://www.sport.governo.it/it/iniziativa-ed-eventi/il-ministro-abodi-ricevuto-dal-presidente-mattarella/#:~:text=Un%20piano%20di%20sport%20sociale,la%20pubblicazione%20di%20nuovi%20bandi>

#### 4) **Importance of sport for health: Considering health as overall mental and physical wellbeing**

Despite sport being introduced not in Art. 32 Const., which specifically addresses the right to health, but in the broader Art. 33, the wording of the new paragraph unmistakably reflects the legislative term's intent to acknowledge the significance of sports for overall mental and physical wellbeing. Opting for the phrase "mental and physical well-being" over "health" signifies a broader and contemporary understanding of health. This decision seeks to promote a holistic perspective, prioritizing the balance between mental and physical well-being, beyond the mere absence of diseases, promoting overall wellness. This acknowledges the preventive role of sports in health, as highlighted globally by the WHO and nationally by the Istituto Superiore di Sanità.

Internationally, the WHO has conducted numerous studies emphasizing the strong connection between physical activity and health, advocating for the implementation of comprehensive national policies that promote physical activity across all age groups. The WHO's guidelines, detailed in the "Global Recommendations on Physical Activity for Health,"<sup>119</sup> offer specific recommendations for engaging in physical activity across different age groups.<sup>120</sup> These guidelines primarily aim at preventing various diseases and are mainly directed toward legislators. At the national level, the Istisan Report

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<sup>119</sup> cfr. *Global recommendations on physical activity for health*. Guidelines Review Committee, January 1, 2010. <https://www.who.int/publications/i/item/9789241599979>

<sup>120</sup> cfr. Physical activity recommendations for specific age groups:  
1. [Recommended levels of physical activity for children aged 5–17 years](#)  
2. [Recommended levels of physical activity for adults aged 18–64 years](#)  
3. [Recommended levels of physical activity for adults aged 65 and above](#)

18/9<sup>121</sup> from the Istituto Superiore di Sanità reaffirmed the importance of physical activity in preventing chronic diseases and preserving mental and physical wellness. The report highlighted the importance of encouraging physical activity, stressing the need to align national policies with WHO guidelines and ensure that everyone has access to opportunities to engage in physical activity.

Sport contributes to not only physical health but also social and mental well-being. Regular exercise not only lowers the risk of illness and physical issues but also helps in managing stress, anxiety, and depression, thereby uplifting the overall mood and self-confidence. Moreover, engaging in sport promotes social interaction, fostering positive relationships and alleviating feelings of loneliness, especially among youth. The promotion of sport and its benefits requires collaborative efforts on both the national and international levels. This involves crafting specific policies and implementing programs aimed at ensuring universal access to physical activity. Such a comprehensive strategy not only enhances the health of individuals and communities but also mitigates the healthcare expenses linked to sedentary lifestyles and associated illnesses.

## **5) Sport as a social right**

Based on the analysis thus far, it seems appropriate to consider sport as a social right, given that its fulfillment requires proactive measures from public

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<sup>121</sup> B. DE MEI, C. CADEDDU, P. LUZI, A. SPINELLI (Ed.). *Movimento, sport e salute: l'importanza delle politiche di promozione dell'attività fisica e le ricadute sulla collettività*. Roma: Istituto Superiore di Sanità; 2018. (Rapporti ISTISAN 18/9)

authorities. It is crucial to differentiate between social rights and civil rights; while civil rights can be directly enforced and simply require public authorities to refrain from interfering, social rights require active intervention by these authorities to ensure their fulfillment. Furthermore, social rights are frequently contingent upon the financial capacity of the State and may be influenced by political agendas or cultural circumstances. Unlike civil rights, which entail a passive obligation on the part of the State, social rights demand an active and affirmative commitment for their realization. In the case of sport, this means that the government must allocate resources, develop infrastructure, and establish programs to encourage physical activity and participation in sports across the population.

As early as 1947, Honorable Giuliano Pajetta acknowledged the challenging social and economic circumstances facing Italy in the aftermath of the war, which greatly hindered the pursuit of sporting activities: “We face a precarious situation; tens of thousands of young people are eager to engage in sports and seek minimal resources for this purpose... there’s a significant demand for sports among youth, yet they encounter difficulties due to the lack of support. While certain types of sports could promote the health of numerous young individuals with minimal investment, we witness significant expenses incurred by numerous speculative organizations.” Comparing Italy’s situation with that of France, Honorable Pajetta stated, “These figures are telling and underscore the government’s prioritization of sports in other nations, whereas, in our country, sports facilities are either nonexistent or often neglected. This is a cause for concern.”

Despite ongoing efforts to invest in sports, there is still much ground to cover; currently, six out of 10 schools in Italy do not have a gymnasium,<sup>122</sup> underscoring a structural deficiency that limits access to sports for many young individuals. This statistic emphasizes the need for further intervention and

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<sup>122</sup> cfr. Final report redacted by UISP, SVIMEZ and Sport e Salute, *l’offerta di impianti e servizi sportivi nelle regioni italiane fabbisogni della pratica sportiva*, November 23, 2023. <https://lnx.svimez.info/svimez/il-rapporto-sullofferta-di-impianti-sportivi-nelle-regioni-italiane/>



investment in the sports sector to ensure inclusive participation opportunities and foster a healthy and active lifestyle among the younger generation.

Furthermore, the justiciability of social rights is closely related to their prescriptive or programmatic nature. For instance, if citizens were granted the right to access sports, they would still lack the possibility to exercise legal action against the government in cases where adequate sports services were not provided. While these rights may not be immediately enforceable in a court of law, they can still be subject to legal scrutiny by bodies such as the Constitutional Court.

In summary, we consider sport a social right because it requires positive action by the State, is not immediately justiciable, requires public expenditures to be fulfilled, and promotes goals such as public health, social inclusion, and youth development that are typical of social rights.

## **6) Objectives behind the amendment to Article 33 of the Italian Constitution**

The recent constitutional reform marks a significant milestone in recognizing sport in the Italian Constitution. However, its placement in Art. 33, though symbolic, falls short of granting it the status of a fundamental right. This represents an initial step toward the ambitious aim of making sport accessible to all, a principle outlined in Art. 2 of the Olympic Charter but still distant from being fully realized. A clear discrepancy exists between the desire for more widespread participation in sports and the concrete availability of resources and facilities, particularly for marginalized groups. While Art. 33 lacks immediate binding force, it should serve as a starting point for concrete actions to ensure universal access to sport as an inclusive right for all.

The inclusion of sport as a constitutional value is only the beginning of a complex and multifaceted journey that will require a sustained commitment from institutions, sports organizations, and society as a whole. It is necessary to activate, especially in certain areas of the country, the safety net that sports can represent for marginalized children. Encouraging sport participation across all age groups is essential, and includes – among the others – the promotion of active aging opportunities for the elderly. Pursuing this goal requires adequate financial and material resources but also a sporting culture that values participation, inclusion, and fair play. Furthermore, it is essential to support talented athletes by providing opportunities for their growth, as well as offering financial and economic assistance.

In order to achieve the objective of ensuring widespread access to sport across the country it is important that the government cooperates with European and international institutions. It is necessary to foster dialogue, share individual experiences, and promote a sports environment that rests its foundation on fair play, ethics, and the fundamental values of sports. Additionally, it is also important to enhance collaboration with sports associations, local communities, wellness centers, and institutions in the decision-making.

Ultimately, the constitutional reform represents a significant starting point in redefining the role of sports in Italian society. It sets the stage for a future where access to sports becomes not just a privilege but a universal right for all citizens, irrespective of their social, economic, or cultural circumstances.

## **7) Conclusion**

In conclusion, the constitutional reform to Art. 33 Const. represents an important moment in recognizing and understanding the significance of sport

within Italian society and culture. Through the addition of this new paragraph, the Republic reaffirms its commitment to promoting physical and mental health through participation in sports.

The constitutional reform highlights the importance of recognizing sports as not merely a leisure activity but a vital component in personal development, social integration, and the promotion of general health and well-being. The wording of the new paragraph marks a significant step in conceiving sport as an essential part of the social and cultural life in Italy. It emphasizes the duty of the Republic, and all its organs, to ensure that sport is accessible to all, without discrimination, with particular attention to the protection of minorities and the promotion of gender equality.

Considering sport as a social right entails public authorities taking proactive measures to ensure its full realization, including investing in infrastructure and programs that foster inclusive participation across society. To establish sport as a universal and inclusive right for every Italian citizen, regardless of social or cultural background, it is crucial to translate the words of the Constitution into concrete actions and effective government policies. Ultimately, the recent constitutional revision to Art. 33 Const. marks a crucial milestone in the promotion of sports as a fundamental value of Italian society and comprises a call for continued efforts to make this value a tangible reality for all.



## **IV. A COMPARATIVE ANALYSIS: THE RECOGNITION OF SPORT AND THE RIGHT TO SPORT IN MAJOR EUROPEAN AND WORLD CONSTITUTIONS**

### **1) Overview**

Sport in today's society has become much more than just leisure. It has developed into an important vehicle for enhancing not only health but also social cohesion and personal development. Various countries are increasingly realizing the importance of sport in their constitutions, by either formally recognizing it as a genuine fundamental right or integrating it with other fundamental rights. This chapter undertakes a comparative analysis of the recognition of sport and the right to engage in sports across major European and world constitutions. This work does not attempt to cover all constitutions, but instead selects those most relevant for the purpose of this study, providing a general outlook on the recognition of the right to sport worldwide.

Italy is not alone in failing to originally recognize sport as a subjective or objective right in its Constitution. Many older constitutions of other states, established in the 18th and 19th centuries or the immediate post-World War II period, do not address sport at all. Switzerland was the first country to include sport in its fundamental charter, in 1876. However, even among the constitutions that have recognized sport, significant differences exist in the approaches and models adopted. Certain constitutions directly associate sport with the right to

health, considering it instrumental to the latter, whereas others prioritize the autonomy of the right to sport as a fundamental principle in its regard.

Italy's recent constitutional reform was crucial in bringing the nation's stance in line with that of nine other EU Member States that already have specific constitutional provisions addressing the promotion of sport, highlighting a growing recognition of the social and cultural significance of sport at the European level. On a global scale, numerous countries recognize sport in their fundamental charters. In particular, South American constitutions offer a comprehensive view of the relationship between the Constitution and sports, recognizing the right to sport, as well as the promotion of and allocation of funding for sporting activities. In Africa, the inclusion of sport in numerous constitutions reflects the continent's commitment to leveraging sport as a means of fostering unity, promoting values of solidarity, and addressing societal challenges.

## **2) Examining the inclusion of sport in national constitutions within and outside the European Union**

Only recently has Italy included the recognition of sport in its Constitution. However, as noted above, Italy is not the only country that originally overlooked sport in its constitutional framework. Several prominent constitutions worldwide also lack specific provisions regarding sports, including those of the United States of America, from 1787<sup>123</sup>; the Kingdom of Belgium,

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<sup>123</sup> The Constitution of the United States was written in 1787, ratified in 1788, and been in force since 1789. It is the world's longest-surviving written charter of government. There have been only 27 amendments, 10 of which pertain to the Bill of Rights, ratified on December 15, 1791. This is because the Constitution is famously difficult to amend.

from 1831<sup>124</sup>; Canada from 1867<sup>125</sup>; and Japan from 1946<sup>126</sup>; as well as the Basic Law of the Federal Republic of Germany of 1949<sup>127</sup> and the Constitution of the French Republic of 1958.<sup>128</sup> This highlights the historical importance of Italy's constitutional step; which represents a virtuous and hopefully anticipatory example with potential implications at both the European and global level.

However, several more recent constitutions have incorporated provisions related to sport, often enacted after the adoption of the Italian Constitution or the other constitutions mentioned above. Notably, these constitutional provisions regarding sports do not consistently resemble each other, often differing in their placement within the constitutional charter and their normative wording.

*i. Constitutional recognition of sport as an objective right*

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<sup>124</sup> The Belgian Constitution represented a harmonious blend of elements from various sources, including the French constitutions of 1791, 1814, and 1830, the Dutch constitution of 1814, and principles from English constitutional law.

<sup>125</sup> The Canadian Constitution includes the Constitution Act of 1867 and the Constitution Act of 1982. It is a partly written, partly unwritten constitution.

<sup>126</sup> The Japanese Constitution holds the distinction of being the world's oldest unamended constitution, with its text remaining unchanged for over 70 years.

<sup>127</sup> The 1949 Basic Law initially served as a provisional framework for the basic organization of the state until German reunification. Despite the provisional nature implied in its name, the Basic Law has consistently embodied all characteristics of a constitution since its inception and has effectively operated as one for over 60 years. The Basic Law has been subject to over 60 amendments since 1949.

<sup>128</sup> The present Constitution of France, adopted on October 4, 1958, is commonly referred to as the Constitution of the Fourth Republic of 1946, with the exception of the preamble, following a 1971 decision by the Constitutional Council. As of 2024, it has undergone 25 amendments.

Some constitutions consider the phenomenon of sport an objective right, including provisions regarding the State's commitment to its promotion and dissemination. In this regard, one notable example is the Constitution of Greece (1975),<sup>129</sup> which has a broad provision aimed at safeguarding sport. Its inclusion serves a primarily symbolic purpose, aiming to underline the importance of sport in Greek society and its intertwined relationship with the education of Greek citizens. Notably, the mention of sport appears in Art. 16,<sup>130</sup> which, similarly to Art. 33 Const., addresses the freedom of "education, art... and science." The placement of sport within Art. 16 underlines its significance within Greek society and culture. Specifically, the Greek Constitution stipulates that "[a]thletics shall be under the protection and the ultimate supervision of the State" and further mandates that "[t]he State shall make grants to and shall control all types of athletic associations, as specified by law." Additionally, physical education is recognized as a fundamental objective of education in Greece. Art. 16, Par. 2 asserts that "[e]ducation constitutes a basic mission for the State and shall aim at the moral, intellectual, professional, and physical training of Greeks." The responsibilities of the State range from "protection" to "ultimate supervision." This ensures that sports are regarded as a civil right, guaranteeing that everyone has the opportunity to engage in their chosen activities and providing the necessary infrastructure to support sporting endeavors. Additionally, the State is tasked with promoting sports by actively involving citizens, especially youth, through tailored programs and events across all levels of education. This perspective resonates with the emphasis on physical education outlined in Art. 16, Par. 2 of the Greek Constitution. However, the explanation of Art. 16, Par. 9 presents challenges in interpreting the complete assurance of sports as a civil right. Unlike provisions safeguarding other civil liberties, this particular clause lacks mechanisms for citizens to address abuses of power by authorities. Sport may thus be perceived as akin to a social entitlement, prompting citizens to demand proactive measures from the State,

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<sup>129</sup> The Constitution of Greece was formulated by the Fifth Revisionary Parliament of the Hellenes in 1974. It has undergone four revisions, in 1986, 2001, 2008, and 2019. The Constitution has 120 articles organized in four parts; sport is recognized in Part Two, "Individual and Social Rights."

<sup>130</sup> Art. 16 of the Greek Constitution of June 11, 1975



including the development of institutional frameworks, financial support, and advocacy for sports advancement. Such an interpretation is consistent with the inclusion of this provision in Art. 16, which addresses the freedom of education, art, and science, and ensures a traditional social entitlement.<sup>131</sup>

Moreover, in a more specific way, the Swiss Constitution (2000)<sup>132</sup> also recognizes sports as an objective right, acknowledging its significance for national culture and youth protection. Sport is recognized in Art. 68 of the Swiss Constitution, which provides that “[t]he Confederation shall encourage sport, and in particular education in sport.” Specifically, the article underlines the importance of physical activity for the development of youth; in fact, Art. 68 Par. 3 states that the confederation “may issue regulations on sport for young people and declare the teaching of sport in schools to be compulsory.” Overall, Art. 68 of the Swiss Constitution reflects a commitment of the State to promoting sports and physical education at both the national and educational levels, emphasizing the importance of sport in Swiss society and the development of its citizens.

We have observed how the Greek Constitution recognizes sport as a fundamental right in a broader sense, whereas Switzerland does so in a more specific manner. Similarly, the Moroccan Constitution (2011)<sup>133</sup> acknowledges sport in two articles, 26 and 33, with the former having a more general implication and the latter being more specific.

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<sup>131</sup> Regarding the analysis of Art. 16 of the Greek Constitution cfr. K. MARGARITIS, *Constitutional Dimensions of Sport in Greece*, in *Sports Law and Governance Journal*, Vol. 1 no. 1, 2015, <http://epublications.bond.edu.au/slej/25>, 2015

<sup>132</sup> The Federal Constitution of the Swiss Confederation, adopted on April 18, 1999, is the third and current federal constitution of Switzerland.

<sup>133</sup> The Constitution of Morocco serves as the highest law of the Kingdom of Morocco. Initially adopted in 1962, 6 years after the country’s independence, it has since undergone three referendums, in 1962, 1992, and 2011. The Constitution has 180 articles organized in 14 titles; sport is recognized in Title II, “Fundamental Freedoms and Rights.”

Art. 26 of the Moroccan Constitution states the following:

The public powers shall lend their support, through appropriate measures, to the... promotion of sports.<sup>134</sup>

This highlights the government's overall commitment to advancing and promoting sports to ensure broader access to physical education for the population. Conversely, Art. 33 emphasizes the importance of physical activity for the development of young individuals and underlines the government's responsibility to implement appropriate measures to allow access to sports facilities.

Specifically, Art. 33 states the following:

It is incumbent upon the public powers to take all appropriate measures to facilitate young people's access to culture, science, technology, art, sports, and leisure, thus creating favorable conditions for the full development of their creative and innovative potential in all these areas.<sup>135</sup>

Similarly, the Constitution of Panama (1972)<sup>136</sup> underlines the State's commitment to promoting and disseminating sports.

Art. 86, in particular, provides the following:

The State shall foster the development of physical culture, through sport, education, and recreation centers which shall be regulated by law.<sup>137</sup>

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<sup>134</sup> Art. 26 of the Moroccan Constitution of 2011

<sup>135</sup> Art. 33 of the Moroccan Constitution of 2011

<sup>136</sup> The Constitution of Panama of 1972 was amended in 1978, 1983, 1993, 1994, and 2004. Panama's current constitution, adopted in 1972, marks the country's fourth constitutional iteration. Previous versions were enacted in 1904, 1941, and 1946. Differences among these constitutions primarily involve emphasis, mirroring the prevailing political landscape during their drafting. The Constitution has 328 articles organized in 15 titles: sport is recognized in Title III, "Individual and Social Rights and Duties."

The Constitution of Macedonia (1991)<sup>138</sup> recognizes in Art. 47 the task of the Republic to stimulate, assist, and protect the development of science, arts, and culture. Additionally, the Republic should stimulate and assist scientific and technological development, as well as “technical education and sport.”<sup>139</sup> Similar protection is granted by the Albanian Constitution (1998),<sup>140</sup> which in Art. 59 entrusts the State, “within its constitutional powers and the means at its disposal,” to aim at “the development of sport and recreational activities.”<sup>141</sup> The Constitution of Serbia (2006),<sup>142</sup> in Part Four, concerning the “competences of the Republic of Serbia,” provides that “the Republic of Serbia shall organize and provide for system in areas of health care, social security, protection of war veterans and the disabled, protection of children, education, culture and protection of cultural goods, sport, public information, system of public services” (Art. 97) and assigns to the autonomous provinces the task of regulating matters in the field of “education, sport, culture, health care and social welfare and public informing at the provincial level.”<sup>143</sup>

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<sup>137</sup> Art. 86 of the Constitution of Panama of October 11, 1972

<sup>138</sup> The Constitution of the Republic of North Macedonia was adopted by the Parliament of the Republic of Macedonia on November 17, 1991. The Constitution has undergone 32 amendments and comprises 134 articles organized in eight parts; sport is recognized in the second, “Fundamental Freedoms and Rights of the Individual and the Citizen.”

<sup>139</sup> Art. 47 of the Constitution of the Republic of North Macedonia of November 17, 1991

<sup>140</sup> The current Constitution of the Republic of Albania was adopted by the Parliament of Albania on October 21, 1998 and officially certified by presidential decree on November 28, 1998. This document replaced the 1976 Constitution, initially adopted at the establishment of the People’s Socialist Republic of Albania on December 28, 1976 and extensively amended on April 29, 1991. The Constitution has 183 articles organized into 18 parts; sport is recognized in Part Two, “The Fundamental Human Rights and Freedoms,” specifically in Chap. V, “Social Objectives.”

<sup>141</sup> Art. 59 of the Constitution of the Republic of Albania of November 28, 1998

<sup>142</sup> The present Constitution of the Republic of Serbia, commonly referred to as the Mitrovdan Constitution, was ratified in 2006, superseding the previous constitution enacted in 1990. The Constitution has undergone 29 amendments and has 206 articles organized into 10 parts; sport is recognized in Part Four, “Competences of the Republic of Serbia.”

A more recent constitution that recognizes sport as an objective right is the Cuban Constitution of 2019,<sup>144</sup> which, in Art. 32, similarly to the Italian Constitution, underlines the State's role and responsibilities in the fields of education, science, and culture and highlights the importance of physical culture, recreation, and sports as integral components of education and as tools for contributing to the holistic development of citizens.

In particular, Art. 32 in Title III (“Principles of Education, Scientific, and Cultural Policy”) provides the following:

The State orients, fosters, and promotes education, the sciences, and culture in all of their forms... In its educational, scientific, and cultural policy, the State abides by the following tenets: ... It orients, fosters, and promotes physical culture, recreation, and sports in all of their forms as a means of education and a means to contribute to the holistic development of citizens.<sup>145</sup>

The Philippine Constitution (1987)<sup>146</sup> provides comprehensive protection for sports, along with the State's commitment to prioritize education,

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<sup>143</sup> Art. 97 of the Constitution of the Republic of Serbia of 2006

<sup>144</sup> Even before achieving independence from Spain, Cuba drafted or adopted several constitutions to govern territories controlled by insurgents during their war against Spain. Since gaining independence, Cuba has had multiple constitutions. The initial constitution after the Cuban Revolution was formulated in 1976 and has undergone subsequent amendments. In 2018, Cuba embarked on a significant revision of its constitution. The current constitution was subsequently enacted in 2019. The Constitution has 137 articles organized in 15 chapters; sport is recognized in Chap. II, “Citizenship.”

<sup>145</sup> Art. 32 of the Cuban Constitution of 2019

<sup>146</sup> The Constitution of the Philippines, the supreme law of the Republic, was finalized by the Constitutional Commission on October 12, 1986 and ratified through a nationwide plebiscite on February 2, 1987. Throughout its history, the country has been governed by three other constitutions: the 1935 Commonwealth Constitution, the 1973 Constitution, and the 1986 Freedom Constitution. The earliest attempt at a Philippine Republic constitution, the 1899 Malolos Constitution, was never fully implemented nationwide. The Constitution has 18 articles; sport is recognized in Art. XIV, “Education, Science and Technology, Arts, Culture, and Sports.”

science, technology, arts, and sports to enhance patriotism and nationalism while socially empowering individuals and accelerating social progress.

Specifically, Art. XIV, *Educazione, Scienza e Tecnologia, Arti, Cultura e Sport*, states the following:

SECTION 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

SECTION 19.

(1) The State shall promote physical education and encourage sports programs, league competitions, and amateur sports, including training for international competitions, to foster self-discipline, teamwork, and excellence for the development of a healthy and alert citizenry.

(2) All educational institutions shall undertake regular sports activities throughout the country in cooperation with athletic clubs and other sectors.<sup>147</sup>

The Philippine Constitution thus stresses the importance of the State's role in promoting physical education and supporting both amateur and competitive sports, including technical training for international competitions. The specific aim is to foster self-discipline, teamwork, and excellence for the development of a healthy and vigilant citizenry. Educational institutions nationwide are mandated to organize sports activities in collaboration with athletic clubs and other relevant sectors.<sup>148</sup>

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<sup>147</sup> Art. XIV of the Constitution of the Philippines of February 2, 1987

<sup>148</sup> Regarding the constitutional recognition of sport in the Philippine Constitution cfr. L. MELICA, *Sport e "Diritti" in Italia e nel Mondo*, Bologna University Press, 2022. Pg. 37

Similarly, Gambia's Constitution (1996),<sup>149</sup> within its section dedicated to the country's goals and objectives, refers to the promotion of sports as a means of fostering national integration.

Par. 5 of Art. 37 states the following:

The State shall ensure that adequate facilities for sports are provided throughout Ghana and that sports are promoted as a means of fostering national integration, health, and self-discipline as well as international friendship and understanding.<sup>150</sup>

Thus, the Constitution has entrusted the State with the task of creating adequate sports facilities throughout the country, promoting sports as a vehicle for enhancing national integration, health, self-discipline, international friendship, and mutual understanding.

***ii. Constitutional recognition of sport as not only an objective right but also a crucial component of the right to health***

Many constitutions consider sport in terms of it being not only an objective right but also a significant element within the right to health.

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<sup>149</sup> After gaining independence from British colonial rule in 1965, The Gambia adopted a constitution. However, it was suspended following a military coup in 1994. In January 1997, a revised constitution was implemented, signaling a return to civilian governance.

<sup>150</sup> Art. 37 of the Constitution of The Gambia of 1996

Specifically, the Spanish Constitution (1978)<sup>151</sup> recognizes sports in Art. 43 as providing the following:

The public authorities shall promote health education, physical education, and sports. Likewise, they shall encourage the proper use of leisure time.<sup>152</sup>

The core message of this statement is twofold: firstly, it underscores that the legislature is responsible for crafting the Constitution and views sport as a legitimate pursuit worthy of active promotion. Secondly, it emphasizes the intrinsic connection between sport and key aspects of human life such as health, education, and leisure. As a result, sport is intertwined with various rights and societal expressions, reflecting its diverse and significant role in society. The Constitution mandates public authorities to collaborate in promoting and safeguarding sports activities. This duty encompasses all public entities with competencies in sports matters, including regional authorities under the decentralized structure of the Spanish State.<sup>153</sup>

The Turkish Constitution extended its protection to sports with the adoption of the new constitution on November 7, 1982.<sup>154</sup> Turkey recognized sport in Art. 59 of its Constitution, providing that “[t]he State shall take measures

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<sup>151</sup> The Spanish Constitution, adopted in 1978, is the supreme law of the Kingdom of Spain. While Spain has seen numerous constitutional documents throughout its history, the current Constitution has undergone only three amendments since its enactment in 1978, in 1992, 2011, and 2024.

<sup>152</sup> Art. 43 of the Constitution of Spain of 1978

<sup>153</sup> D. AHUMADA BENEDETTO, J. MESZAROS ELGUETA, *El Derecho al Deporte y la Actividad Física como Derecho Fundamental: Antecedentes y Desafíos en la Construcción de un Nuevo Modelo Jurídico e Institucional del Deporte y La Actividad Física en Chile*, in <https://repositorio.uchile.cl/handle/2250/176681>, 2020, pg. 16-21

<sup>154</sup> The Constitution of Turkey, also referred to as the Constitution of 1982, serves as the fundamental law of Turkey. It was ratified on November 7, 1982, replacing the previous Constitution of 1961. Since then, it has been amended 21 times, with three of those amendments conducted through referendums, in 2007, 2010, and 2017, and one partially through a referendum in 1987. As of April 2016, 113 out of the 177 articles of the Constitution of 1982 have been amended. The Constitution is organized into seven parts; sport is recognized in Part Two, “Fundamental Rights and Duties,” specifically in Chap. Three, “Social and Economic Rights and Duties.”

to develop the physical and mental health of Turkish citizens of all ages and encourage the spread of sports among the masses. The state shall protect successful athletes.”<sup>155</sup> The Constitution thus underlines the importance of sport for the enhancement of overall health, considering it in its broadest sense as encompassing both physical and mental health. Moreover, Art. 59 also refers to the sports justice system: “The decisions of sport federations relating to administration and discipline of sportive activities may be challenged only through compulsory arbitration. The decisions of Board of Arbitration are final and shall not be appealed to any judicial authority.”<sup>156</sup> According to the Constitution, the State is responsible for protecting “successful athletes” and safeguarding the independence of sports federations. Decisions made by the latter can be raised only through mandatory arbitrations, whose verdict is final and not subject to appeal.

A more recent constitution, from 2011, that refers to sports and its importance to physical and mental health is that of Hungary.<sup>157</sup>

In particular, Art. XX stipulates the following:

Every person shall have the right to physical and mental health. Hungary shall promote the exercise of the right set

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<sup>155</sup> Art. 59 of the Constitution of the Republic of Türkiye of November 7, 1982

<sup>156</sup> Art. 59 of the Turkish Constitution, this paragraph was added on March 17, 2011; Act No. 6214

<sup>157</sup> Hungary’s current constitution, known as the Fundamental Law, was approved by parliament on April 18, 2011 and came into effect on January 1, 2012. This marked a significant moment; it was the first constitution adopted democratically, following free elections in the country’s history. Replacing the 1949 Constitution, it filled a long-standing gap as Hungary, which had been the only former Eastern Bloc nation without a new constitution post-communism. However, the 2011 constitution has faced criticism both domestically and internationally. Critics argue that it was drafted without sufficient input from opposition and society, reflects the ideology of the ruling Fidesz party, imposes a conservative Christian worldview, and undermines previously independent institutions. The Constitution has 78 articles organized in 15 chapters; sport is recognized in Chap. II, “The Parliament.”



out in Paragraph (1)... by supporting sports and regular physical exercise.<sup>158</sup>

The Constitution grants the Hungarian people the right to both physical and mental health, recognizing the importance of physical culture as a vital component of overall culture and as a fundamental tool for the preservation of health and leisure. The state is compelled to facilitate access to physical education and sports, ensuring equal opportunities and supporting inclusive sports initiatives, including those for individuals with disabilities. Moreover, the state is mandated to promote physical education in schools and support the development of an active lifestyle. The state promotes competitive sports and the international participation of athletes and promotes the Olympic and Paralympic spirit. Additionally, it pledges to foster favorable market conditions for the development of sports and protect athletes against harmful practices such as doping and sports-related vandalism.<sup>159</sup>

The Russian Constitution (1993)<sup>160</sup> addresses sport in two articles (41 and 72), in particular by underlining the importance of sport for the promotion of health in Art. 41: “In the Russian Federation, federal programs for the protection and improvement of the health of the public shall be financed, measures shall be taken to develop State, municipal, and private healthcare systems, and activities shall be encouraged which contribute to the improvement of human health, the development of physical education and sport, and ecological, sanitary and epidemiological wellbeing.”<sup>161</sup> Art. 72 addresses a different aspect, underlining the allocation of the legislative power to the joint

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<sup>158</sup> Art. XX of the Fundamental Law of Hungary of January 1, 2012

<sup>159</sup> Cfr. Act 1 of 2004 on Sports (“Sports Act”), <http://www.aikidoszakszovetseg.hu/doc/lawonsport.pdf>

<sup>160</sup> Russia’s current constitution, the Constitution of the Russian Federation, was ratified through a national referendum on December 12, 1993. It officially came into effect on December 25, 1993, upon its publication, marking the end of the Soviet system of government. The Constitution has 137 articles organized in nine chapters; sport is recognized in the second and third chapters, on “Rights and Freedoms of Man and Citizen” and “The Federal Structure,” respectively.

<sup>161</sup> Art. 41 of the Constitution of the Russian Federation of December 25, 1993.

jurisdiction of the Russian Federation and constituent entities of the Russian Federation, in matters concerning “general issues of upbringing, education, science, culture, physical education and sport.”<sup>162</sup> Art. 72 has content similar to that of Art. 117 of the Italian Constitution, which mentions sport when allocating legislative power between the State and the regions.

In the non-European landscape, some interesting examples can be noted, such as that of the Chinese Constitution (1982),<sup>163</sup> which recognizes sport in Art. 21: “To improve the people’s physical fitness, the State shall develop sports and promote public sports activities.”<sup>164</sup> Similarly, the Constitution of Laos (1991),<sup>165</sup> in Art. 26, mandates that the State ensure the realization of the right to sports to improve the population’s athletic abilities and enhance overall health.<sup>166</sup>

The constitutions mentioned above, in recognizing sport, echo a similar approach to the amendments proposed for Article 32 of the Italian Constitution. They highlight, in particular, the importance of sport as a fundamental element for the health and well-being of citizens, as well as for social cohesion, and the promotion of human values. For instance, Bill Dec. 13, 2021 No. 2478, proposed an amendment to Art. 32, which provided for the addition of the following statement after the second paragraph: “La Repubblica promuove la pratica

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<sup>162</sup> Art. 72 of the Constitution of the Russian Federation of December 25, 1993.

<sup>163</sup> The Constitution of the People’s Republic of China serves as the highest legal authority in the country. Enacted by the 5th National People’s Congress on December 4, 1982, it undergoes revisions approximately every 5 years, marking the fourth constitution in PRC history. The Constitution has 143 articles organized in four chapters; sport is recognized in Chap. I, “General Principles.”

<sup>164</sup> Art. 21 of the Constitution of the People’s Republic of China of December 4, 1982.

<sup>165</sup> The Constitution of Laos was ratified on August 14, 1991, 16 years after the establishment of the Republic in 1975. During this interim period, the country operated without a formal written constitution. The Constitution has 119 articles organized in 14 chapters; sport is recognized in Chap. II, “The Socio-Economic Regime.”

<sup>166</sup> For the sake of completeness, the textual datum of Art. 26 of the Constitution of Laos is given: “The State and society attend to encouraging, supporting and investing in public sports activities, including traditional and international sports [to] upgrade abilities in sport and to strengthen people’s health.”

sportiva e ne riconosce la valenza sociale ed educativa, nonché gli effetti sul benessere psicofisico dell'individuo" (The Republic promotes the practice of sports and recognizes its social and educational value, as well as its effects on the psychophysical wellbeing of the individual).

*iii. Constitutional recognition of sport as a fundamental right of all individuals.*

In addition, some constitutions recognize sport as not only an objective right but also an inherent right for all individuals, whether autonomously or as integral to the right to health. Brazil became the 13th country to incorporate sports into its constitution in 1988, recognizing it as a "social right" for all Brazilian citizens. The Brazilian Federal Constitution <sup>167</sup> underlines the importance of promoting the participation of citizens in sports. It states that fostering the citizens' right to engage in physical activity is a duty of the State and urges governmental bodies to facilitate the means for individuals to exercise this right effectively. In particular, Art. 217 states the following:

It is the duty of the State to foster the practice of formal and informal sports, as a right of each individual, with due regard for

I – the autonomy of the directing sports entities and associations, as to their organization and operation;

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<sup>167</sup> The Constitution of the Federative Republic of Brazil, Brazil's supreme law, was implemented in 1988, replacing the autocratic 1967 constitution that marked the end of a 21-year military dictatorship and initiated Brazil's 6th republic, known as the New Republic (Nova República). The constitution comprises 250 articles organized into nine titles. The right to sports is acknowledged in Title 8, "The Social Order," specifically in Chap. III, "Education, Culture, and Sports."

II – the allocation of public funds with a view to promoting, on a priority basis, educational sports and, in specific cases, high-performance sports;

III – differentiated treatment for professional and non-professional sports;

IV – the protection and fostering of sports created in the country.

Paragraph 1. The Judicial power shall only accept legal actions related to sports discipline and competitions after the instances of the sports courts, as regulated by law, have been exhausted.

Paragraph 2. The sports courts shall render final judgment within sixty days, at the most, counted from the date of the filing of the action.

Paragraph 3. the Government shall encourage leisure, as a form of social promotion.<sup>168</sup>

The Brazilian Constitution recognizes sport as a fundamental right for all individuals, requiring the State to actively encourage participation in sports. Moreover, it prioritizes the use of public funds for educational sports initiatives, with some consideration given to high-performance sports. Unlike other constitutions discussed in this chapter, the Brazilian Constitution explicitly distinguishes between professional and amateur sports, acknowledging the different needs and contexts within the sports landscape. Sport in Brazil has served as an escape from poverty, hardship, and especially crime.<sup>169</sup> In

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<sup>168</sup> Art. 217 of the Constitution of the Federative Republic of Brazil of October 5, 1988.

<sup>169</sup> In Brazil, criminal organizations such as Rio de Janeiro's Comando Vermelho or São Paulo's Primeiro Comando da Capital are particularly present in the favelas. In this context, players such as Lorenzo Insigne, Ronaldinho, Neymar, and Pelé stand as emblematic examples. Through sacrifice, perseverance, determination, and a blend of luck and talent, they have managed to build a lawful life for themselves.

particular, Par. 3 of Art. 217 encourages leisure as a means of social advancement (“the Government shall encourage leisure, as a form of social promotion”). In both Brazil and Italy, education and poverty pose significant challenges to communities. The educational systems in these countries are designed to not only foster cultural development but also promote physical activity and social inclusion through sport.<sup>170</sup> The inclusion of the “right to sports” in the 1988 Federal Constitution raised expectations for significant changes in public sports policies in Brazil; sports were previously seen primarily as symbols of national pride, with a strong emphasis on elite athletes and sports teams. However, despite aspirations for broader access to sport following its constitutional inclusion, subsequent historical developments have failed to meet these expectations.<sup>171</sup>

The Brazilian Constitution also regulates “sports disciplines and competitions” by stipulating that jurisdiction over cases in this field falls to ordinary judges only after all levels of sports justice have been exhausted. This provision mirrors a principle found in the Italian legal system, albeit not in the Constitution itself but rather in Law No. 280 of October 17, 2003, which codified general principles derived from legal doctrine and jurisprudence regarding the interaction between the sports system and the State, acknowledging the autonomy of the former while delineating its boundaries. Additionally, the Brazilian Constitution mandates that sports proceedings be regulated by law and concluded within a strict timeframe, underlining that “the sports courts shall render final judgment within sixty days.”

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Yet, in areas such as Scampia or Cidade de Deus, achieving such a feat seems like an unattainable dream.

<sup>170</sup> Regarding the constitutional recognition of sport in the Brazilian Constitution cfr. A. MENDEZ e A. CODATO, The institutional configuration of sport policy in Brazil: organization, evolution and dilemmas, in *Rev. Adm. Pública*, vol. 49, no.3, Rio de Janeiro, May/June 2015.

<sup>171</sup> cfr. R. M. TOLEDO, M. T. S. BEGA (2015). *Nationalism and Public Policies of Sports in Brazil*, on H.F. L’HOESTE, R.M. IRWIN, J. POBLETE (eds) *Sports and Nationalism in Latin/o America. New Directions in Latino American Cultures*, Palgrave Macmillan, New York.

In the Latin American context, we also find the Constitution of Mexico (1917),<sup>172</sup> which connects the right to sport for all individuals as an essential aspect of physical culture in Art. 44, stating that “all individuals have a right to physical culture and the practice of sports” and that “the State shall promote and stimulate this right by issuing laws on the matter.”<sup>173</sup> Furthermore, Art. 18 outlines that within the prison system, sports activities must be included as part of educational programs for inmates; specifically, “the prison system shall be organized on the basis of respect for human rights, as well as work, training, education, health, and sports as a means to achieve inmate’s social rehabilitation, pursuing that he/she will not commit a crime again and following the benefits that the law establishes for him/her. Women and men shall be imprisoned in separate places.”<sup>174</sup>

In the Bolivian Constitution (2009),<sup>175</sup> Arts. 104 and 105 outline the principle of non-discrimination in access to sports activities. In particular, the former affirms the right of all individuals to participate in sports, physical culture, and leisure, regardless of gender, language, religion, political views, territorial origin, or social status,<sup>176</sup> while the latter outlines the State’s obligation to promote these rights through educational, recreational, and public health

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<sup>172</sup> The present Constitution of Mexico, officially titled the Political Constitution of the United Mexican States, emerged during the Mexican Revolution. Ratified by the Constituent Congress on February 5, 1917, it has undergone numerous amendments. It has 136 articles organized under nine titles; sport is recognized in Title One, Chaps. I, “Fundamental Rights,” and II, “Composition of the Federation and Mexican Territory.”

<sup>173</sup> Art. 44 of the Political Constitution of the United Mexican States of February 5, 1917.

<sup>174</sup> Art. 18 of the Political Constitution of the United Mexican States of February 5, 1917.

<sup>175</sup> The current Constitution of Bolivia came into effect on February 7, 2009. The constitution has 411 articles organized in five parts; the right to sport is recognized in Part I, “Fundamental Bases of the State: Rights, Duties, and Guarantees,” specifically in Title II, “Fundamental Rights and Guarantees.”

<sup>176</sup> For the sake of completeness, the textual datum of Art. 104 of the Constitution of Bolivia is given: “Everyone has the right to sports, physical culture and recreation. The State guarantees access to sports without distinction as to gender, language, religion, political orientation, territorial location, social, cultural membership or any other characteristic.”

policies, particularly focusing on people with disabilities. The state is mandated to implement the necessary measures and allocate sufficient financial resources to ensure the fulfillment of these rights.<sup>177</sup>

Very interesting is the 1976 Constitution of Portugal<sup>178</sup> due to its comprehensive nature, encompassing 296 articles. It addresses the protection of sports in three separate articles, recognizing its role both as a supportive element for safeguarding the right to health and youth and as an independent right applicable to all citizens. In particular, the Portuguese Constitution refers to sport in the following articles:

Art. 64 (health):

The right to the protection of health shall be fulfilled: ... By creating economic, social, cultural, and environmental conditions that particularly guarantee the protection of childhood, youth, and old age; by systematically improving living and working conditions, and promoting physical fitness and sport at school and among the people; and also by developing the people's health and hygiene education and healthy living practices;<sup>179</sup>

Art. 70 (youth):

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<sup>177</sup> For the sake of completeness, the textual datum of Art. 105 of the Constitution of Bolivia is given: "The State shall promote, by educational, recreation, and public health policies, the development of physical culture and the practice of sports in their preventive, recreational, training and competitive levels, with special attention given to persons with disabilities. The State shall guarantee the methods and necessary economic resources to make them effective."

<sup>178</sup> The Constitution of Portugal, enacted in 1976 following the Carnation Revolution, succeeded several prior constitutions, including the initial one crafted in 1822 after the Liberal Revolution of 1820. The Constitution has 296 articles, organized into four parts; sport is recognized in three distinct articles in Part I, "Fundamental Rights and Duties," specifically Title III, "Economic, Social, and Cultural Rights and Duties."

<sup>179</sup> Art. 64 of the Constitution of Portugal of 1976.

In order to ensure the effective fulfillment of their economic, social and cultural rights, young people shall enjoy special protection, particularly... in physical education and sport;<sup>180</sup>

Art. 79 (physical education and sport):

1. Everyone has the right to physical education and sport.
2. In cooperation with schools and sporting associations and groups, the State is charged with promoting, stimulating, guiding and supporting the practice and dissemination of physical education and sport, and preventing violence in sport.<sup>181</sup>

The Portuguese experience stands out as a notable example of the explicit recognition of sports within a constitutional framework, addressing various dimensions of individual well-being and treating it as a distinct value deserving of protection. Art. 79 establishes sport as a fundamental right for all citizens, assigning the State, schools, and sports associations the responsibility for promoting and popularizing sports.<sup>182</sup> Similarly, Art. 70 safeguards youth rights across education, early employment, sports, and leisure. Unlike Italy's constitutional approach, which separates health from economic, social, and cultural aspects, Portugal integrates these elements. The Portuguese provision emphasizes the role of sports in enhancing both individual and collective well-being through public health education, hinting at potential economic benefits from a healthier, more active population.

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<sup>180</sup> Art. 70 of the Constitution of Portugal of 1976.

<sup>181</sup> Art. 79 of the Constitution of Portugal of 1976.

<sup>182</sup> M. JOSE' CARVALHO, A. OLIVEIRA, JOSE' PEDRO SARMENTO, *Regulation and management of professional sport in Portugal*, p. 359, <https://www.easm.net/download/2004/3bd9c7ff147f3e13e217d71645bec71d.pdf>



*iv. Constitutional recognition of sport in Africa: A pathway to peace and social cohesion*

Numerous African constitutions recognize the right to sport. This demonstrates the consistent dedication of African governments to invest in sport as a means of fostering peace among communities. Sport, with its principles of solidarity, fairness, and respect, is viewed as a powerful tool for individual development and social cohesion. Various efforts, including funding and projects, aim to promote sports participation in vulnerable regions and bridge cultural and religious barriers that fuel conflict. However, there is still significant work to be done to fully leverage the potential of sport as a tool for peace in Africa.

For example, The Constitution of Mozambique (2004),<sup>183</sup> in Art. 93 (“Physical Culture and Sport”) recognizes the right to physical education and sport, stating that “Citizens shall have the right to physical education and to sport” and that “the State shall encourage, through educational and sporting institutions, the practice and the dissemination of physical education and sport.”<sup>184</sup> Moreover, Art. 123 (youth) provides that “the State and society shall stimulate and support the creation of youth organizations for the pursuit of cultural, artistic, recreational, sporting and educational objectives.”<sup>185</sup>

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<sup>183</sup> The Constitution of Mozambique serves as the foundational law of the country, established on December 21, 2004, and later amended in 2007. The Constitution has 306 articles, organized in 17 titles; the right to sport is recognized in Art. 93, in Title III, “Fundamental Rights, Duties and Freedoms,” specifically Chap. V, “Economic, Social, and Cultural Rights and Duties,” and in Art. 123 in Title IV, “Economic, Social, Financial, and Fiscal Organization,” specifically Chap. III, “Social Organization.”

<sup>184</sup> Art. 93 of the Constitution of Mozambique of December 21, 2004

<sup>185</sup> Art. 123 of the Constitution of Mozambique of December 21, 2004

Similarly, the Moroccan Constitution, as mentioned above, in Art. 33 emphasizes the importance of providing young individuals with free access to sports for the development of their personality, as part of their “right to the development of personality.”

The constitutions of Zimbabwe, Uganda, Burkina Faso, Cameroon, Ethiopia, and Kenya all reflect similar provisions. For instance, the Constitution of Zimbabwe (2013),<sup>186</sup> in Chap. II (“National Objectives”), Art. 32 (“Sporting and Recreational Facilities”), mandates that “the State must take all practical measures to encourage sporting and recreational activities, including the provision of sporting and recreational facilities for all people.”<sup>187</sup> Similarly, the Constitution of Uganda (1995),<sup>188</sup> in Par. XVII (“Recreation and Sports”), requires the State to “promote recreation and sports for the citizens of Uganda.”<sup>189</sup> Burkina Faso’s Constitution (1991),<sup>190</sup> in Art. 18,<sup>191</sup> recognizes sports as one of the social and cultural rights to be promoted by the State, while

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<sup>186</sup> The Constitution of Zimbabwe is the supreme law of Zimbabwe. The constitution has 345 articles, organized in 18 chapters; sport is recognized in Chap. 2, “National Objectives.”

<sup>187</sup> Art. 32 of the Constitution of Zimbabwe of 2013

<sup>188</sup> The Constitution of Uganda, ratified on October 8, 1995, establishes a republican system of government with a strong executive branch headed by the President. The constitution has 292 articles, organized in 19 chapters; sport is recognized in Par. XVII of the “National Objectives and Directive Principles of State Policy.”

<sup>189</sup> Par. XVII of the “National Objectives and Directive Principles of State Policy” of the Constitution of Uganda of October 8, 1995

<sup>190</sup> The Constitution of Burkina Faso was endorsed through a referendum on June 2, 1991, officially adopted on June 11, 1991, and last revised in January 2002. The constitution has 169 articles, organized in 16 titles; sport is recognized in Title I, “Fundamental Rights and Duties,” specifically in Chap. IV, “Social and Cultural Rights and Duties.”

<sup>191</sup> For the sake of completeness, the textual datum of Art. 18 of the Constitution of Burkina Faso is given: “Education, potable water and sanitation, instruction, [professional] training [formation], social security, housing, energy, sport, leisure, health, protection of maternity and of infancy, assistance to the aged persons, to the persons living with a handicap and [those] in social cases, [and] artistic and scientific creation, constitute the social and cultural rights recognized by this Constitution which sees to their promotion.”

Ethiopia's (1995),<sup>192</sup> in Par. 9 of Art. 41,<sup>193</sup> mandates the State's contribution to the promotion of arts and "sports." Unlike the above-mentioned constitutions, Cameroon's Constitution (1972),<sup>194</sup> much like Art. 117, on the division of powers between the State and regions. Part IX of the Constitution ("The Economic and Social Council"), Art. 56, provides that the regions have legislative competence in matters related to the "economic, social, health, educational, cultural and sports development."<sup>195</sup> In Kenya,<sup>196</sup> Arts. 185–187 of the Constitution outlines the preparation of necessary means and instruments for implementing sports activities.

### **3) Exploring the recognition of the right to sport beyond constitutional frameworks**

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<sup>192</sup> Ethiopia has had four constitutions, from 1931, 1955, 1987, and 1995. The constitution has 106 articles, organized in 11 chapters; sport is recognized in Chap. Two, "Fundamental Principles of the Constitution."

<sup>193</sup> For the sake of completeness, the textual datum of Art. 41, Par. 9 of the Constitution of Ethiopia is given: "The State has the responsibility to protect and preserve historical and cultural legacies, and to contribute to the promotion of the arts and sports."

<sup>194</sup> The Constitution of Cameroon serves as the highest law of the Republic of Cameroon. Adopted in 1972, it represents the country's third constitution. The document has a preamble and 13 parts, each containing numerous articles.

<sup>195</sup> Art. 56 of the Constitution of Cameroon of 1972.

<sup>196</sup> The Constitution of Kenya, the country's supreme law, was most recently revised in 2010. It was ratified through a referendum on August 4, 2010 and promulgated on August 27, 2010. The constitution has 264 articles, organized in 18 chapters; sport is recognized in three articles in Chap. Eleven, "Devolved Government," specifically in Parts 2 ("Country Governments") and 3 ("Functions and Powers of County Governments").

Even if a country's constitution does not explicitly mention sport, this does not mean that the State does not recognize a right to sport. To illustrate this, we examine how Japan and Norway approach the right to engage in sport within their legal frameworks. While their constitutions may not directly address sports, both countries emphasize the significance of sports access and participation through other means.

In particular, the Japanese Government, in 2011, adopted The Basic Act on Sport,<sup>197</sup> that states the following in the preamble:

Living life happily and fruitfully through sport is the right of all citizens, and it shall be ensured that all citizens have the opportunity to familiarize themselves with sport, enjoy sport or participate in the activities supporting sport on a daily basis under a safe and fair environment, according to their individual interests and aptitude and on their own initiative.

As such, in addition to explicitly recognizing the right to sport for “all citizens,” the Act also underlines the importance of sport in the development of “physical strength of the youth” and its ability to have a “significant influence on character building” thanks to the values of sport that help cultivate a “spirit of respect and cooperation with others,” as well as “the attitude of respective fairness and discipline or self-control.” Furthermore, it highlights the significance of sport in fostering social interaction among individuals and communities at the local level. As many of the constitutions seen so far, it highlights the importance of the role that sport plays in the “retention and promotion of mental and physical health.” Art. 3 of the Act underlines the

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<sup>197</sup> Law No. 78 of June 24, 2011 (“Basic Act on Sports”). The Basic Law on Sports is the first full revision in 50 years of the Law for the Promotion of Sports (Law No. 141 of 1961), which was enacted in 1961, and establishes the basic principles of sports, clarifies the responsibilities of the national and local governments and the efforts of sports organizations, and defines the basic matters for sports-related policies. The Act also establishes the basic policies for sports.

responsibility of the national government “for establishing and implementing measures concerning sport in a comprehensive manner.”

In 2023, Japan introduced the White Paper on Sport<sup>198</sup> to foster a “sports for everyone society,” emphasizing the role of sports in promoting physical and mental health and encouraging social interaction. This paper underlines the importance of implementing policies and initiatives to promote physical activity and strengthen ties within the community. In particular, it highlights how “as people’s engagement with sports and the community increases, they will experience all three facets of sports: participate, spectate, and volunteer.”

Norway stands out as one of the world’s most admired sporting and cultural systems, characterized by outstanding achievements in child and community involvement, as well as the emergence of numerous elite athletes who dominate in both winter sports such as skiing, and summer sports such as beach volleyball, soccer, and track. Sport is considered a key pillar in achieving public health and citizenship development goals, a perspective reflected in the country’s government policies.<sup>199</sup>

The General Assembly of the Norwegian Olympic and Paralympic Committee and Confederation of Sports adopted in 2007 and revised in 2015 the “Children’s Rights in Sport.” This document emphasizes the experience that should be available to every child in the country. In particular, it underlines the importance of listening to the voices of youth and provides that children “must be granted opportunities to participate in planning and execution of their own sport activities” and that they “have the right to choose which sport, or how many sports they wish to participate in. Children have the right to determine how much they wish to practice their sport.” These statements are aimed at motivating children to continue playing sports by listening to their needs and by not imposing activities that are not fun for them.

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<sup>198</sup> White Paper on Sport in Japan 2023, by Chief Editor Kazutoshi Watanabe, President of the Sasakawa Sports Foundation, March 2023

<sup>199</sup> *Norway – world’s leading sport systems*, on Project Play, <https://projectplay.org/world-sport-systems/norway>

#### **4) Conclusion**

In conclusion, examining the inclusion of sport in national constitutions both within and beyond the EU reveals varying perspectives and approaches concerning the recognition and promotion of sport as a fundamental right. While certain countries have explicitly included provisions related to sport in their constitutional charters, others have opted to address this issue implicitly or through interconnected rights, such as the right to health or education.

In the European context, the inclusion of sport as an objective right within the constitutions of countries such as Greece, Switzerland, and Hungary reflects a commitment to promote and protect sporting engagement at the national level. These constitutions recognize sport as a fundamental component of national culture and as a tool for the physical and mental well-being of citizens. Despite the similarities, there are differences in the phrasing of the respective constitutional provisions. Some fundamental charters provide explicit norms on the role of the State in the promotion of sports (e.g. art. 128 Swiss Constitution), while others do not provide much guidance for the interpretation and implementation of the respective provisions.

Beyond Europe, several constitutions, such as those of Brazil and Mexico, recognize sport as an autonomous and fundamental right of all individuals. These constitutional documents highlight the importance of sports for health, education, and social welfare, placing the responsibility on the State to encourage and protect equal access to sports for everyone, without discrimination.

Moreover, the presence of provisions recognizing the right to sport in numerous African constitutions proves the ongoing commitment of African

governments to invest in sport as a vehicle for fostering peace and social cohesion. Since sport embodies the values of justice, solidarity, and respect, it holds enormous potential for both individual growth and community integration. While significant efforts have been made through various initiatives, including funding and projects, to promote sports participation and bridge cultural gaps, considerable work remains to fully employ the transformative power of sport in Africa. The examples provided above (e.g., Mozambique, Morocco, Zimbabwe) underline the different approaches taken by countries to recognize sport within their constitutional frameworks, emphasizing its importance as a fundamental right and a catalyst for societal progress.

Examining the acknowledgment of the right to sport beyond constitutional frameworks reveals that countries such as Canada, Japan, and Norway prioritize access to and engagement in sports through alternative legislation and policies. Japan, for instance, has adopted laws ensuring the right to sports for all citizens, promoting its pursuit of individual well-being and social cohesion. Similarly, Norway is committed to protecting children's rights in sports, allowing them to participate according to their preferences. These approaches highlight how the recognition of the right to sport transcends constitutional boundaries, fostering an inclusive sports culture aimed at benefiting society as a whole.

To conclude, the recognition of sport in the constitutional framework of numerous countries reflects the recognition of its importance in modern society and awareness of its potential to promote values such as inclusion, health, and overall well-being. However, challenges persist in effectively implementing these provisions and ensuring equitable and universal access to sport for all citizens. Governments must continue their endeavors to secure sufficient resources and infrastructure to support sports participation and cultivate a culture of inclusivity and accessibility in sports for everyone.





## **V. THE POST-REFORM LANDSCAPE: A GLIMPSE INTO THE POTENTIAL EFFECTS OF ARTICLE 33 OF THE ITALIAN CONSTITUTION**

### **1) Overview**

The constitutional revision of Art. 33 Const., enacted through Constitutional Law no. 1/2023, is a crucial step toward recognizing the importance of sport in Italian society. However, it also raises questions on how to effectively implement the legislative initiative and actively engage both institutions and citizens in the process. All involved parties must work together to ensure that sport becomes truly accessible to all, thus contributing to a more inclusive and healthier society.

The educational values of sport are fundamental in the development and growth of young people. Sporting activities instill values that go beyond the improvement of one's physical skills, teaching lessons like fair play, respect for others, responsibility, and determination. These values not only contribute to individual development but also help build a more cohesive and respectful society. Moreover, participating in sport can improve teamwork and leadership skills and teach how to manage success and failure in all aspects of personal and professional life.

Sport should not be perceived only as a competitive endeavor (an idea that became prevalent during the 20th century); rather, we should consider it in a broader sense. Engaging in sport can provide values and skills that transcend competitive sporting successes. It is incumbent upon the State to facilitate the practice of sport by actively involving local authorities, with their sports facilities and schools optimizing their use of resources. Sports facilities should not only be seen as venues to host large-scale events but must be made functional to meet the evolving role that the Constitution assigns to sport.<sup>200</sup>

Furthermore, the fundamental role that sport plays with regard to health protection must be addressed: the government should promote sport as a crucial element of Italy's health strategy. In fact, numerous studies have demonstrated that where sport is practiced, health conditions greatly improve. As such, physical activity and movement not only contribute to individual well-being but also have a significant impact on public finances through reduced healthcare expenditure.

In Italy, access to sports is often hindered by a number of issues. A primary challenge is the lack of adequate sports infrastructure, especially in rural and suburban areas. In particular, in the south of Italy, there's an acute shortage of gyms, playgrounds, and generally accessible areas for recreation and leisure. As such, these communities have limited opportunities to play sports and generally to practice physical activity on a regular basis, which is essential to maintain a healthy lifestyle. Moreover, the financial constraints faced by many families prevent them from accessing specialized sports clubs or classes, exacerbating economic disparities between individuals. These factors strongly contribute to increasing social inequalities in Italy, depriving youth and adults of the opportunity to reap the positive benefits of sport. In order to address these challenges public institutions must invest in accessible sports infrastructure and promote inclusive programs. The State should design public policies to address regional inequalities and guarantee equal opportunities and rights for every citizen, regardless of geographical or socioeconomic background.

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<sup>200</sup> P. SANDULLI, *lo Sport nella Costituzione e "l'operazione Stadio Flaminio*, on Riv. Dir. Sport, 2024, pp. 1-4

In other words, the constitutional mandate cannot remain a mere concept on paper; it must be translated into concrete acts and policies, ensuring that all Italians have access to sport. Minister Abodi emphasized, “While it’s important to promote this reform, it’s equally vital to interpret and implement it effectively, elevating its significance. A constitutional norm, though pivotal, isn’t sufficient on its own; what’s essential is to integrate it into political and governmental decisions, both nationally and locally.”<sup>201</sup>

## 2) Access to sport in Italy

Italy is ranked as the fourth most sedentary OECD country among adults (44.8% of the population do not reach WHO recommended physical activity guidelines), and first among children (94.5% do not meet recommended levels). These statistics underline a concerning trend that requires a thorough analysis of root causes and possible solutions.

The practice of sports in Italy has slightly increased over the past 20 years. In 2001, the percentage of people who were physically active in their free time was 59.1%; in 2021, the rate reached 66.2% (according to a National Institute of Statistics [ISTAT] study). However, despite this increase, a considerable number of people do not practice sport or do so only sporadically.

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<sup>201</sup> For the sake of completeness, Minister Abodi’s original speech is given: “Da un lato sarà necessario promuovere questa riforma e dall’altro dovremo saperla interpretare e attuare, oltre che nobilitare. Non basta una norma in Costituzione anche se è un passo molto importante, ma sarà fondamentale farla vivere nelle scelte di carattere politico e di governo, nazionale e sul territorio.”  
cfr. *Lo sport entra in Costituzione: sì definitivo della Camera. Abodi ammette: “Ora occorre attuarla,”* <https://www.ilfattoquotidiano.it/2023/09/20/sport-costituzione-camera-abodi/7298392/>

This highlights the need for targeted interventions to encourage a change in the population's behavior.<sup>202</sup>

What also emerges are territorial and gender-based disparities in accessing sport. Sports are predominantly practiced by men (39.8% vs. 29.6% of women). Moreover, the highest rates of sport involvement are observed in the north (41.6%), followed by the center (36.7%), and finally the south (24%). This discrepancy is also reflected in the distribution of sports facilities, more than half of which are located in the north, and only a smaller fraction in the center and south.<sup>203</sup>

Infrastructure deficiencies pose another significant obstacle to sports access. Data from the Ministry of Education reveal that only four out of 10 school buildings in Italy are equipped with a gymnasium, with even more critical situations in the south.<sup>204</sup> Accessibility challenges extend dramatically for people

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<sup>202</sup> In 2021, among people aged 3 and older who engage in sports, 16.8% reported participating less than once a week, 49.2% once or twice a week, and 34% three or more times a week. The sedentary rate remains high: 30.3% of the male and 36.9% of the female population.  
cfr. studio ISTAT, *Sport, attività fisica, sedentarietà*, <https://www.sport.governo.it/it/comunicazione-ed-eventi/studi-ricerche-ed-analisi/sport-attivita-fisica-sedentarieta/#:~:text=Per%20quanto%20riguarda%20la%20frequenza,o%20piu%20volte%20a%20settimana>

<sup>203</sup> The National Census of Sports Facilities, conducted by Sport e Salute S.p.a. and concluded in 2020, revealed that over half of public and private sports facilities of public interest are located in the north (52%), while 22% are in the center, and 26% are in the south.  
cfr. Rapporto Svimez 2023, *l'economia e la società del Mezzogiorno*, December 5, 2023, [https://lnx.svimez.info/svimez/wp-content/uploads/2023/12/rapporto\\_2023\\_slides\\_sito.pdf](https://lnx.svimez.info/svimez/wp-content/uploads/2023/12/rapporto_2023_slides_sito.pdf), p. 13

<sup>204</sup> More specifically, around 550,000 elementary school pupils in the south (66% of the total) attend schools without gym facilities. While Apulia has a decent provision of gyms, regions such as Campania (with 170,000 pupils lacking gyms, 73% of the total), Sicily (170,000 pupils, 81%), and Calabria (65,000 pupils, 83%) are significantly under-resourced. In the north-center regions, 54% of students are without access to gym facilities. The situation is similarly for secondary schools in the south, where 57% of pupils attend schools without a gym.  
cfr. Rapporto Finale 2023, *l'offerta di impianti e servizi sportivi nelle regioni italiane*, Svimez, UISP and Sport e Salute, [https://lnx.svimez.info/svimez/wp-content/uploads/2023/11/RicercaUISP\\_2023.pdf](https://lnx.svimez.info/svimez/wp-content/uploads/2023/11/RicercaUISP_2023.pdf), p. 15

with disabilities. Nationally, at least one in five sports facilities is not accessible to individuals with disabilities.<sup>205</sup>

Investments in sports facilities hold significant social value; a well-equipped facility not only sparks interest but also steers the focus of young individuals toward healthy forms of entertainment conducive to personal growth. Targeted investments in infrastructure coupled with awareness programs and inclusive policies can create an environment in which sports are accessible to all, thus promoting an active and healthy lifestyle for the entire Italian population.

### 3) **What does it mean to recognize sport in the Constitution?**

The recognition of sport in the Italian Constitution implies a sequence of responsibilities and concrete actions that must be taken at both the national and local levels to create a context where sport is accessible to everyone. Firstly, sport is not just about competition and leisure; it holds intrinsic educational and social value. As such, promoting sport entails more than just building infrastructure and facilities; a need exists to grow and instill a sporting culture beginning in early childhood. Reaching this goal requires collaboration and the involvement of educational institutions to incorporate sports activities into school curricula and involve students in physical activities from a young age.

Art. 33 Const., in conjunction with Art. 3, assigns the State the task of removing economic and social barriers that prevent the full development of individuals. In particular, the task of implementing this constitutional mandate

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<sup>205</sup> cfr. Rapporto Finale 2023, “*l’offerta di impianti e servizi sportivi nelle regioni italiane*”, Svimez, UISP and Sport e Salute, [https://lnx.svimez.info/svimez/wp-content/uploads/2023/11/RicercaUISP\\_2023.pdf](https://lnx.svimez.info/svimez/wp-content/uploads/2023/11/RicercaUISP_2023.pdf), p. 32

lies primarily with local and regional authorities. It is essential that municipalities, working alongside local entities, establish sports facilities capable of meeting the daily needs of the population. Additionally, it is imperative to monitor sports infrastructure, including its operational status and maintenance. This oversight should be promoted by the Ministry of Sports, which should be elevated to the status of a Ministry *con portafoglio* following the constitutional amendment. Considering that most facilities are municipally owned, municipalities should initiate the census under regional coordination. Furthermore, CONI's regional committees, now also responsible for the educational and therapeutic values of Sport e Salute, could play a key role in this monitoring and coordination endeavor.<sup>206</sup>

Moreover, the management of funds allocated for the promotion of sports, particularly those stemming from the National Recovery and Resilience Plan (NRRP), should be meticulously planned and monitored. These funds should be allocated toward enhancing sports infrastructure in schools and urban areas. The NRRP provides funding allocations within Mission 4, Component 1.1, Investment 1.3,<sup>207</sup> specifically targeting the strengthening of school sports infrastructure. Additionally, it includes provisions in Mission 5, Component 2.3, Investment 3.1<sup>208</sup> aimed at fostering the rehabilitation of urban areas by

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<sup>206</sup> cfr. P. SANDULLI, “*lo Sport nella Costituzione e “l’operazione Stadio Flaminio,”*” on Riv. Dir. Sport, 2024, pp. 3-5.

<sup>207</sup> The goal of Mission 4, Component 1.1, Investment 1.3 is to strengthen sports infrastructure and promote physical activities starting in elementary school. Enhancing motor and sports skills through school sports tutors supports healthy lifestyles, combats school dropout, ensures social inclusion, and fosters personal development. As per the National Register of School Construction, 17.1% of first-cycle schools lack gyms or sports facilities. This figure rises to 23.4% in the less developed southern regions and to 38.4% when including second-cycle schools. cfr. Piano Nazionale di Ripresa e Resilienza of July 15th, 2021, Missione 4: istruzione e ricerca, <https://www.orizzontescuola.it/wp-content/uploads/2022/08/PNRR-Aggiornato-177-193.pdf>

<sup>208</sup> Under Mission No. 5, “Inclusion and Cohesion,” Component 2 of the NRRP, Investment 3.1 “Sport and Social Inclusion,” €700 million is allocated to the Department for Sport for urban rehabilitation through sports facilities. The approved interventions include the following:

1. Regeneration of sports facilities: Upgrading and improving energy efficiency of existing facilities.

investing in sports facilities and the establishment of equipped urban parks. These initiatives aim to promote social inclusion and integration.

These needs were also recognized through Law Decree 185/2015, which outlined “urgent measures to encourage the construction of sports facilities in urban suburbs.” Specifically, Art. 15 stipulated that “[i]n order to strengthen national competitive sports activity and foster the development of the associated culture in disadvantaged and peripheral urban areas, with the goal of mitigating socioeconomic disparities and enhance urban security, a ‘Sport and Suburbs’ Fund is established. This fund is allocated from the budget of the Ministry of Economy and Finance, with subsequent transfer to the autonomous budget of the Presidency of the Council of Ministers, administered by [CONI].”<sup>209</sup>

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2. Construction of new sports facilities: Prioritized projects focusing on green transition, climate change mitigation, and digital transformation.
  3. Creation of parks and outdoor paths: Equipped with new technologies to promote free sports practice in 2,000 municipalities with populations up to 10,000 in the Southern Regions, addressing the lack of public playgrounds (€43,605,000.00).

cfr. Piano Nazionale di Ripresa e Resilienza of July 15th, 2021, Missione 5: inclusione e coesione, Componente 2, Investimento 3.1, <https://www.lavoro.gov.it/strumenti-e-servizi/Attuazione-Interventi-PNRR/Pagine/M5C2>

<sup>209</sup> For the sake of completeness, the original text of Art. 15 of Decree Law 185/2015 is quoted:

- “1. Ai fini del potenziamento dell'attività sportiva agonistica nazionale e dello sviluppo della relativa cultura in aree svantaggiate e zone periferiche urbane, con l'obiettivo di rimuovere gli squilibri economico sociali e incrementare la sicurezza urbana, e' istituito sullo stato di previsione del Ministero dell'economia e delle finanze, per il successivo trasferimento al bilancio autonomo della Presidenza del Consiglio dei ministri, il Fondo «Sport e Periferie» da trasferire al Comitato Olimpico Nazionale Italiano (CONI). A tal fine e' autorizzata la spesa complessiva di 100 milioni di euro nel triennio 2015-2017, di cui 20 milioni nel 2015, 50 milioni di euro nel 2016 e 30 milioni di euro nel 2017.
2. Il Fondo e' finalizzato ai seguenti interventi:
  - a) ricognizione degli impianti sportivi esistenti sul territorio nazionale;
  - b) realizzazione e rigenerazione di impianti sportivi con destinazione all'attività agonistica nazionale, localizzati nelle aree svantaggiate del Paese e nelle periferie urbane e diffusione di attrezzature sportive nelle stesse aree con l'obiettivo di rimuovere gli squilibri economici e sociali ivi esistenti;
  - c) completamento e adeguamento di impianti sportivi esistenti, con destinazione all'attività agonistica nazionale e internazionale;

Investing in sports does not just mean dispersing public resources; in fact, regular physical activity can serve as a preventive measure against various illnesses. Exercise and sport are important forms of preventive and therapeutic medicine that reduce the risk of chronic diseases, benefiting both individuals and the healthcare system. Investing in sport not only improves quality of life but also contributes to the long-term economic sustainability of the healthcare system. Sergio Pecorelli, president of the Healthy Foundation, Italian Medicines Agency (Aifa), and of the Scientific Committee of the Atletica è Salute project, launched by Fidal, talks about how to get savings to the hospitals of at least €5 for every €1 spent in sports.

Moreover, in Italy, the lack of well-established “dual career” programs, particularly within public universities, poses a significant challenge for athletes who wish to balance sports and academic education. This situation leads many young talents to seek opportunities abroad, where they perceive better support in pursuing both passions. To address this issue and retain local talent, it is crucial to implement measures aimed at facilitating athletes’ “dual careers.” These measures could include establishing mentoring programs, offering scholarships for athletes, introducing flexibility in academic schedules to accommodate athletic commitments, and fostering partnerships between academic institutions and sports federations to create an environment conducive to both athletic and academic growth. Investing in “dual careers” would not only help athletes maximize their potential in both sports and studies but also help preserve the country’s sporting and intellectual legacy.

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- d) attività e interventi finalizzati alla presentazione e alla promozione della candidatura di Roma 2024.
3. Per la realizzazione degli interventi di cui al comma 2, il CONI presenta alla Presidenza del Consiglio dei ministri per l'approvazione, entro quindici giorni dalla data di entrata in vigore del presente decreto, un piano riguardante i primi interventi urgenti e, entro trenta giorni dalla data di entrata in vigore della legge di conversione del presente decreto, il piano pluriennale degli interventi, che può essere rimodulato entro il 28 febbraio di ciascun anno. I piani sono approvati con decreto del Presidente del Consiglio dei ministri. Per la predisposizione e attuazione del piano pluriennale, il Comitato Olimpico Nazionale Italiano può avvalersi del personale in servizio presso altre pubbliche amministrazioni in possesso delle specifiche competenze tecniche in materia.”



A step forward has already been taken in recent years with the adoption of Law 107/2015 and Law Decree 185/2015. The former, in Art. 1, Par. 7, Letter g, includes among its educational goals the “enhancing of physical activity and the promotion of behaviors conducive to a healthy lifestyle, with specific emphasis on nutrition, physical education, and sports, while also ensuring the protection of the right to education for students engaged in competitive sports.” In particular, it mandates the provision of facilities for student-athletes participating in regional and interregional competitions, allowing them to balance the practice of sports activities with academic pursuits. This provision helps student-athletes maintain their academic progress while pursuing competitive sports.<sup>210</sup>

#### **4) Initiatives carried forward to implement the mandate of Article 33.**

While there is still much ground to cover to achieve uniform and universal access to sports in Italy, recent years have seen the implementation of projects that signal a positive trend toward this objective. First and foremost, efforts have been made to promote the development of sports infrastructure, fostering social inclusion, well-being, and community cohesion. A public notice was issued to select projects to be financed under the Fondo Sport e Periferie 2023.<sup>211</sup> This initiative aims to highlight the importance of sport as a

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<sup>210</sup> For the sake of completeness, the original text of Art. 1, Par. 7, Letter g of Law 107/2015 is quoted: “potenziamento delle discipline motorie e sviluppo di comportamenti ispirati a uno stile di vita sano, con particolare riferimento all’alimentazione, all’educazione fisica e allo sport, e attenzione alla tutela del diritto allo studio degli studenti praticanti attività sportiva agonistica.”

<sup>211</sup> Public Notice for the over-the-counter procedure to identify interventions eligible for financing under the “Fondo Sport e Periferie 2023”, of July 28, 2023, [https://www.sport.governo.it/media/vs5fh3z2/decreto\\_approvazione\\_graduatoriasep23\\_signed.pdf](https://www.sport.governo.it/media/vs5fh3z2/decreto_approvazione_graduatoriasep23_signed.pdf)

fundamental tool for elevating the quality of life in suburban areas, with €75 million allocated for projects in municipalities with less than 100,000 inhabitants. This initiative represents a significant contribution in terms of improving sports infrastructure in small Italian towns; it facilitates the regeneration of urban areas and the revitalization of disadvantaged communities, ultimately enhancing collective well-being.<sup>212</sup>

Another noteworthy project aimed at revitalizing and upgrading local infrastructure is the Caivano project. This initiative focuses on rejuvenating a sports complex (formerly known as the Delphinia Sports Center), which, in 2018, was abandoned and vandalized. The site gained notoriety as the location where two minors were assaulted. The government entrusted Sport e Salute with the task of revitalizing the facility, covering an extensive area of 50,000 square meters, with a financial commitment of €9.3 million.

The Caivano redevelopment project includes the transformation of the equipped park managed by the Carabinieri (police enforcement agency), which will feature fixed structures for outdoor sports activities. Furthermore, the former sports center will be renovated, developing a modern sports complex inspired by Etruscan architecture. This renovation will involve refurbishing the gymnasium, swimming pool, and multi-purpose and five-a-side soccer fields and introducing new amenities such as a skatepark, an outdoor fitness area, tennis and padel

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<sup>212</sup> The notice aims to achieve the following goals:

- Reduce marginalization and social degradation;
- Improve urban quality and strengthen community ties;
- Enhance urban safety through the promotion of sports activities; and
- Foster a culture of respect and social justice.

Areas of intervention include the following goals:

- Constructing and/or regenerating sports facilities for competitive activities in disadvantaged areas and urban suburbs, along with providing necessary sports equipment and facilities; and
- Completing and/or adapting existing sports facilities for national and international competitive activities.

cfr. Public Notice for the over-the-counter procedure to identify interventions eligible for financing under the “Fondo Sport e Periferie 2023,” of July 28, 2023, [https://www.sport.governo.it/media/vs5fh3z2/decreto\\_approvazione\\_graduatoriasep23\\_signed.pdf](https://www.sport.governo.it/media/vs5fh3z2/decreto_approvazione_graduatoriasep23_signed.pdf)

courts, a bocce court, an athletics track, and facilities for long jump, pole vault, and sport climbing. Once completed, the complex will cater to over 40 sports disciplines.<sup>213</sup>

This is not only an innovative project for the town of Caivano and its surrounding area, but also an example that can be extended to the rest of Italy. The goal is to extend this model to the entire country, with the hope of creating similar projects and thus giving new life and creating spaces for youths and, in general, for all local community members to practice sport. However, it is also crucial to involve local authorities and raise awareness of the importance of sports to grow and develop prosperous communities.

In recent years, particularly as a result of the pandemic crisis, the culture of cycling has spread widely. In particular, on December 8, 2023, the City Council of Rome approved the final project of the Grande Raccordo Anulare delle Bici. This ambitious project entails the creation of a bicycle-pedestrian ring spanning over 50 km that goes around the city and connects its green spaces with key historical and artistic landmarks.<sup>214</sup>

Equally significant are initiatives to integrate sports activities into school curricula across Italy. In recent years, numerous projects have been launched by CONI in collaboration with MIUR to promote physical activity in schools. One notable example is the Sport di Classe project, jointly implemented by the Ministry of Education, Universities, and Research and CONI. This initiative aims at the dissemination of physical education from elementary school, thereby enriching the educational and developmental experiences of younger generations.<sup>215</sup>

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<sup>213</sup> cfr. Illumina Caivano. Presentato a Palazzo Chigi il progetto di riqualificazione e ricostruzione dell'ex centro sportivo Delphinia, Scuola Sport e Salute, <https://www.sportesalute.eu/primo-piano/4740-illumina-caivano-presentato-a-palazzo-chigi-il-progetto-di-riqualificazione-e-ricostruzione-dell-ex-centro-sportivo-delphinia.html>

<sup>214</sup> cfr. Grande raccordo anulare delle bici, approvata progettazione definitiva, Comune di Roma, <https://www.comune.roma.it/web/it/notizia.page?contentId=NWS1122970>

<sup>215</sup> cfr. Progetto Sport di Classe, <http://www.progettosportdiclasse.it/>

Another noteworthy initiative is the Scuole Aperte Allo Sport project, designed for secondary schools. Participating schools will be able to offer students a range of sports activities to be conducted during school hours and after school sessions.<sup>216</sup> Additionally, the establishment of student championships implemented by MIUR in collaboration with CONI, and the national sports federations, associated sports disciplines, and Italian Paralympic Committee, aims to introduce competitive sports events to first- and second-year secondary school students. These initiatives collectively contribute to fostering a culture of physical fitness and sports participation among students throughout Italy.<sup>217</sup>

The Ministry of Education and Merit, in joint collaboration with Sport e Salute S.p.A. and with the Minister for Sport and Youth, has elaborated a national project for the 2023/2024 academic year. This project, called Scuola Attiva Kids,<sup>218</sup> targets all elementary school courses in both public and private schools. The objective of the initiative is to improve the physical and sport educational activities in elementary schools, highlighting the educational values of physical activity, in order to promote healthy lifestyles and social cohesion among students.

The Scuola Attiva Kids initiative seeks to align with EU policies on physical activity. Planned activities include teacher training sessions, the

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<sup>216</sup> Participating schools will provide students with a variety of sports activities, including the following:

- Sports weeks: Over 3 weeks, each dedicated to a different sport, the physical education teacher will be assisted by Federal Technicians for 2 hours per class during curricular time.
- Sports afternoons: Optional free courses related to the three sports will be available one afternoon per week for up to six weeks per sport, taught by Federal Technicians in school gyms.

cfr. È partito il progetto “Scuole aperte allo sport” 2019/2020, Sport e Salute, <https://www.sportesalute.eu/primo-piano/1868-è-partito-il-progetto-“scuole-aperte-allo-sport”-2019-2020.html>

<sup>217</sup> cfr. Competizioni sportive scolastiche, Ministero dell’Istruzione e del Merito, <https://www.miur.gov.it/campionati-studenteschi>

<sup>218</sup> cfr. Progetto Scuola Attiva Kids, Ministero dell’istruzione e del Merito e Sport e Salute, <https://www.sportesalute.eu/progettoscuelattiva/kids/il-progetto.html>

AttiviAMOCi informational campaign, the incorporation of active breaks during classes, end-of-year school celebrations, and participation in wellness days. Through these diverse activities, the initiative aims to instill a culture of physical fitness, well-being, and inclusivity in primary schools across the country.

It is also important to ensure that athletes have the opportunity to pursue their studies while competing at the highest level. Athletes often have shorter careers than those in other professions, and factors such as an injury can further limit their time playing a sport. As such, dual career programs are very important. These initiatives allow athletes to continue their education while actively participating in sports. This not only fosters their academic development but also prepares them for a smoother transition at the end of their athletic careers. This approach minimizes the risk of sudden career gaps after retirement from sports, ensuring that they have a solid foundation for building a sustainable future beyond sports.

The “dual career” project is gradually gaining momentum, with many private and public universities offering programs in which athletes can fulfill both their sporting and academic ambitions simultaneously. This approach not only benefits student-athletes individually but also helps foster a culture of academic and athletic excellence within university institutions.

## **5) Conclusion**

In conclusion, the revision of Art. 33 Const. through Constitutional Law no. 1/2023 marks a significant step forward in the recognition and promotion of sport. However, it also raises questions and challenges that require continued dedication from public authorities.

In order to maximize sport's potential as a catalyst for personal and social change, there are several challenges that need to be overcome. One of these obstacles is inequality in access to sports. Numerous communities, particularly those in rural areas and disadvantaged urban areas, face a severe lack of adequate sports infrastructure and opportunities to play sports regularly. These deficiencies not only limit opportunities for individual development but also perpetuate social inequalities, denying countless youth and adults of the physical, mental, and social benefits afforded by sports.

Effectively addressing these challenges requires a collaborative effort involving public institutions, sports organizations, educational institutions, and local communities. It is crucial to invest in building and improving sports infrastructure, ensuring that it is accessible to everyone regardless of socioeconomic background. In addition, it is important to promote and support programs that encourage active participation, particularly among disadvantaged and marginalized groups. Initiatives such as the Fondo Sport e Periferie, the Caivano project, and educational programs are examples of significant steps toward achieving this goal. Supporting sports means investing in the overall health and well-being of society.

In addition to ensuring physical access to sports, it is also crucial to ensure personal and professional development opportunities for athletes, particularly during and after their sports careers. The concept of "dual careers" is crucial in this regard, aiming to allow athletes to balance sports with studies or a professional career. Well-structured "dual career" programs can not only improve athletes' career prospects but also safeguard their mental and physical well-being, mitigating the professional "gap" often experienced post-retirement from sports.

In conclusion, the recognition of sport in the Italian Constitution is a key step toward building a more inclusive, healthy, and resilient society. However, to translate this recognition into concrete actions and tangible impacts on people's lives, a joint and continuous commitment is needed by all stakeholders. In fact, all the levels of government (from the central to the local level, including European institutions), as well as all the social groups and institutions of

intervention (from sport clubs to community associations, from health institutions to education and employment fields), must activate a comprehensive and collaborative approach in order to fully engage sport's potential as a transformative power for the society and its individuals.





## CONCLUSION

The revision of Art. 33 of the Italian Constitution represents a pivotal moment in the recognition of the importance of sport in Italian society. With Constitutional Law No. 1/2023, the government expressly acknowledged the educational and social value of sporting activity and its role in the promotion and improvement of the overall health of individuals.

The journey that culminated on September 26, 2023, with the recognition of the value of sport in the Italian Constitution, was extensive, reflecting the different proposals presented over the years. From the initial proposals in the late 1990s, there have been persistent efforts to revise the Constitution to recognize the values of sport. The most recent unsuccessful attempt to include sport in the constitution during the XVIII legislative term came very close to completion. Constitutional Bill C-715 was approved in both the first and second readings by the Senate, but only in the first reading by the Chamber of Deputies. This process was cut short when President Mattarella prematurely dissolved the Chamber on July 21, 2022, following the government crisis under former Prime Minister Draghi. The continued attempts underline the growing understanding of sport, not merely as a recreational activity, but also as a crucial element for personal development, social integration, and public health.

The inclusion of sporting activity in Art. 33 of the Italian Constitution, alongside education, art, science, and culture, emphasizes the holistic role of sports, instrumental in fostering personal growth and social cohesion. Moreover, the constitutional reform highlights the Republic's commitment to ensuring that everyone has access to sport, irrespective of social, economic, or cultural

backgrounds. Public authorities must adopt proactive measures to invest in infrastructure, develop inclusive programs, and create opportunities for individuals to participate in sports. This equity focus is particularly important to address the needs of marginalized groups, promote gender equality, and protect minors.

The broad scope of this revision recognizing the importance of sports helps align Italy with many constitutions around the world. In Europe and internationally physical activity is increasingly seen as a crucial component of public health, social inclusion, and the promotion of fundamental rights. In particular, the Olympic Charter of 1908 and, similarly, in 1987, UNESCO, state that the practice of sport is a fundamental right for all.

The European Union has significantly contributed to the ‘legalisation’ of sport with a number of rulings by the European Court of Justice, such as the famous Bosman ruling which completely changed the transfer system of professional football players. In Italy, the process of institutionalization of sport has been progressive, via legislative measures such as the law on professional sports of 1981 and the revision of Title V of the Constitution in 2001. This more recent revision focused on the allocation of powers between the state and the regions, further reinforcing the role of sport in the Italian legal system.

While representing a critical step, the formal recognition of sport in the Constitution is just the beginning. The true challenge lies in translating the constitutional mandate into tangible actions and effective policies. This means ensuring that the values recognized by the constitution become a part of the everyday life of all Italian citizens, through comprehensive national strategies and action plans. To fully realize the potential of sport, the government, including all its organs, must address several challenges and obstacles. One of the main constraints in Italy is the inequality in access to sports facilities. Numerous communities, particularly those in rural areas and disadvantaged urban neighborhoods, face a severe lack of adequate sports infrastructure and opportunities to practice sport.

To fully implement the constitutional reform and allow everyone to have the opportunity to practice sport, public authorities must collaborate with European and international bodies, local communities, and sports associations. This collaboration should happen through ongoing dialogue, coordinated policy-making, shared funding initiatives, joint programs, and the exchange of best practices to create cohesive and inclusive sports infrastructure. The state must invest in building and improving sports facilities and promote and support programs that encourage participation in sports, particularly among disadvantaged and marginalized groups. Initiatives like the "Fondo Sport e Periferie" and the Caivano project, which provide opportunities to practice sports to disadvantaged communities, are examples of significant steps toward achieving this goal.

In conclusion, the entry of sport in the Italian Constitution, with the revision of the Art. 33, par. seven, represents a decisive step to expand and spread the practice of sport to all citizens. Not only it declares the importance of sport for physical and social well-being, but it also places the Italian legislation next to the more recent constitutions of the European Union and the international community.

However, despite the significance of this reform, we are still far from achieving universal access to sport in Italy. Some areas of the country, above all rural areas and disadvantaged urban neighborhoods, are far from the achievement of equality in access to facilities and in the opportunity to practice sport. Therefore, the next step is that public authorities diligently apply the constitutional mandate. The government must take all necessary measures to ensure widespread access to sports. This will require close cooperation with European and international bodies, local communities, educational institutions, and sports associations. Only with constant dedication and fruitful collaboration of all the actors involved in this process, the constitutional acknowledgment of sport could be turned into effective measures and real advantages for every Italian citizen. Investing in sports means investing in the nation's health, education, and social cohesion, laying the foundation for a more inclusive and vibrant society.



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