



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

**SPORT IN THE ITALIAN CONSTITUTION (ART. 33):  
A CODIFICATION OF THE SOCIAL CULTURE AND A PROGRAM RULE TO  
IMPLEMENT SPORTING ACTIVITY AND ITS “EDUCATIONAL AND SOCIAL VALUE AND  
ITS ROLE IN SUPPORTING PHYSICAL AND PSYCHOLOGICAL WELLBEING”**

*Enrico Lubrano\**

**INDEX**

**INTRODUCTION**

- I. SPORT AND THE RIGHT TO SPORT: A COMPARATIVE ANALYSIS**
- 1. The failure to recognize sports and the right to sports in the Republican Constitution.**
  - 2. The social importance of sports and the right to sports in recent Constitutions.**
- II. JOURNEY TOWARD THE RECOGNITION OF SPORT AT THE CONSTITUTIONAL LEVEL**
- 1. Primary source recognition: general freedom to sport (Law no. 91/1981), right to sport for minors (Law no. 205/2017), importance of grassroots sport (Law no. 145/2018).**
  - 2. The recognition of the social importance of sport and the right to sport by the European Union and international organizations (U.N., U.N.E.S.C.O., and I.O.C.).**
  - 3. The recognition of sports as a fundamental element of preventive medicine by the international (World Health Organization) and national (National Institute of Health) scientific community.**
- III. AMENDMENT TO ARTICLE 33 OF THE ITALIAN CONSTITUTION**
- 1. Legislative process for the amendment of Art. 33 of the Italian Constitution.**
  - 2. Legislative Decision-Making and Article Selection for the Amendment.**
  - 3. Revised Art. 33 of the Italian Constitution.**
- IV. IMPLICATIONS OF THE REVISION TO ARTICLE 33 OF THE ITALIAN CONSTITUTION**

**CONCLUSION**



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

## INTRODUCTION

The so-called "*right to sport*" essentially consists of the right of all individuals to engage in physical activity. Sport is a fundamental element for the expression of personality, both as individuals and within social groups, as well as for the prevention and improvement of individual and collective physical and mental health.

This work aims to provide an in-depth exploration of the topic of the right to sport, as a subjective legal situation now recognized as a freedom at the constitutional level (Article 33 of the Italian Constitution), with the perspective (and hope) of its material implementation at the national and local level.

The reform of Art. 33 Const., through Constitutional Law of September 26, 2023, No. 1, that introduced sport within the Italian Constitutional framework, is an important step in the recognition of the educational and social value of sporting activity in all its forms and its role in supporting physical and psychological well-being.

This revision, although conclusive of a long legislative journey, also represents the beginning of a new phase of material implementation of the constitutional mandate. To ensure that everyone can participate in physical activity material actions and comprehensive policy, measures must be taken by all stakeholders (the government, local communities, administrations, educational institutions, and sport associations).

### **I. SPORT AND THE RIGHT TO SPORT: A COMPARATIVE ANALYSIS**

A comparative analysis of the right to sport demonstrates how many contemporary Constitutions have recognized the social role of sport and codified a genuine right to sport. This may manifest either as an independent personality right or as a means to promote the right to health.

## 1. The failure to recognize sports and the right to sports in the Republican Constitution

It may seem logical that the Republican Constitution originally overlooked the importance of the social function of sports (even preceding the acknowledgment of the right to sports). This was partly attributed to the necessity of establishing the Republic's fundamentals. In the wake of World War II, the priorities certainly did not include sports, which also had a far more limited socio-economic scope compared to today.

In reality, the failure to codify sport in the Constitutional Charter wasn't necessarily due to a lack of consideration <sup>(1)</sup>, but rather reflected a deliberate "repudiation" of sport as a legacy of the fascist regime, from which society and institutions strongly felt the need to distance themselves <sup>(2)</sup>.

The fact that the Republican Constitution - among the fundamental rights and freedoms - did not contain any reference to the right to sports for decades may have seemed normal. This is because, despite the high number of citizens who engaged in sports, this right was not perceived, at least, from

---

\* Lawyer. Professor of Sports Law at the University of Rome "Luiss Guido Carli".

<sup>1</sup> See, F.P. LUISO, *La Giustizia Sportiva*, 1975, where the author asserts that "*in the era, even of material scarcity, in which the Constitution was born, sport did not assume in the eyes of the Constituents the relevance that it undoubtedly has today*", p. 25.

<sup>2</sup> See, in particular, P. SANDULLI, *Costituzione e Sport*, on *Riv. dir. sport.*, 2017, IV. This contribution points out, moreover, that, an intervention was made (on April 19, 1947) within the work of the Constituent Assembly. The intervention was carried out by Giuliano Pajetta, in the context of the discussion regarding Article 31 of the Constitution and with specific reference to sport as a function of protecting the health of children, and in any case "*distancing himself from the military aspect of it*", which recalled the values of the fascist regime.

See, also, R. MORZENTI PELLEGRINI, *L'evoluzione dei rapporti tra fenomeno sportivo e ordinamento statale*, Milano 2007, p. 52; M. SANINO, *Sport*, on *Enc. Giur.*, Vol. XXXII, Roma, 2006; G. VALORI, *Il diritto nello sport*, Torino, 2005, p. 100; UGONA, *Sport*, on *Digesto Ip.*, Sez. Pubbl., Torino, 1999; V. SANNONER, *La Costituzione italiana e lo sport*, on D. MASTRANGELO (edited by), *Aspetti giuspubblicistici dello sport*, Bari, 1994, pp. 13-14; A. G. BONADONNA, *Aspetti costituzionali dell'ordinamento sportivo*, on *Riv. Dir. Sport*, Milano 1965, p. 196.

Essentially, the Constituent Assembly, in the act of re-founding the fundamental values of the state, rather than lacking interest in sport, seems to have wanted to ignore it (distancing itself from it). Essentially, instead of genuinely losing interest in sport, the Constituent Assembly appears to have preferred to overlook it (or even distance itself from it). This is because, as a characteristic of the fascist ideology, sports were emphasized as a way to train the younger generations for the enhancement of race and the fortification of the state during times of war.

Significant, in this respect, appears to have been the attitude of the government, which, in 1946, appointed Giulio Onesti, a lawyer, as liquidating commissioner of the Italian National Olympic Committee (CONI). He was given the specific task of eliminating a symbol of the Fascist culture; however, the Italian Olympic Committee was not liquidated by Giulio Onesti (who had realized the enormous potential of sport and the need to maintain a sports organization that, apart from the legacies of the Fascist regime, had a potential that needed to be preserved).

the point of view of our social and legal culture, as a "good" significant enough to warrant recognition as a legitimate fundamental right within our legal and social structures.

Even though not expressly recognized, sport is undoubtedly subject to implicit acknowledgment within the context of other fundamental rights<sup>3</sup>, such as the right to the expression of personality, both individually and within social formations (Art. 2), and the right of association (Art. 18).

---

<sup>3</sup> The authoritative doctrine has questioned the so-called open nature of the provision in Art. 2 Const. In doing so it has theorized the possibility of identifying, through interpretation, "new" implicit, instrumental, transversal rights, as such arising from an evolutionary and regenerative interpretation of Art. 2 Const. itself. The reference is, as is well known, to F. MODUGNO, *I nuovi diritti nella giurisprudenza costituzionale*, Torino, 1995, passim.

On the need to "update" the catalog of rights referable to the Fundamental Charter, cfr., *ex plurimis*: A. BARBERA, Art. 2, on G. BRANCA (a cura di), *Commentario alla Costituzione*, Bologna-Roma, 1975, pp. 80 ss.; A. D'ALIOIA, *Introduzione. I diritti come immagini in movimento: tra norma e cultura costituzionale*, in ID. (ed.), *Diritti e Costituzione. Profili evolutivi e dimensioni inedite*, Milano, 2003; P. HÄBERLE, *Le libertà fondamentali nello Stato costituzionale*, Roma, 1993; P. BARILE, *Diritti dell'uomo e libertà fondamentali*, Bologna, 1984, p. 55.

For a general framing of the issue, it is necessary to refer to N. BOBBIO, *L'età dei diritti*, Torino, 1990.

Additionally, there are alternative scientific avenues to reconstruct the constitutional framework of a subjective right. However, it is not deemed feasible to assert the constitutional foundation of safeguarding the right to sports through the application of the method of necessary implications (based on implied powers), following the approach adopted by A. LOIODICE, *Contributo allo studio sulla libertà di informazione*, Napoli, 1969, as the systematic prerequisites for the establishment of an independent right to sport do not exist.

The system of necessary implications follows a logical and systematic approach where constitutional and fundamental rights are implicitly deduced from the constitutional text. These rights are deemed necessary in alignment with the principles of constitutional law and the comprehensive set of protected rights. A notable example is the evolution of the right to information, which was initially considered merely theoretical, but later recognized as concrete and essential.

For further insights, refer to A. LOIODICE's work on *Informazione diritto alla (enciclopedia del diritto)*. This method of researching and constructing subjective freedoms has been endorsed in various rulings of the Constitutional Court and is also supported by C. MORTATI in his book *Istituzioni di diritto pubblico*, Padova, 1967.

The right to sports enjoys constitutional protection, although it is dispersed among the individual rights safeguarded by the Constitution. However, its normative framework cannot be independently reconstructed. There is a need for its delineation and distinct protection at the constitutional level. Currently, it is deemed appropriate to conduct normative and comparative research. Such research may not only pave the way for identifying various facets of the right to sports, but also highlight the necessity for specific constitutional safeguards or recognition of this right, drawing insights from European and international laws.

Moreover, since 1949, attentive legal doctrine has acknowledged sports organization as a true sectorial legal system <sup>(4)</sup>, based on Santi Romano's theory of the plurality of legal systems <sup>(5)</sup>.

Even in the decades that followed, up until just recently, the State never felt the need to codify the right to sports at the constitutional level, or at least for the social significance of sports to be acknowledged. This was the case despite the growing influence of sports culture and the socio-economic dimensions of the sports phenomenon itself.

---

<sup>4</sup> Massimo Severo Giannini is considered a “Pioneer” in the legal recognition of the sports phenomenon as a distinct institutional system. He first delved into the topic in the immediate postwar period (see M. S. GIANNINI, *Prime osservazioni sugli ordinamenti sportivi*, on *Riv. dir. sport.*, 1949, 1, p. 10). Nearly fifty years later, M. S. GIANNINI revisited this argument in his work, *Ancora sugli ordinamenti giuridici sportivi*, on *Riv. Trim. Dir. Pubbl.*, 1996, p. 671.

There are interpretive perspectives that facilitate the reconstruction of the constitutional protection of the right to sport. On one hand, these perspectives may be linked to subsidiarity (see V. BALDINI, *Sussidiarietà e diritti*, Napoli, 2007). On the other hand, they can be derived from principles inferred from Article 2 regarding the protection of human dignity and other provisions concerning the same constitutional value (see V. BALDINI, *La dignità umana tra approcci teoretici ed esperienze interpretative*, on AIC Magazine No. 2/2013).

Essentially, human dignity involves the complete development of individuals, including their participation in sports. Meanwhile, subsidiarity allows public roles to be delegated in supporting and advancing sports activities, ensuring that the right to sports can be realized in practice.

Though various aspects are pertinent for applying Article 2 and other provisions concerning individual profiles, insights from Don L. LEPORE, *Sulla dignità della persona*, on *dirittifondamentali.it*, 1/20, are valuable.

Despite human dignity having roots primarily in religious thought, its normative implications and expansions have not been thoroughly explored. Notably, V. BALDINI's examination of constitutional interpretation is insightful.

Both Baldini's and Giannini's approaches advocate for the consistent application of the principle of constitutionally adequate interpretation. However, as highlighted in V. BALDINI's work, *Costituzione e razionalizzazione della politica in Liber Amicorum*, for Pasquale Costanzo, on Consulta online 09.01.2020, caution is warranted to avoid overinterpretation. Baldini criticizes interpretations that might distort legislative intent, favoring judicial rationality excessively (A. RUGGERI, *Tutela dei diritti fondamentali ed il ruolo ‘a fisarmonica’ dei giudici dal punto di vista della giurisprudenza costituzionale*, on *dirittifondamentali.it*, 2/18, pp. 5 ss.).

<sup>5</sup> On the theory of plurality of legal systems, see among others in particular: E. ALLORIO, *La pluralità degli ordinamenti giuridici e l'accertamento giudiziale*, on *Riv. Dir. Civ.*, 1955, p. 247; G. BOSCO, *La pluralità degli ordinamenti giuridici nell'ambito del diritto delle genti*, in *Studi in memoria di Guido Zanobini*, IV, p. 93; G.P. CAMMAROTA, *Il concetto di diritto e la pluralità degli ordinamenti giuridici*, Catania, 1926; ID., *Formalismo e sapere giuridico*, Milano, p. 1963; G. CAPOGRASSI, *Note sulla molteplicità degli ordinamenti giuridici*, in *Opere*, IV, Milano, 1959, p. 181; M. S. GIANNINI, *Sulla pluralità degli ordinamenti giuridici*, on *Atti del Congresso internazionale di sociologia*, Roma, 1950; V. GUELI, *La pluralità degli ordinamenti giuridici e condizioni della loro consistenza*, Milano, 1949; A. LAMBERTI, *Gli ordinamenti giuridici: unità e pluralità*, Salerno, 1980, p. 148; S. PANUNZIO, *La pluralità degli ordinamenti giuridici e l'unità dello Stato*, in *Studi filosofici-giuridici dedicati a G. Del Vecchio nel XXV anno di insegnamento*, 11, Modena, 1931; L. PICCARDI, *La pluralità degli ordinamenti giuridici e il concetto di rinvio*, on *Scritti giuridici in onore di Santi Romano*, p. 249; F. SATTA, *Introduzione ad un corso di diritto amministrativo*, Padova, 1980. An interpretive approach regarding the application of the principle of plurality of Orders is delineated by A. LOIODICE, *Attuare la Costituzione – sollecitazioni extra ordinamentali*, Bari, 2000.



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

Very significant, however, from the point of view of framing the sporting phenomenon as a matter of public interest, was the jurisprudence of the Constitutional Court. In its judgment No. 57 of March 25, 1976, the Court emphasized that *"sport is a human activity recognized as having a public interest such as to require its protection and encouragement by the State"*.

Subsequent legislation followed a similar trajectory. It recognized the public significance of Sports Federations' activities from a substantive perspective (Article 15 of Legislative Decree No. 242 of July 23, 1999) and consequently placed it under the exclusive jurisdiction of the Administrative Judge from a procedural standpoint (Law No. 280 of October 17, 2003).

It wasn't until 2001, with the reform initiated by Constitutional Law No. 3 of October 18, 2001, that "sport" became part of the constitutional framework. However, this recognition did not establish it as a subjective right or as a value; rather, it was included within the scope of objective law. Specifically, the *"sports order"* was listed among the areas subject to concurrent jurisdiction between the State and Regions (Article 117, third paragraph) <sup>(6)</sup>.

## **2. The social importance of sports and the right to sports in recent Constitutions**

Beyond the specific reasons that had determined the failure of the Constituent Assembly to recognize the value of sport (such as the need to disassociate it from the fascist regime), even the oldest Constitutions of other states, dating from the 18th and 19th centuries and the immediate post-World War II period, did not address sport at all. This includes the Constitutional Charters of the United States

---

<sup>6</sup> For an in-depth discussion of this amendment, see F. BLANDO, *Il ruolo e le competenze delle Regioni nello sport*, on *Riv. Dir. Econ. Sport*, Vol. V, Fasc. 1, 1999; B. CARAVITA, *La Costituzione dopo la riforma del titolo V*, Torino, 2002, p. 79; A.G. PARISI, *Sport, diritti e responsabilità: un confronto con l'esperienza francese*, on *Comparazione Dir. Civ.*, 2010; L. PIROZZI, *L'ordinamento sportivo*, on *Le materie di competenza regionale*, edited by G. GUZZETTA, Napoli, 2015; P. SANDULLI, *Costituzione e Sport*, cit.

of America (1787) <sup>(7)</sup>, the Kingdom of Belgium (1831) <sup>(8)</sup>, Japan (1946) <sup>(9)</sup>, the Basic Law of the Federal Republic of Germany (1949) <sup>(10)</sup> and the Constitution of the French Republic (1958) <sup>(11)</sup> have been placed in this sense, by way of example and in chronological order.

Several other more recent Constitutions, in contrast with the aforementioned States, have adopted diverse stances regarding sports, examining and regulating it in accordance with various models, which can be broadly categorized into three types:

- 1) consideration of the sports phenomenon within the framework of objective law; this generally comprehends the organization and regulation of sports, as well as the State's dedication to its promotion and dissemination.
  - a) Either broadly, as in the case of the Greek Constitution (1975);
  - b) Or as a crucial component of national culture and youth protection, like in the case of Switzerland's Constitution (2000);
- 2) consideration of sport - not only in terms of an objective right - but also as a relevant element in the context of the right to health; this approach is the most frequent, as evidenced by numerous Constitutions, such as those of Spain (1978), Turkey (1982), Russia (1993), Croatia (2010) and Hungary (2011);
- 3) the recognition of sport as a genuine right for all individuals, both independently and as functional to the right to health; this is the case in the Constitution of Brazil (1988) and the Constitution of Portugal (1976), respectively.

---

<sup>7</sup> The Constitution of the United States of America was adopted on September 17, 1787, by the Convention of Philadelphia. It was then subsequently ratified by special Conventions convened for that purpose in each of the thirteen states existing at that time; it came into force in 1789.

<sup>8</sup> We refer to the Belgian Constitution as the "*Constitution of February 7, 1831*". From the time of the Constitution's adoption in 1831 until the 1960s, its wording remained virtually unchanged. The First amendments broadened the electoral base (universal suffrage). Subsequent amendments focused on state decentralization.

<sup>9</sup> The Japanese Constitution was enacted in 1946. The Constitution is rigorous and hasn't been changed since it was ratified.

<sup>10</sup> The formal name of the Federal Republic of Germany's Constitution is the Grundgesetz, or Basic Law of the Federal Republic of Germany.

<sup>11</sup> The current French Constitution (Constitution française du 4 octobre 1958) came into force on October 4, 1958. The text, drafted by a special commission appointed by Charles de Gaulle, had been approved by a large majority of the electorate on the previous September 28.



A brief comparison of these Constitutional Charters (<sup>12</sup>) reveals how the different States have articulated constitutional values that are also a part of the Italian national culture; in particular:

- 1) Greece (1975) subjected sports to close government scrutiny, including financial oversight (<sup>17</sup>);
- 2) Switzerland (2000) empowered the Swiss Confederation to promote "*sport*" and "*sports education*" also within schools (<sup>18</sup>);
- 3) Spain (1978) committed, within the framework of the discipline of the right to health, to develop health education, "*sports education*", "*sport*" and "*leisure time*" (<sup>19</sup>);

---

<sup>12</sup> For a comparative analysis of the various systems of sports organization in Europe, see A.N. CHAKER, *Good governance in sport – A Europa Survey*, 2004; A.N. CHAKER, *Study of National Sports organization in Europe*, 1999; J. RIORDAN, A. KRUGER, *European Cultures in Sport. Examining the nations and regions*, 2003.

<sup>17</sup> The Constitution of Greece (Sýntagma) was adopted by the Fifth Constitutional Assembly of the Hellenes and came into force in 1975. It was revised in 1986, 2001 and 2008.

The sports phenomenon has been regulated since 1975 by Article 16, Paragraph 9, which states the following: "*Sports shall be placed under the protection and high supervision of the State. The State shall subsidize and control unions of sports associations of all kinds as prescribed by law. The law also establishes the terms within which state subsidies are to be dispensed in accordance with the proper purposes of the associations themselves*".

Concerning the history of the Constitution of Greece, see G. KATROUGALOS, *The constitutional history of Greece, in the Balkan context*, on [www.servat.unibe.ch/icl/gr00m\\_.html](http://www.servat.unibe.ch/icl/gr00m_.html).

<sup>18</sup> The current Swiss Constitution (ted. Bundesverfassung, fr. Constitution Suisse) (which replaced the previous Constitution of May 29, 1874) was approved by popular vote on April 18, 1999 and came into force on January 1, 2000.

Of particular interest is Article 68, specifically titled "*sport*", within Section Three, which pertains to "*Training, research, and culture*". This article provides for the promotion of "*sport*" and, notably, "*sports education*".

"Art. 68: *Sport*.

1. *The Confederation shall encourage sport, and in particular education in sport.*
2. *It shall operate a sports school.*
3. *It may issue regulations on sports for young people and declare the teaching of sports in schools to be compulsory*".

Concerning the constitutional system in Switzerland, see T. FLEINER, A. MISIC, N. TOPPERWIEN, *Swiss Constitutional Law*, 2005.

Concerning the ordering of sports in Switzerland, see L.W. VALLONI, T. PACHMANN, *Sports Law in Switzerland*, Third Edition, 2018.

<sup>19</sup> The Spanish Constitution (Constitución española) was endorsed by the Cortes during the Plenary Sessions of the Congress of Deputies and the Senate on October 31, 1978. It was ratified by the Spanish people through a referendum on December 6, 1978, sanctioned by His Majesty the King before the Cortes on December 27, 1978, and came into effect on December 29 of the same year.

Article 43 (Title I, Chapter III) acknowledges the significant role of sports (and leisure) as a relevant component for the safeguarding of health.

In particular, this provision, as part of the regulation of the right to health, explicitly outlines the responsibility of public authorities to promote "*health education, physical education, and sports*", as well as to encourage "*the proper utilization of leisure time*".

Given the importance of this norm, it is deemed appropriate to quote its content.



- 4) Turkey (1982) considered sports as an essential element for the training and development of young people and as a tool for the "*improvement of the physical and mental health of all citizens*" at all ages <sup>(20)</sup>;
- 5) Russia (1993) included the development of "*physical culture*" and "*sports*" among the activities aimed at "*enhancing human health*" <sup>(21)</sup>;

---

“1. *The right to health protection is recognized.*

2. *It is incumbent upon the public authorities to organize and safeguard public health by means of preventive measures and the necessary benefits and services. The law shall establish the rights and duties of all concerned in this respect.*

3. *The public authorities shall promote health education, physical education, and sports. Likewise, they shall encourage the proper use of leisure time”.*

Concerning the organization of sports in Spain, see, in general: J.D.D. CRESPO PEREZ, *Sports Law in Spain*, Second Edition, 2019; concerning more specific issues, such as the functioning of Sports Justice: F. ADAM DOMENECH, *Deporte y Arbitraje: vía para la resolución de conflictos deportivos*, on *Revista Jurídica de Deporte y Entretenimiento*, n. 17, 2006, p. 17; A. MERINO RODRIGUEZ, *Los conflictos deportivos y sus formas de solución. Especial referencia al sistema disciplinario deportivo*, in *Introducción al derecho del Deporte*, by J. ESPARTERO CASADO, Madrid, 2004.

<sup>20</sup> The Turkish Constitution (1924) was radically amended first in 1982 and then in 2017 through a constitutional referendum, whereby the powers of the President of the Republic were greatly expanded and those of the Parliament were limited.

Of particular significance regarding the regulation of sports, as a means to ensure the training and development of young people and as a measure to enhance physical and mental health, are Articles 58 and 59, respectively.

“A. *Protection of the youth. ARTICLE 58.*

1. *The State shall take measures to ensure the education and development of the youth. ....*

2. *The State shall take necessary measures to protect youth from addiction to alcohol and drugs, crime, gambling, and similar vices, and ignorance.*

B. *Development of sports and arbitration. ARTICLE 59.*

1. *The State shall take measures to develop the physical and mental health of Turkish citizens of all ages and encourage the spread of sports among the masses.*

2. *the State shall protect successful athletes”.*

Concerning the organization of sports in Turkey, see A. GURSOY, *Sports Law in Turkey*, 2010.

<sup>21</sup> The Constitution of the Russian Federation was enacted in 1993, after the Russian constitutional crisis of 1993, and was adopted, following the outcome of a national referendum, on December 12, 1993.

Article 41 is of particular significance as it falls within the framework of regulating the right to health. It stipulates "*development of physical culture and sport*" among activities targeted at strengthening human health.

“1. *Everyone shall have the right to health protection and medical aid. Medical aid in state and municipal health establishments shall be rendered to individuals gratis, at the expense of the corresponding budget, insurance contributions, and other proceeds.*

2. *In the Russian Federation federal programmes of protecting and strengthening the health of the population shall be financed by the State; measures shall be adopted to develop state, municipal and private health services; activities shall be promoted which facilitate the strengthening of health, the development of physical culture and sport, ecological and sanitary-epidemiological well-being.*

3. *The concealment by officials of the facts and circumstances posing a threat to the life and health of people shall entail responsibility according to the federal law”.*

Concerning the organization of sports in Russia, see O. RYMNEVICH, *Sports Law in Russia*, Second Edition, 2018; D. ROGACHEV, O. SHEVCHENKO, *Sports Law in Russia*, 2016.

- 6) Croatia (2010) has aligned "*physical culture and sports*" with primary health protection; this is in the context of correlated core objectives attributed to local self-government units (<sup>22</sup>);
- 7) Hungary (2011) established "*sporting activity*" and "*regular exercise*" as a means of advancing and enforcing the right to "*physical and mental*" health (<sup>23</sup>);
- 8) Brazil (1988) assigned the State "*the obligation to promote formal and informal sports practices as a universal right for all*" (<sup>24</sup>);

---

<sup>22</sup> The current Constitution of the Republic of Croatia was enacted by the Parliament in 2010.

Article 135 (the text of which is provided here) allocates various responsibilities to local self-government units, such as primary health protection and "*physical culture and sports*", highlighting the significant role of sports (and leisure) as relevant components in health protection.

"1. *Units of local self-government shall administer affairs of local jurisdiction by which the needs of citizens are directly fulfilled, and in particular affairs related to the organization of localities and housing, zoning and urban planning, public utilities, child care, social welfare, primary health services, education and primary schools, culture, physical education and sports, customer protection, protection and improvement of the environment, fire protection and civil defence*".

Concerning the organization of sports in Croatia, see V. SMOKVINA, *Sports Law in Croatia*, 2017.

<sup>23</sup> The new "*Fundamental Law of Hungary*" was approved by the Parliament in Budapest on April 19, 2011, and came into effect on January 1, 2012.

Of particular interest is Article XX, which - within the framework of the regulation of the right to "*physical and mental*" health - provides, as a means of promoting it, "*regular physical exercise*".

"1. *Everyone shall have the right to physical and mental health.*

2. *Hungary shall promote the effective application of the right referred to in paragraph through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment*".

Concerning the ordering of sports in Hungary, see A. NEMES, *Sports Law in Hungary*, Second Edition, 2017.

<sup>24</sup> The Constitution of the Federative Republic of Brazil was promulgated in 1988.

Article 217 directly and specifically regulates the right to sports as a universal right, assigning the State the task of fostering "*formal and informal sporting activities*".

"*It is the duty of the State to foster formal and informal sporting activities as each individual's right, observing:*

I. *autonomy, as to their organization and operation, of entities and associations controlling sports;*

II. *allocation of public funds for promotion, on a priority basis, of educational sports and, in specific cases, high return sports;*

III. *differentiated treatment for professional and non-professional sports;*

IV. *protection of and granting incentives to nationally created sports*".

Concerning the regulation of sports in the Constitution of Brazil, see A. MENDEZ-A. CODATO, *The institutional configuration of sport policy in Brazil: organization, evolution and dilemmas*, on *Rev. Adm. Pública*, vol. 49, no.3, Rio de Janeiro, May/June, 2015, on [www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0034-76122015000300563](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0034-76122015000300563); G. CATALANO, *Comparazione Costituzionale sullo sport tra Italia e Brasile*, on [www.docsity.com/it/comparazione-costituzionale-sullo-sport-tra-italia-e-brasile/4536354/](http://www.docsity.com/it/comparazione-costituzionale-sullo-sport-tra-italia-e-brasile/4536354/); M.T. SPADAFORA, *Diritto del lavoro sportivo*, Roma, 2012, p. 58; R. G. HOSTERHOUDT, *Sport as a form of human fulfilment*, 2006.

- 9) Portugal (1976) established sports as a fundamental right that belongs to "everyone" as well as a means of "protecting" the right to youth and health through the implementation of a particularly extensive and significant discipline that was divided into three paragraphs (25).

## II. JOURNEY TOWARD THE RECOGNITION OF SPORT AT THE CONSTITUTIONAL LEVEL

Although sport was not initially included in the original text of the Italian Constitution, neither as a fundamental right nor as a freedom, unlike more modern Constitutions that have recognized varying

---

<sup>25</sup> The Constitution of the Portuguese Republic, adopted on April 2, 1976, marks the Constitution of the Third Republic and is the current constitution of Portugal. It officially came into effect on April 25, 1976.

Sport is regulated in three separate articles, dealing respectively with "health" (Art. 64), "youth" (Art. 70), and "physical culture and sport" (Art. 79).

Given the special interest of these regulations, it is deemed appropriate to quote their textual data.

\*

Article 64 (health) provides for "promoting physical fitness and sport" as an element to guarantee the right to health.

"1. Everyone shall possess the right to health protection and the duty to defend and promote health.

2. The right to health protection shall be fulfilled:

- a. By means of a national health service that shall be universal and general and, with particular regard to the economic and social conditions of the citizens who use it, shall tend to be free of charge;
- b. 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 also promoting physical fitness and sport at school and among the people; and by developing both the people's health and hygiene education and healthy living practises".

\*

Article 70 (youth) includes "physical education and sports" among the elements of "special protection to ensure the effective enjoyment of economic, social and cultural rights" of young people.

"1. In order to ensure the effective enjoyment of their economic, social and cultural rights, young people shall receive special protection, particularly:

- a. In education, vocational training and culture;
- b. In access to their first job, at work and in relation to social security;
- c. In access to housing;
- d. In physical education and sport;
- e. In the use of their free time.

2. The priority objectives of the youth policy shall be the development of young people's personality, the creation of the conditions needed for their effective integration into the active life, a love of free creativity and a sense of community service.

3. Acting in cooperation with families, schools, businesses, residents' organisations, cultural associations and foundations and cultural and recreational groups, the state shall foster and support youth organisations in the pursuit of the said objectives, as well as international youth exchanges"-

\*

Article 79 (physical education and sport) of the Constitution directly and specifically regulates the right to sports as a universal right, assigning the state the responsibility of "promoting... the practice and dissemination of physical education and sports".

With reference to the ordering of sports in Portugal, see: R. BOTICA SANTOS, A. MIGUEL MESTRE, F. RAPOSO DE MAGALHAES, *Sports Law in Portugal*, Second Edition, Kluwer Law, 2018.



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

degrees of space for sport in their original text, the writer believes that sport still possessed a significant legal basis in legal culture, also in Italy before the introduction of sport in Article 33 of the Italian Constitution (constitutional law n. 1/2023).

This is evident from the primary source discipline on the subject (see paragraph 1), the discipline of the European Union and international bodies (see paragraph 2) and the international and national medical-scientific culture (see paragraph 3).

### **1. Primary source recognition: general freedom to sport (Law no. 91/1981), right to sport for minors (Law no. 205/2017), importance of grassroots sport (Law no. 145/2018)**

1. Although sport wasn't acknowledged as a true fundamental right at the constitutional level for over 70 years, it has been codified as freedom in primary legislation for nearly forty years now. Specifically, Law No. 91 of March 23, 1981 (even though it pertains to the distinct subject of relations between companies and professional sportsmen) sought to establish a significant programmatic principle. This principle involves recognizing the unrestricted practice of sporting activities: "*The practice of sporting activity, whether conducted individually or collectively, professionally or recreationally, is free*".

This indication has expressed, since the early 1980s, a social and legal culture in line with modern Constitutions. In particular, in favor of guaranteeing the performance of physical activities by the community (then consolidated over time, up to the adoption of the last paragraph of Art. 33 Const.).

2. In particular, Law No. 205, Dec. 27, 2017 (Art. 1, para. 369(e)) expressly codified the existence of a real right to sports, although limited to minors only (and not extended to all individuals), enshrining the State's obligation to "*guarantee the right to the practice of sports as an irrepressible form of development of the minor's personality*" <sup>(26)</sup>.

---

<sup>26</sup> For the sake of comprehensiveness, here is an extract from Article 1, paragraph 369 of Law No. 205 dated December 27, 2017:

*"In order to support the strengthening of the Italian sports movement, a special fund called 'Single fund to support the strengthening of the Italian sports movement' is established at the Office for Sport of the Presidency of the Council of Ministers [...] These resources are intended to finance projects related to one of the following purposes:*

*e) to guarantee the right to the practice of sports as an irrepressible form of development of the personality of the child, including through the implementation of awareness campaigns".*

3. Subsequently, Law No. 145 of December 30, 2018 (Art. 1, paragraphs 629 et seq.) implemented a structural reform of national sports, establishing a new government entity, named "*Sport e Salute s.p.a.*" (which replaced the previous entity "*CONI Servizi s.p.a.*"). This new entity is overseen by a Board of Directors of only three members. Their appointment is determined by the Government Authority responsible for Sport, currently the Minister for Sport for the chairman's position, as well as the Minister for Health and the Minister for Education, University and Research <sup>(27)</sup>, in consultation with the Ministry for Economy and Finance, for the two director positions.

The transition from the previous system (which established the entity "*CONI Servizi s.p.a.*", by Law No. 178 of August 8, 2002) to the current one has raised significant questions regarding its compatibility with the principle of administrative decentralization (Article 5 of the Constitution).

This transition has been substantial, particularly concerning the appointment of the governance (now directly under government prerogative) and the financial aspect (with over 90 percent of the previous public contribution now allocated to this new entity). Specifically:

- 1) while the governance of "*CONI Servizi*" was previously appointed by the top management of the Italian Olympic Committee, the Board of Directors of "*Sport e Salute s.p.a.*" is appointed by the government, as outlined in Article 1, paragraph 633(d) of Law No. 145/2018 <sup>(28)</sup>;

---

<sup>27</sup> This appointment power currently rests with the Minister for Education, following the reform on January 20, 2020, as a result of which the Ministry for Education, Universities and Research was divided into two ministries, namely the Ministry for Education and the Ministry for Universities and Research. Despite profiles of regional competence, the role of the regions is disregarded, reflecting a trend in the legislature to supplant regional authority even in areas where regional competence could apply. This raises various issues regarding legislative discretion, which are explored in depth by V. BALDINI in *Le decisioni manipulative*, found in *La discrezionalità del legislatore nella giurisprudenza della Corte Costituzionale*, edited by M. SCUDIERO and S. STAIANO, Napoli, 1999.

<sup>28</sup> For the sake of completeness, the textual datum of the rule in question is given (translated verbatim into English):

*"The company shall be administered by a board of directors consisting of three members, one of whom shall serve as chairman. The chairman shall be appointed by the government authority in charge of sports after consulting the relevant parliamentary committees, shall be the legal representative of the company, shall chair the board of directors of which he is a member, and shall perform the functions of chief executive officer. The other members shall be appointed by the Minister of Health and the Minister of Education, University and Research, respectively, in consultation with the Minister of Economy and Finance, after consulting the relevant parliamentary committees".*



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

- 2) while the state previously allocated its contribution (approximately 410 million euros annually) to “*CONI Servizi s.p.a.*”, with the aforementioned reform, over 370 million euros were allocated to “*Sport e Salute s.p.a.*” (leaving the Italian Olympic Committee with the sole responsibility of organizing Olympic preparation activities, with an annual funding of about 40 million euros), as stipulated in paragraph 630 of Article 1 of Law No. 145/2018 <sup>(29)</sup>.

This reform has played a significant role in signaling a new political and cultural direction towards sports. Essentially, the State sought to directly oversee fundamental sports activities, encompassing both competitive and amateur sports, from both a governance and financial standpoint, while exclusively entrusting Olympic preparation activities to CONI.

This shift highlights the government's and legislature's focus on grassroots sports as an integral aspect of the right to health, especially for young individuals. This is evident in the allocation of the authority to appoint two board members to the Minister for Health and the Minister for Education, respectively.

## **2. The recognition of the social importance of sport and the right to sport by the European Union and international organizations (U.N., U.N.E.S.C.O., and I.O.C.)**

The recognition of sport as a cultural element contributing to the prevention and enhancement of health, a principle shared by modern Constitutions and recent national primary source legislation, reflects not only the legal culture of the European Union, but also the ethos of several international organizations to which Italy is a member. These organizations include the United Nations (U.N.), U.N.E.S.C.O. (United Nations Educational, Scientific and Cultural Organization) and the International Olympic Committee (I.O.C.).

---

<sup>29</sup> For the sake of completeness, the textual datum of the rule in question is given (translated verbatim into english):

"630. *As of the year 2019, the level of funding for the Italian National Olympic Committee (CONI) and Sport and Health Spa is set at an annual rate of 32 percent of the revenues actually collected from the state budget in the previous year, and in any case not less than a total of 410 million euros annually ... The resources allocated in the first instance shall be directed to CONI, amounting to 40 million euros per year, to cover expenses related to its operations and institutional activities, as well as to support Olympic preparation and assist the Italian delegation; to Sport and Health Spa, no less than 368 million euros annually; and to cover charges outlined in paragraphs 634 to 639, with an allocation of 2 million euros*".



1. The current Article 165 of the Treaty of the European Union (as amended in 2007 as a result of the Treaty of Lisbon, signed on December 13, 2007, and entered into force on January 1, 2009) expressly considers the social and educational value of sport, specifying that *"the Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organizing of education systems and their cultural and linguistic diversity"* (paragraph 1) and directs the Union's action at *"developing the European dimension of sport"*.

The subsequent European Parliament Resolution of February 2, 2012, essentially translated the aforementioned discourse into concrete actions for the development of the European dimension of sport. It outlined 40 specific points related to the *"social role of sport"* alone, highlighting various aspects such as *"the public health, social, cultural and economic benefits of sport"* (point no. 1), its positive impact on health and the reduction of healthcare expenditure (point no. 7), the significance of ensuring effective accessibility to sports facilities (point no. 9), and the role of sport as *"a means of promoting peace, economic growth, intercultural dialogue, public health, integration and the emancipation of women"* (point No. 19) <sup>(30)</sup>.

---

<sup>30</sup> Of particular interest are some points contained in that Resolution, which emphasized, among other things:

- 1) *"the benefits of sport socially, culturally, economically and for public health"* (point No. 1); the importance of sport for young people (*"integrating sport and physical activity at all levels of education in the Member States"*: point No. 3) and for the elderly (*"promoting the practice of sport among the elderly, since this practice contributes to social interaction and excellent health conditions"*: point No. 6);
- 2) the benefits of physical activity for health and for reducing health expenditure (*"stresses that sport, at all ages, is an area that offers great potential in terms of improving the general level of health of Europeans and calls, therefore, on the EU and the Member States to facilitate participation in sporting activities and to promote a healthy lifestyle that fully benefits from the opportunities to practice sports, thus reducing health expenditure"*: point no. 7);
- 3) the importance of effective accessibility to sports facilities (*"stresses the importance of making sports accessible to all citizens in different contexts, e.g., at school, at work, as a recreational activity or through sports clubs and associations"*: point No. 9)
- 4) the importance of sport as *"a means of promoting peace, economic growth, intercultural dialogue, public health, integration and the emancipation of women"* (point No. 19); for fundamental rights, take into account the problems related to the process of internationalization - Europeanization of domestic law as well as the problematic aspects of a constitutional protection of fundamental rights in V. BALDINI, *La tutela dei diritti fondamentali nell'esperienza contemporanea dello Stato a sovranità (sempre più) limitata*, on AIC Magazine, No. 3/2012.





Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

2. The United Nations General Assembly, by Resolution 67/296 on August 23, 2013, decided to designate April 6 (the date of the opening of the First Olympic Games in Athens in 1896) as "*the International Day of Sports for Development and Peace*" <sup>(31)</sup>.

3. In 1978, U.N.E.S.C.O. adopted the "*International Charter for Physical Education, Physical Activity, and Sport*" affirming sport as a "*fundamental right for all*" and as a beneficial element contributing to individual and collective advantages, such as improved health, socio-economic development, peace, and human dignity <sup>(32)</sup>.

4. The International Olympic Committee enshrined in the so-called "*Olympic Charter*" (Article 1, Paragraph 8) the principle that "*The practice of sport is a human right. Every individual must have the possibility of practicing sport*" <sup>(33)</sup>.

**3. The recognition of sports as a fundamental element of preventive medicine by the international (World Health Organization) and national (National Institute of Health) scientific community**

---

<sup>31</sup> In that resolution, the U.N. "*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 non-governmental 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*".

<sup>32</sup> In particular, the "*International Charter for Physical Education, Physical Activity and Sport*" emphasizes the following:

- 1) "*the practice of physical education is a fundamental right for all*" (point No. 1);
- 2) "*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*" (point No. 10);
- 3) "*proclaims 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*" (item No. 13).

<sup>33</sup> The International Olympic Committee (I.O.C.) serves as the pinnacle of the global sports system, with all National Olympic Committees (such as the Italian National Olympic Committee) and International Sports Federations affiliating with it.

At the core of its structure lies the "*Olympic Charter*" established in 1908 and subsequently revised multiple times. This charter delineates a comprehensive set of regulations and directives governing the organization of the Olympic Games and overseeing the operations of the Olympic movement, thereby encapsulating its fundamental tenets.

The recognition of sport as a fundamental element of preventive medicine goes beyond the legislative reform introduced by Law No. 145/2018. While this law aimed to emphasize the close connection between sport and health, it also reflects a more widespread acknowledgment within Italian society.

Today, both the international and national scientific communities recognize the pivotal role of sport in preventive medicine. This recognition is deeply ingrained in Italian culture, signaling a consensus among experts regarding the significance of incorporating sport into preventive healthcare initiatives.

1. In particular, at the international level, the World Health Organization (W.H.O.) has emphasized the significance of engaging in physical activity for both social and preventive health purposes, drawing upon extensive scientific research <sup>(34)</sup>.

Based on these assumptions, the World Health Organization has issued a set of "recommendations" directed at all nations, stressing the imperative of establishing comprehensive national policies that span multiple sectors. These policies are designed to facilitate the support and execution of programs and initiatives aimed at promoting physical activity across all age groups <sup>(35)</sup>.

---

<sup>34</sup> Of particular relevance appear to be the various studies and recommendations of the World Health Organization, with reference to the important correlation between sports and health and the need to develop a greater sports culture, aimed at the implementation of grassroots sports activity.

The following WHO studies (with related links) are noted: *Governance: Development of a draft global action plan to promote physical activity*, Geneva, 2018 ([www.who.int/ncds/governance/physical\\_activity\\_plan/en/](http://www.who.int/ncds/governance/physical_activity_plan/en/)); *Global strategy on diet, physical activity and health. Physical activity and young people*, Geneva, 2018 ([www.who.int/dietphysicalactivity/factsheet\\_young\\_people/en/](http://www.who.int/dietphysicalactivity/factsheet_young_people/en/)); *Report of the Commission on Ending Childhood Obesity*, Geneva, WHO, 2016 ([apps.who.int/iris/bitstream/10665/204176/1/9789241510066\\_eng.pdf?ua=1](https://apps.who.int/iris/bitstream/10665/204176/1/9789241510066_eng.pdf?ua=1)); *Global Action Plan for the Prevention and Control of Non-communicable Diseases, 2013-2020*, Geneva, WHO, 2013 ([apps.who.int/iris/bitstream/handle/10665/94384/9789241506236\\_eng.pdf;jsessionid=41F704F895D659AF8FF1F00E43BA4553?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/94384/9789241506236_eng.pdf;jsessionid=41F704F895D659AF8FF1F00E43BA4553?sequence=1)); *Interventions on diet and physical activity: what works. Summary report*, Geneva, WHO, 2009, 1 ([apps.who.int/iris/bitstream/10665/44140/1/9789241598248\\_eng.pdf?ua=1](https://apps.who.int/iris/bitstream/10665/44140/1/9789241598248_eng.pdf?ua=1)); *Steps to health: a European framework to promote physical activity for health*, Copenhagen, 2007 ([www.euro.who.int/\\_\\_data/assets/pdf\\_file/0020/101684/E90191.pdf](http://www.euro.who.int/__data/assets/pdf_file/0020/101684/E90191.pdf)).

<sup>35</sup> *The Global recommendations on physical activity for health of the WHO* (2010) ([www.who.int/dietphysicalactivity/factsheet\\_recommendations/en/](http://www.who.int/dietphysicalactivity/factsheet_recommendations/en/)) offer recommendations for engaging in physical activity across three age groups (5-17 years, 18-64 years, over 64 years). These guidelines focus on primary prevention strategies for cardiorespiratory, metabolic, musculoskeletal, cancer, and depressive disorders. Primarily targeting decision makers, these recommendations serve as a framework for informing national policies.

2. Furthermore, on the national level, a recent report from the Istituto Superiore di Sanità, specifically, the Istisan Report No.18/9 (translated verbatim into English) titled "*Movement, sport and health: the importance of physical activity promotion policies and the effects on the community*", underlined that "*physical activity serves as a primary tool for preventing chronic noncommunicable diseases, preserving mental and physical well-being, and enhancing the quality of life for individuals of all genders and age groups*"<sup>(36)</sup>.

This Report also stressed the importance of guaranteeing the effectiveness of the right to sports ("*principle of physical activity accessible to all*"), given the substantial implications of physical activity for both health (in terms of preventing and treating a wide array of significant diseases)<sup>(37)</sup> and financial

---

In 2013, the *Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013-2020* of the WHO highlighted a goal of achieving a 10 percent relative decrease in the prevalence of inadequate physical activity globally by 2025, among nine identified objectives. Emphasized the necessity of national intervention policies supporting health prevention through a multi-sectoral approach and collaborative efforts addressing modifiable behavioral risk factors, as well as health, economic, and environmental determinants.

Moreover, with the document *Health 2020: the European policy for health and well-being* ([www.euro.who.int/\\_\\_data/assets/pdf\\_file/0006/199536/Health2020-Short.pdf](http://www.euro.who.int/__data/assets/pdf_file/0006/199536/Health2020-Short.pdf)), the WHO has proposed coordinated efforts across all governments in the WHO European Region, spanning various areas and levels within each country, engaging stakeholders to enable all citizens to lead healthier and longer lives by incorporating regular physical activity into their lifestyles. According to estimates provided by the WHO, globally, one in four adults is deemed insufficiently active, with 80 percent of adolescents failing to meet recommended levels of physical activity. In Europe, however, more than one-third of adults and two-thirds of adolescents appear not to engage in adequate physical activity.

<sup>36</sup> The study, which synthesized all international scientific literature on the subject, highlighted "*the importance of promoting physical activity at both the individual and community levels through a multi-stakeholder and multi-sectoral approach*", describing "*international and national policies for the promotion of physical activity inspired by the recommendations of the World Health Organization*" and stressing the importance of effectively ensuring "*the principle of physical activity accessible to all*", including through "*the implementation of cross-sectoral programs, aimed at reducing the burden of disease and a reduction in direct and indirect costs caused by sedentariness*."

This Report is published on the institutional website of the Istituto Superiore di Sanità at the following links: [old.iss.it/publ/?lang=1&id=3128&tipo=5](http://old.iss.it/publ/?lang=1&id=3128&tipo=5) (abstract); [old.iss.it/binary/publ/cont/18\\_9\\_web\\_rev.pdf](http://old.iss.it/binary/publ/cont/18_9_web_rev.pdf) (full text).

It's important to note that the practical implications and scenarios regarding the exercise of the right to sports extend beyond just healthy individuals or those capable of fully responding to any form of physical activity.

The constitutional framework allows for the protection of fundamental rights even for "vulnerable" individuals: v. P. SCARLATTI, *La sentenza n. 141 del 2019 della Corte Costituzionale tra discrezionalità del legislatore e tutela dei diritti fondamentali delle persone vulnerabili*, on [dirittifondamentali.it](http://dirittifondamentali.it), 1/20, and, also, D. FERRI, *Persone con disabilità*, on [dirittifondamentali.it](http://dirittifondamentali.it), 1/20.

<sup>37</sup> The Istituto Superiore di Sanità study delved further into this aspect in paragraph 4, exploring the effects of physical activity on psychophysical health, both at the individual and collective levels. It highlighted that physical activity plays a pivotal role in preventing and treating a wide range of conditions, including cardiovascular

perspectives (pertaining to savings for the National Health Service, currently estimated at approximately 2.3 billion euros annually) <sup>(38)</sup>.

### III. AMENDMENT TO ARTICLE 33 OF THE ITALIAN CONSTITUTION

On September 26, 2023, Constitutional Law no. 1 <sup>(13)</sup> was adopted introducing a new final paragraph to Art. 33 of the Italian Constitution acknowledging the educational and social value of sport in all its forms and its role in promoting the overall health of individuals.

This amendment is the result of a long legislative journey that began in 1997, characterized by the succession of several constitutional reform proposals and bills. The new amendment reflects the content of the various texts presented in both the Senate and the House of Representatives, with the primary distinction being which article to intervene on.

#### 1. Legislative process for the amendment of Art. 33 of the Italian Constitution

The legislative process that led to the introduction of the final paragraph of Art. 33 lasted 25 years. This proposal arose for the first time during the XIII Legislative Term with the presentation of Bill No. 2414 <sup>(14)</sup>, titled “*Constitutional Protection of the Right to Sports and Recreational Activity*”. The bill proposed an amendment to Article 32 of the Constitution to recognize participation in sports

---

diseases, diabetes, overweight and obesity, musculoskeletal disorders, and various types of cancers. These effects vary depending on age groups (children, adolescents, adults, elderly) and specific situations such as pregnancy. Additionally, physical activity contributes to enhancing psychosocial well-being and improving work productivity.

<sup>38</sup> Paragraph 5 of the study further delved into this profile, focusing on the impact of physical activity on the community, particularly in terms of economic implications. It specifically addressed the quantification of savings for the National Health Service attributable to the adoption of healthy lifestyles, amounting to approximately 2.3 billion euros annually.

<sup>13</sup> Article 33, paragraph 7, was introduced in the Italian Constitution through Constitutional Law of September 26, 2023, No. 1 (Official Gazette No. 235 of October 7, 2023).

Article 1 of Constitutional Law n. 1/2023 reads as follows:

“To Article 33 of the Constitution, the following paragraph is added at the end:

«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».

<sup>14</sup> Senate of the Republic, XIII legislative term, Bill No. 2414, submitted on May 8, 1997, “*Tutela costituzionale del diritto all’attività sportiva e ricreativa*”. The Bill was introduced by Senators Maceratini, Servello, and Bucciero, on May 8, 1997.

and recreational activities as a vital part of the right to health. Various subsequent bills <sup>(15)</sup> followed the same approach, intervening on Art. 32 and mirroring the content of Bill No. 2414 <sup>(16)</sup>.

This approach was revisited during the XIV Legislative Term with Bill No. 318/2001 <sup>(17)</sup>, which positioned sport alongside art and science, highlighting its educational value (Art. 33). This shift broadened the scope of the constitutional revision from simply acknowledging the “*right to sporting activity*”, to emphasizing the educational and social value of sport and its contribution to physical and psychological well-being.

During subsequent legislative terms, further proposals arose to introduce sport into Art. 32 or Art. 33 of the Constitution <sup>(18)</sup>.

A new placement for sport in the Constitution was proposed on December 7<sup>th</sup>, 2021, with Bill No. 2474. This proposal aimed to introduce the promotion of sport in Art. 9 of the Constitution, which focuses on the promotion of culture, research, and the protection of the landscape and historical heritage.

Bill no. 2474 was, together with other five proposals regarding the inclusion of sports in the Constitution, merged into a unified bill <sup>(19)</sup> during the XVIII Legislative Term. The unified bill

---

<sup>15</sup> The content of Bill no. 2414 was presented in three subsequent proposals; 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’attività sportiva e ricreativa*”; 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’attività sportiva e ricreativa*,” 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’attività sportiva e ricreativa*”.

<sup>16</sup> The legislative process was explored in depth by L. SANTORO, *L’inserimento dello Sport in Costituzione: Prime Osservazioni*, on Fondazione Bologna University Press, Diritto dello Sport, Vol. 04, n. 02, 2023, pp. 9-23.

<sup>17</sup> The proposal was introduced by Carla Muzzuca Poggiolini. Cfr. 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 attività sportive*”-

<sup>18</sup> Cfr Chamber of Deputies, XVI legislative term, Bill No. 2276 submitted on March 11, 2009, and Chamber of Deputies, XV legislative term, Bill No. 2006 submitted on 16 January, 2007.

<sup>19</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*”;

progressed through the early stages of the legislative process and nearly completed it, securing approval from one of the two parliamentary chambers in both the first and second readings.

The consolidated text, which combined several proposals to amend Articles 9, 32, or 33 of the Constitution, ultimately intervened on Article 33. This choice focused on highlighting the "*value of sporting activity*" rather than establishing a "*right to sport*".

The text received approval in its first reading by the Chamber of Deputies, but the legislative process was left unfinished due to the early dissolution of the Parliament. Although the XVIII Legislative Term was initially set to end in March 2023, President Mattarella dissolved it on July 21, 2022, eight months ahead of schedule, following the government crisis during former Prime Minister Draghi's tenure.

In the subsequent legislative term, Parliament retained the content from the nearly adopted text and brought the legislative process to completion, adopting Constitutional Law No. 1 of September 26, 2023. This amendment marks an important milestone in Italian Constitutional history, codifying a value that represents a vital component of national and international society and culture.

## **2. Legislative Decision-Making and Article Selection for the Amendment**

As we have seen in the previous paragraph, various proposals were presented throughout the years to introduce sport into the Italian Constitution. The primary difference between these proposals lies in determining which article to amend. The primary alternatives that emerged were focused on amending Articles 9, 32 or 33.

- 
- 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*";
  - 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*";
  - 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*";
  - 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*";
  - 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*".





Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

Intervening on Art. 9 would have had both advantages and drawbacks. On the positive side, sport would have been included among the fundamental rights of the Constitution (Articles 1 through 12), representing a significant recognition. However, if sport was incorporated into Art. 9, its articulation would have been much more limited – likely reduced to just one or two words, such as “sport” or “sporting activity”, rather than the more detailed lines it receives under Article 33. Moreover, the legislator chose not to amend Article 9, because it was already in the process of being revised to include environmental protection, which could have created problematic overlaps with the recognition of sport <sup>(20)</sup>.

Several proposals centered on amending Article 32 of the Constitution, emphasizing the strong connection between physical activity and the right to health. As discussed earlier, many Constitutions worldwide incorporate sport within the framework of the right to health, a choice that carries both advantages and disadvantages.

The main advantage of this amendment would have been the formal recognition of a well-established principle in medical and scientific culture: the strong link between sport and health. This connection is so consolidated that the government named the new institution for the development of Sport in Italy “Sport e Salute” (Sport and Health). This political and cultural decision reflects the tie between sport and health, not only in the name, but also in the composition of its board, with the president appointed by the Government Authority responsible for Sport and the two members appointed respectively by the Ministries of Health and Education. Moreover, if sport had been introduced in Art. 32, it would have been recognized as a fundamental right for individuals and a key interest for society for the promotion of overall health.

However, intervening on Art. 32 would have limited the scope of constitutional protection for sport, by focusing solely on its role in promoting health. While this connection is important, it represents only one dimension of sports’ broader significance. In fact, sport also serves to promote other values, like individual and social education, which would have been overlooked in this narrower framework.

---

<sup>20</sup> Constitutional Law No. 1 of February 11, 2022, titled “*Amendments to Articles 9 and 41 of the Constitution regarding environmental protection*” was published in the Official Gazette No. 44 on February 22, 2022. By amending Article 9 the legislator introduced environmental protection, biodiversity, and ecosystems among the fundamental principles.



To provide a more comprehensive normative framework for sport, the legislator decided to introduce this value in Art. 33. This decision reflected the political will to emphasize the holistic role of sport in promoting physical education, overall well-being, and personal and societal development. Sport's role goes beyond merely promoting health; the legislator aimed to highlight the importance of encouraging physical activity not just for its health benefits, but also for its broader role in the growth of individuals and society as a whole.

Art. 33 of the Italian Constitution addresses the freedom of art, science, and education. It guarantees the right to free expression in these areas and outlines the state's role in overseeing education. By highlighting the significance of personal education and development, Article 33 paves the way for recognizing sport as a key element within this framework. Within the scope of Art. 33, sport can be regarded as an essential aspect of overall personal and societal growth.

### **3. Revised Art. 33 of the Italian Constitution**

To understand the importance of this amendment, we need to analyze its content. Constitutional Law No. 1/2023 introduced a new paragraph to Art. 33 that reads as follows: “*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*” <sup>(21)</sup>.

The paragraph begins with “*The Republic*”, which is the subject of the phrase. Here, the legislator entrusted the Republic with the task of recognizing the value of sporting activity. In this context, “*Republic*” refers to all its organs and powers, collectively charged with this duty. The new final paragraph of Article 33 must be understood in conjunction with Article 114, meaning that all components of the Republic are responsible for recognizing and promoting the values of sport. Art. 33 functions as a programmatic norm, providing a framework that guides legislators, policymakers, and public administrations toward the practical implementation of this value <sup>(22)</sup>.

---

<sup>21</sup> For the sake of completeness the textual datum in Italian of Art. 33 of the Constitution is given: “*La Repubblica riconosce il valore educativo, sociale e di promozione del benessere psicofisico dell'attività sportiva in tutte le sue forme*”.

<sup>22</sup> During the examination session no. 416 regarding DDL n. 2474, Paola Binetti made the following statement, underlining the responsibility of the Republic in ensuring widespread access to sport: “[*T*]his provision

The new paragraph contains the verb "*recognizes*", mirroring the language of Article 2 of the Italian Constitution. This wording implies that sporting activity is regarded as an intrinsic part of society, a fundamental reality that existed before any legislative action<sup>(23)</sup>, according to the Latin maxim "*ubi societas, ibi ius*", where there is society, there is law<sup>(24)</sup>.

In general, law not only mirrors social culture, but also steers it in a specific direction. To create a solid legal foundation, it is crucial to integrate principles rooted in social culture, even if they initially lack legal recognition; once codified these principles gain legal substance and authority. Here, the legislator did just this, by recognizing sport in the Constitution, it acknowledged the existing cultural importance of sport, but also encouraged its further development and integration into personal and social values.

The object of the recognition is the "*value ... of sporting activity in all its forms*". In Article 33, the term "*value*" is used for the first time in a substantive context, underlining the significance of certain behaviors that warrant legal protection<sup>(25)</sup>. The legislator introduced the expression "*sporting activity*",

---

*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>23</sup> G. LIOTTA, *Ordinamento statale e ordinamento sportivo*, on G. LIOTTA, L. SANTORO, *Lezioni di diritto sportivo*, VI ed., Milano, 2023, p. 26.

<sup>24</sup> Santi Romano argues that law is more than just a set of rules; it is an organized structure or system, a social body that operates with stability and a degree of autonomy from other systems. He refers to this organized entity as an "institution" equating it with the concept of a legal order.

Since *ubi societas, ibi ius* ("*where there is society, there is law*"), every institution forms its own legal order. These legal systems may interact with or influence one another to varying extents, or they may remain completely separate.

<sup>25</sup> G. MARAZZITA, *Il riconoscimento del valore costituzione dell'attività sportiva*, January 10, 2024, on *federalismi.it*, 1/2024, p. 121; G. BASILICO, *Il riconoscimento costituzionale del valore dello sport*, 2024, Vol. 30, Fasc. 1, pp. 54-64; M. PROTTO, *Dalla Costituzione alla Superlega: l'irresistibile ascesa giuridica dello sport*, on *Diritto e pratica del lavoro*, 2024, Vol. 41, Fasc. 28, p. 1460; E. BATTELLI, *Il riconoscimento del valore educativo e sociale dell'attività sportiva in Costituzione*, on *Osservatorio costituzionale*, 2024, Fasc. 2, pp. 26-66; L. CASTIGLIONE, *Verso il servizio sport. Considerazioni a seguito della riforma dell'art. 33 della Costituzione*, on *Amministrativ@mente.com*, 2/2024, pp. 738-752; L. FERRARA, *Lo sport in Costituzione*, on *Riv. dir. sport.*, 2/2023, pp. 431-438.

and not “*sport*”, to underline the importance of grassroots sports and not just competitive endeavors. Sports are relevant and of interest to Italy and Europe financially <sup>(26)</sup>, but they are even more important for the general system in terms of grassroots sports activities. This explains the codification not of the concept of sport, but of “*sporting activity in all its forms*”, as all the doctrine underlined <sup>(27)</sup>.

The axiological content of sporting activity is defined across three dimensions, each complementary to the other and of equal importance, without any hierarchical order. The values of sport recognized by Article 33 are the “*Educational and social value... and its role in supporting physical and psychological wellbeing*”.

The first value of sport is outlined in Art. 33 is the “*educational*” one. The decision to prioritize education is based on the placement of the amendment within Article 33, which pertains to personal development and education. Sport is significant from an educational standpoint, because it imparts essential values that go from the expression of one’s personality (Art. 2 Const.) to the promotion of peace (Art. 11 Const.). Sporting activity and movement instill important values that shape and form citizens such as loyalty, fairness, and fair play, all of which are vital for civil coexistence.

Furthermore, Art. 33 underlines the “*social value*” of sport. Sport often acts as a strong unifying force and a means of integration for individuals and groups experiencing various forms of disadvantage or marginalization, whether socioeconomic, ethnocultural, or related physical or cognitive challenges.

---

<sup>26</sup> The government with this amendment emphasized the importance of grassroots sports, however elite sports have had and have a significant social and financial implications, demonstrated by the government's repeated interventions in sports governance. For example, in 2023, the government introduced a major sports reform through five legislative decrees (nos. 36-40 of 2021), and just two months ago, a decree was issued establishing a new organization responsible for overseeing the financial stability of sports clubs, a role previously held by Covisoc. By entrusting this responsibility to an external commission, the government underlined the importance of financial balance in sports. Though the financial aspect is vital for Italy and Europe, the government recognizes the greater significance of promoting basic sports activities, which is why the law codifies not just the concept of sport, but the full range of sporting activities in all their forms.

<sup>27</sup> Minister Abodi highlighted the importance of the constitutional revision, underlining the need for a “*sport for all and by all*” approach. The concept of “*sport for all*” emerged on the international stage and has developed into a model of social intervention, promoting sports participation as a means of education and social integration. This goes beyond competitive success, it means fostering a culture of physical activity that is inclusive and accessible to all. It underscores the significance of diverse sports activities and the essential role of sports associations in promoting participation across all levels of society ([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](http://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)).



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

The commitment to fostering the social role of sport is also evident from projects and initiatives carried out to promote participation and the creation of infrastructure in marginalized areas. For instance, the initiative “*Fondo Sport e Periferie 2023*” focuses on selecting projects for funding to improve sports infrastructure in small Italian towns and marginalized areas. This initiative aims to facilitate the regeneration of urban spaces and, ultimately, benefit the overall collective well-being <sup>(28)</sup>.

Although the legislator ultimately chose to amend Art. 33 Const. Instead of Art. 32, it nevertheless emphasized the importance of the link between sport and health. The amendment goes beyond merely acknowledging the role of sport in promoting health, by incorporating the phrase “*mental and physical well-being*”. This choice is intentional and aimed to present a broader and more contemporary interpretation of health. The decision seeks to elevate the concept of well-being beyond simply being free from illness, embracing an holistic perspective that emphasizes the balance between mental and physical health.

#### **IV. IMPLICATIONS OF THE REVISION TO ARTICLE 33 OF THE ITALIAN CONSTITUTION**

The revision of Art. 33 Const., introduced by Constitutional Law no. 1/2023, marks an important moment in the recognition of the role of sport in Italian society.

However, it also brings to light the need for practical steps to ensure the reform is effectively implemented. Sporting activity, now codified as an implicit social right, requires proactive measures from public authorities to make sport actually accessible to everyone.

Given the broad scope and significance of this provision, its effects must be evaluated over the medium to long term. There are two key perspectives to consider:

- a) first, the necessity for a broad cultural change, and
- b) second, the need to evaluate tangible outcomes, particularly concerning infrastructure and implementation.

---

<sup>28</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, (on [www.sport.governo.it/media/vs5fh3z2/decreto\\_approvazione\\_graduatoriasep23\\_signed.pdf](http://www.sport.governo.it/media/vs5fh3z2/decreto_approvazione_graduatoriasep23_signed.pdf)).



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

Undergoing a cultural reform means changing societal attitudes toward the role of sport, emphasizing its educational, social, and health benefits. The fact that sport has been included in the constitution does not guarantee an immediate and widespread impact. Therefore, we need a deliberate effort by all relevant actors to promote and disseminate a broader sporting culture, ensuring that its values reach and resonate with the entire community.

We must start with schools, where future generations are shaped and new cultural values are formed. This requires that legislators, the government and all relevant administrations create comprehensive regulations, both at the primary and secondary levels, to recognize and promote these values <sup>(29)</sup>.

To complement the cultural shift, it is important to take concrete actions and develop infrastructure to make the constitutional recognition of sport a reality. The effectiveness of these efforts will depend on how well we improve sports facilities, provide access to physical activities and incorporate sport into daily life.

The 2021 legislative reform, especially Decree n. 38/2021, focuses on enhancing sports facilities, including community centers and local sports fields. Local governments must consider sports facilities as integral components of their regulatory frameworks, ensuring that they are included in future development plans. This is already evident in some smaller towns with forward-thinking administrations that should be taken as an example nationwide <sup>(30)</sup>.

---

<sup>29</sup> Several key initiatives have been launched to promote sports activities in schools across Italy that may be taken as an example for future projects.

One of these is “Sport di Classe” a collaboration between the Ministry of Education and CONI, aimed at introducing physical education in elementary schools to enhance students' educational experiences.

Another significant initiative, “Scuole Aperte Allo Sport”, targets secondary schools, offering sports activities both during and after school. Additionally, student championships, organized in partnership with MIUR, CONI, and the Italian Paralympic Committee, introduce competitive sports to secondary school students. These efforts collectively foster a culture of physical activity among students.

<sup>30</sup> A notable example of an initiative aimed at restructuring and improving local infrastructure is the Caivano project.

In this case, the government focused on revitalizing a sports complex, previously known as the Delphinia Sports Center, which had been abandoned and vandalized since 2018. The government tasked Sport e Salute with restoring the facility, which spans 50,000 square meters, with a financial investment of € 9.3 million ([www.sportesalute.eu/primo-piano/4740-illumina-caivano-presentato-a-palazzo-chigi-il-progetto-di-risqualificazione-e-ricostruzione-dell-ex-centro-sportivo-delphinia.html](http://www.sportesalute.eu/primo-piano/4740-illumina-caivano-presentato-a-palazzo-chigi-il-progetto-di-risqualificazione-e-ricostruzione-dell-ex-centro-sportivo-delphinia.html)).

The governmental action must target the promotion of physical education across all age groups. It must intervene on school and university facilities, as well as, foster sport in work environments (both public and private). Moreover, it is essential to extend the intervention to senior citizens to improve their lifestyle and life expectancy, resulting in lower healthcare expenditures.

The initiatives should take advantage of parks, gardens, and other available spaces, including the development of cycling paths and the removal of barriers that prevent access to physical activities.

It is crucial to clarify that this focus should not solely be on organized sports (already embedded in Law n. 280/2003). Instead, here, we are talking about a broader, more inclusive approach to physical activity that benefits all members of society, regardless of their age or background. This shift emphasizes the importance of integrating physical activity into daily life, fostering a culture that values health and well-being for everyone.

## CONCLUSION

The government, through the revision of Art. 33 Const., has formally acknowledged sport's educational, social and health benefits within the Italian Constitutional framework.

This was the result of a long journey, characterized by various attempts to codify sport in the fundamental charter since the late 1990s, showing the evolving understanding of sport as a key element for personal growth and public health. This constitutional reform also aligns Italy with a contemporary approach already taken at the international level by the most recent constitutions, the European Union, the international community, and medical-scientific literature <sup>(31)</sup>.

---

<sup>31</sup> Regarding the identification of fundamental rights, legal doctrine highlights that they are increasingly shaped by a wide range of legal sources.

In this regard, V. BALDINI, in *What is a Fundamental Right: The Classification of Fundamental Rights. Historical-Theoretical-Positive Profiles*, published on *dirittifondamentali.it*, I, June 15, 2016, emphasizes that "*the experience of fundamental rights is increasingly characterized by a pluralism of sources of production at different levels (national, supranational, international)*".

This reform is particularly important because it reflects the evolving principles embedded in our national culture <sup>(32)</sup>. In particular, the three distinct values of sport: as a means for personal expression and development, for integration in social relationships and for health improvement.

A primary aspect to consider is the value of sport as a means of expression and development of individual personality, especially for young people. This value of sport is particularly significant within the fundamental right to the expression of one's personality, “*both as an individual and within social groups*” (Art. 2 of the Constitution), aimed at enabling the “*full development of the human person*” (Art. 3, paragraph 2, of the Constitution) <sup>(33)</sup>.

Secondly, physical exercise (whether individual or collective, whether for its own sake or aimed at a recreational or competitive goal) plays an important “*social role*”, serving as an element of social interaction, dialogue, integration and inclusion. It acts as a positive value in the expression and development of human personality and, consequently, in interpersonal relationships.

Thirdly, sport plays a very significant role as a means of enhancing individual and collective health, especially in terms of prevention. It is important to ensure that individuals participate in sport at all ages, and particularly for the elderly <sup>(34)</sup>. This is especially important in the current historical context,

---

<sup>32</sup> Regarding constitutional amendments, scholars note that such changes may be introduced as a reflection of a new social culture. In this regard, see V. BALDINI, *La Costituzione e la sua revisione. Appunti per una discussione in tema*, on [dirittifondamentali.it](http://dirittifondamentali.it), 2014, I, April 8, 2014, where the author emphasizes that “*the Constitution, as Uwe Volkmann states, is not merely a normative text; its actual identity is tied to a common sentiment that is both concrete and emotional, ultimately connected to what society sees or wants to see in the Constitution*”. He also highlights “*the idea of the Constitution as a ‘process,’ open to the influence of external communications that help shape the meaning of its provisions*”.

The same author (V. BALDINI, *Diritto, pluralismo culturale, Costituzione. La prospettiva storico-filosofica quale ‘precomprensione’ per l’interpretazione dei ‘valori’ costituzionali*, on [dirittifondamentali.it](http://dirittifondamentali.it), 2012, I, January 15, 2012)) further notes that the Constitution functions in relation to the legal system as a “*true social product*” and “*is more than just a (mere) normative act at the top of the hierarchy of legal sources in the state system; it is the fundamental law and, at the same time, an expression of a historical-cultural identity in which the state community ultimately recognizes itself*”.

<sup>33</sup> In particular, on the recognition of sporting activity as a personality right, see: E. BENEVENTO, *L’attività sportiva in relazione ai diritti della personalità*, in *Comparazione Dir. Civ.*, 2017; T. PENSABENE LIOTTI, *Il diritto allo sport: tra esigenza socialmente rilevante e interesse fondamentale della persona*, in *Il Dir. Amm.*, 2012, 3, p. 4145.

<sup>34</sup> As indicated in the referenced Istituzionale Report from the Italian National Institute of Health, “*physical activity is one of the main tools for the prevention of non-contagious chronic diseases, for maintaining psycho-physical well-being, and for improving the quality of life, for both sexes and at all ages*”.



where life expectancy is progressively increasing, making it necessary for all citizens, particularly the elderly, to engage in regular physical activity to ensure a good quality of life and to limit costs for the National Health Service <sup>(35)</sup>.

A last element, that is important is the the correlation between sport and “peace” which — though seemingly excessive — was first indicated in the “*International Charter for Physical Education, Physical Activity, and Sport*” by UNESCO in 1978 <sup>(36)</sup>. This connection was reaffirmed in the European Parliament Resolution of February 2, 2012 <sup>(37)</sup> and finally in the United Nations General Assembly Resolution of August 23, 2013, No. 67/296 <sup>(38)</sup>, where there is a specific “*United Nations Office on Sport for Development and Peace*” (U.N.O.S.D.P.).

This correlation between sport and peace reflects a global culture in the history of humanity, from the “*Olympic truce*” to the words expressed by Pope Francis during the Angelus on April 5, 2020 <sup>(39)</sup>.

---

<sup>35</sup> With regard to the importance of physical activity in the community for reducing healthcare costs, see paragraph 5 of the referenced Istisan Report 18/9 (“*Movimento, sport e salute: l’importanza delle politiche di promozione dell’attività fisica e le ricadute sulla collettività*”) and point 7 of the European Parliament Resolution dated February 2, 2012 (“*emphasizes that sport, at all ages, is a sector that offers great potential for improving the overall health level of Europeans and therefore invites the EU and member states to facilitate participation in sports activities and to promote a healthy lifestyle that fully benefits from opportunities to engage in sports, thereby reducing healthcare costs*”).

<sup>36</sup> For completeness, the textual data of point No. 6 is provided, which outlines all the benefits of sport, including reconciliation and peace: “*Physical education, physical activity, and sport can bring a variety of individual and social benefits, such as health, social and economic development, active participation of youth, reconciliation, and peace*”.

<sup>37</sup> For completeness, the textual data of point No. 19 is provided, which identifies sport as “*a tool to promote peace, economic growth, intercultural dialogue, public health, integration, and the empowerment of women*”.

<sup>38</sup> For completeness, the textual data of the passage is provided, indicating that the main purposes of the International Day of Sport are “*development and peace*” so much so that, with this resolution, the U.N. invited “*states, the United Nations system, and in particular the United Nations Office for Development and Peace, relevant international organizations, and international, regional, and national sports organizations, civil society, including non-governmental organizations, the private sector, and all other interested parties to cooperate, observe, and raise awareness for the International Day of Sport for Development and Peace*”.

<sup>39</sup> In this sense, see the exact words spoken by the Pope in the referenced Angelus: “*During this period, many events are suspended, but the best fruits of sport emerge: resilience, teamwork, brotherhood, and giving one’s best. Therefore, let us promote sport for peace and development*” ([www.ansa.it/sito/notizie/sport/2020/04/05/papa-francesco-i-valori-dello-sport-per-rilanciare-lo-sviluppo\\_257c0c3e-a577-406f-9757-167ac36e3caa.html](http://www.ansa.it/sito/notizie/sport/2020/04/05/papa-francesco-i-valori-dello-sport-per-rilanciare-lo-sviluppo_257c0c3e-a577-406f-9757-167ac36e3caa.html)).



Rivista di Diritto Sportivo - Fondata nel 1949 da Giulio Onesti  
Direzione scientifica: Alberto M. Gambino - Giulio Napolitano

It is a natural consequence of the well-known fact that physical activity releases the negative energy inherent in human nature [*“animus belligerans hominis”* <sup>(40)</sup>] and produces endorphins, generating positive energy [the so-called *“runner’s high”* <sup>(41)</sup>], an expression of the *“animus ludens hominis”* <sup>(42)</sup>. Thus, it becomes a functional tool for the objectives of *“reconciliation and peace”*, a consideration that should be particularly emphasized in light of the principle that *“Italy repudiates war”* and pursues *“peace and justice among nations”* (Article 11 of the Constitution).

The recognition at the constitutional level of sporting activity tasks the Republic with the responsibility of incentivizing the culture and education of sports and health, as well as to encourage its practice and to create the conditions to ensure its effectiveness.

The role of the Republic, comprised of all its organs, is a fundamental one. In fact, the inclusion of sport in the constitution is only the beginning. The real challenge lays in translating it into practical measures, such as expanding infrastructure and ensuring equal access to sports opportunities for all. To implement this reform effectively, public authorities must work with European and international bodies, local communities, and sports associations.

---

<sup>40</sup> This concept (*“animus belligerans hominis”*) is expressed by I. MARANI TORO and A. MARANI TORO, *Gli ordinamenti sportivi*, Milano, 1977.

<sup>41</sup> It is a well-known fact, to the point of being described even on Wikipedia: *“The term Runner’s high refers to the euphoric sensation, similar to that derived from the use of certain narcotic substances, experienced by many athletes during prolonged physical activity. Before targeted research was conducted on this subject, this condition was mostly attributed to psychological causes rather than a neurochemical one: in fact, some studies dating back to 2008 have proven the dependence of this euphoric sensation on the release of endorphins by the pituitary gland during physical exercise of a certain duration”*.

<sup>42</sup> This concept (*“animus ludens hominis”*) is expressed by J. HUIZINGA, *Homo ludens*, Torino, 1938.