JUDGMENT NO. 160 YEAR 2019

In this case, the Court considered a referral order from the Regional Administrative Court (TAR) of Lazio questioning, during proceedings between sports manager Luigi Dimitri and the Italian National Olympic Committee (CONI) and others, the constitutionality of Article 2(1)(b) and (2) of Decree-law no. 220 of 19 August 2003 (*Urgent provisions on sports justice*), converted with amendments into Law no. 280 of 17 October 2003. Dimitri had applied to the TAR for annulment of a three-year suspension issued against him by a sports tribunal with exclusive power to decide on matters pertaining to sports sanctions, also claiming compensation. The TAR raised a question of constitutionality regarding Article 2 of Decree-law no. 220 of 2003, referring, furthermore, to the Constitutional Court's previous interpretation of this provision in its Judgment no. 49 of 2011. While this judgment reaffirmed the possibility of seeking compensation for damages in such cases before administrative courts, it did not allow for the possibility of extending judicial protection to the annulment of disciplinary measures issued by tribunals with jurisdiction in the sports justice system.

The referring court also noted elements of unconstitutionality in Article 2 of Decree-law no. 220 of 2003, alleging conflict with Articles 103 and 113 of the Constitution, as well as with Article 24 of the Constitution read in conjunction with them. The Constitutional Court, however, found these points unfounded, clarifying that, as stated in its 2011 judgment, the right to seek compensation for damages is sufficient to safeguard the legitimate interests and individual rights of claimants, and the impossibility of seeking the annulment of a sanction issued by a body with exclusive jurisdiction is in fact the outcome of a not-unreasonable balancing exercise carried out by the legislator between the constitutional principle of full and effective judicial protection and the protection afforded to the autonomy of the sports justice system, which is amply protected in Articles 2 and 18 of the Constitution. On this matter, the Court added that the sports justice system is autonomous and has its own unique characteristics that, like any legal system, has its own organization and regulations, so when it comes into contact with the State legal system, this contact must be regulated in the light of the autonomy of the sports justice system and the constitutional provisions from which it springs, at the same time ensuring the right to a defence and the principle of full and effective judicial protection enshrined in Articles 24, 103 and 113 of the Constitution. The Court affirms that the protection of legitimate interests under Articles 103 and 113 does not imply the necessity for a mechanism to annul sanctions issued by the public administration, and indeed, the remedy of compensation alone is not unknown to the Italian legal system, provided that it is in accordance with the principle of reasonableness. Finally, the Court finds that the need for forms of temporary protection in relation to claims brought before a court can be adequately met thanks to the atypical and broad-ranging precautionary measures available. The Court therefore dismisses all the points raised by the referring court as groundless.

[omitted]

THE CONSTITUTIONAL COURT

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 2(1)(b) and (2) of Decree-law no. 220 of 19 August 2003 (*Urgent provisions on sports justice*), converted with

amendments into Law no. 280 of 17 October 2003, initiated by the Regional Administrative Tribunal for Lazio in the proceedings pending between Luigi Dimitri and the Italian National Olympic Committee (*Comitato olimpico nazionale italiano*, CONI) and others, pursuant to a referral order of 11 October 2017, registered as no. 197 in the 2017 Register of Referral Orders and published in the *Official Journal of the Republic* no. 3, first special series 2018.

Considering the entries of appearance of Luigi Dimitri, the Italian Football Federation (FIGC), the CONI, and the intervention submitted by the President of the Council of Ministers.

having heard Judge Rapporteur Daria de Pretis in chambers on 17 April 2019;

having heard counsels Amina L'Abbate for Luigi Dimitri, Luigi Medugno for the FIGC, Giulio Napolitano and Alberto Angeletti for the CONI, and State Attorney Carlo Sica for the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– The Regional Administrative Tribunal [*Tribunale amministrativo regionale*, or TAR] of Lazio – to which a sports manager registered with the Italian Football Federation (*Federazione italiana gioco calcio* – FIGC) had applied for the annulment, after suspension and an order to pay compensation for damages, of the decision of the Sports Guarantee Committee [*Collegio di garanzia dello sport*] of the Italian National Olympic Committee [*Comitato olimpico nazionale italiano*] (CONI), which confirmed the disciplinary measure against him consisting of three years' suspension issued by the Federal Court of Appeal [*Corte federale di appello*] of the FIGC – questions the constitutionality of Article 2(1)(b) and (2) of Decree-law no. 220 of 19 August 2003 (*Urgent provisions on sports justice*), converted, with amendments, into Law no. 280 of 17 October 2003.

In the part submitted to the Court for examination, Article 2 of Decree-law no. 220 of 2003 (under the heading "Autonomy of the sports justice system") establishes that the sports justice system has exclusive power to decide matters relating to "disciplinary action and the imposition and application of related disciplinary sanctions" (paragraph 1(b)), and that in this regard "clubs, associations, affiliates, and members must apply, in accordance with the provisions of the statutes and regulations of the Italian National Olympic Committee and the Sports Federations referred to in Articles 15 and 16 of Decree-law no. 242 of 23 July 1999, to the disciplinary bodies of the sports justice system" (paragraph 2).

In the opinion of the referring court, the above provisions may be unconstitutional, even in the light of the Constitutional Court's interpretation given in Judgment no. 49 of 2011. On the basis of this ruling, handed down in relation to questions similar to those now before this Court, in disputes concerning non-technical disciplinary sanctions in the sports context and impinging on positions legally protected in the Italian legal order, it is possible to seek compensation for damages before administrative courts with exclusive jurisdiction, but judicial protection cannot be extended to allow the annulment of disciplinary measures.

In this interpretation too, the provision allegedly violates Articles 103 and 113 of the Constitution with regard to aspects "not fully examined" in the previous ruling as they were "deemed to be 'absorbed' in the objections concerning the violation of Article 24 of the Constitution". It also appears to present points of conflict with Article 24 of the Constitution "read in conjunction with the same Articles 103 and 113 of the Constitution",

already examined by this Court in relation to the exclusion of interim judicial protection under the ordinary jurisdiction.

[omitted]

3.– Regarding the merits, the questions raised are unfounded.

3.1.– The referring court argues complains first of all of the violation of Articles 103 and 113 of the Constitution have been violated. Classifying sports-related disciplinary decisions as administrative measures, an expression of the public powers attributed to the national sports federations and the CONI, would require the legally protected positions that they affect to be classified as legitimate interests, with the consequence that it would not be possible to deny the holders of such interests the judicial protection of annulment before the administrative court, otherwise, the result would be an infringement of the aforementioned constitutional provisions on judicial protection against actions taken by the public administration.

[omitted]

[In the above-mentioned Judgment no. 49 of 2011] it is stated that the provision of a "diversified mode of judicial protection" of individual rights and legitimate interests limited to compensation for loss – according to the interpretation offered by the "living law" – is sufficient to avert the unconstitutionality of the challenged provision. This conclusion – reached upon observation that the legislator thus achieved a not-unreasonable balancing of the interests at stake – implies finding the "explicit exclusion of direct jurisdiction regarding measures through which disciplinary sanctions are [...] imposed" (point 4.5. of the *Conclusions on points of law*) compatible with the Constitution, an exclusion that extends to the effective protection of the legitimate interests that may be affected by the sanctions. It is therefore clear that, insofar as it affirms that "the lack of possibility to seek annulment" does not violate "the provisions of Article 24 of the Constitution", judgment no. 49 of 2011 in no way leaves room for the various doubts regarding constitutionality due to violation of Articles 103 and 113 of the Constitution, which, in the wording of the judgment itself, make up the "constitutional basis" for the possibility of seeking annulment.

[omitted]

Regarding the merits of the case, Judgment no. 49 of 2011 excluded the hypothesis that the aforementioned constitutional provisions had been infringed, since the challenged provisions, in the interpretation established by the settled case law and accepted by this Court, leaves open the possibility that those who believe that their rights or legitimate interests have been infringed by the imposition of disciplinary sanctions, may take legal action to obtain compensation and that this form of remedy – compensation equivalent to the loss actually suffered – despite being different from the annulment generally available to administrative courts, is in any event able, in the case at hand, to meet the constitutional requirement of the necessary judicial protection of legitimate interests. The legislator's choice expressing this is in fact the outcome of the not-unreasonable balancing exercise made by the legislator between the aforementioned constitutional principle of full and effective judicial protection and the safeguards afforded to the autonomy of the sports justice system – which is amply protected in Articles 2 and 18 of the Constitution – "a balance that has led it [...] to exclude the possibility of judicial intervention, which has greater impact" on this autonomy, while maintaining the remedy of compensation for damages.

3.2.2.– Having thus established that the questions raised concerning the provision challenged with regard to Articles 103 and 113 of the Constitution have been examined

in detail in the frequently mentioned Judgment no. 49 of 2011, this Court considers that there are no reasons whatsoever to depart from its ruling that the question was groundless, which deserves to be fully upheld, both with regard to the importance of the constitutional values at stake and the evaluation of the reasonableness of the balance found by the legislator in its detailed definition of the system of judicial protection in sport – provided in the legal framework established in Decree-law no. 220 of 2003 and also thus interpreted in the "living law".

Furthermore, with regard to what was already stated at length in the abovementioned judgment, it will be sufficient to highlight a number of further points, the discussion of which is prompted by the arguments presented in the referral order.

The first reference is to the – in some respects – autonomous and original nature of the sports justice system, which, like any legal system, has the traditional characteristics of plurisubjectivity and its own organization and regulations.

Within the framework of the pluralist structure of the Constitution, oriented to the openness of the State system to other systems, the sports organization system too, as such and in its various organizational and functional branches, is safeguarded by the constitutional provisions that recognize and guarantee the rights of individuals, not only as individual persons, but also in the social groups in which their personality is expressed (Article 2 of the Constitution) and which ensure the right to associate freely for those ends that are not forbidden to the individual by criminal law (Article 18). Consequently, when the two systems come into contact through the intervention of the State legislator, possible relations with the State legal system must be regulated taking into account the autonomy of the sports justice system and the constitutional provisions in which it is rooted.

On the other hand, the legislative framework regarding mechanisms regulating (including directly) relations between the sporting system and the State system is limited by the obligation to respect constitutional principles and rights.

State regulation of the sports justice system must therefore remain within the limits of what is necessary to balance the autonomy of the system and respect for other constitutional guarantees that may arise, including – as far as they are of interest here and in terms of the sports justice system – the right to a defence and the principle of full and effective judicial protection, as enshrined in Articles 24, 103 and 113 of the Constitution.

In concrete terms, all this means that while it obviously cannot lead to the total sacrifice of the guarantee afforded by the judicial protection of legitimate rights and interests, protection of the autonomy of the sports justice system may nevertheless justify choices by the legislator that, without excluding it, can mould it in such a way as to avoid causing "non-harmonic" interference with it, as the legislator deemed that constitutive protection does in this case.

With Judgment no. 49 of 2011, as we have seen, this Court adopted an adaptive ruling that considers the interpretation offered by the "living law" to be the "key to interpretation" of the provision submitted for examination, deeming it able to dispel the doubt, justified by the literal wording of the challenged provision, that it may preclude any form of judicial protection. On the basis of this reconstruction, an administrative judge may in any case be aware of disciplinary questions concerning subjective rights or legitimate interests, since the explicit exclusive jurisdiction of sports justice, while excluding the possibility of annulment, does not affect the right of those who believe that their legally protected positions – including those of legitimate interest – have been infringed, to take legal action for compensation. The exclusive authority of the sports

justice system does not extend to compensation, and claims for damages may not, in any case, be brought before sports tribunals.

This constitutionally oriented interpretative choice is based on an assessment of the non-unreasonableness of the balance reached by the legislator, which excludes "the possibility of action by the courts that have a greater impact on the autonomy of the sports regulatory system" (point 4.5. of the Conclusions on points of law) and limits intervention to compensation for the loss of legally protected positions involved in questions in which the autonomy and stability of legal relations as a rule takes precedence over actual protection in a specific form, due to the importance of technical and disciplinary aspects in the world of sports. In fact, this is a context in which the sets of rules governing each sport and their associated competitions have evolved independently from one another in line with the particular developments in each sector and usually present a high level of specificity and technicality, which should be maintained to the greatest extent possible.

3.2.3.– The argument that it is a constitutional necessity for legitimate interests to be protected through the possibility of having a judgment annulled, on the grounds of which the referring court concludes that any legislative limitation of such a form of judicial protection against acts and measures of the public administration is incompatible with Articles 103 and 113 of the Constitution, must be rejected.
As this Court has already stated, if there is no doubt that the fundamental principles of our constitutional system, as expressed in Articles 24 and 113 of the Constitution, must be rigorously applied to guarantee the legal positions of those who hold them, this does not mean that the aforementioned Article 113 of the Constitution, correctly interpreted, aims to ensure, in every case and unconditionally, unlimited and immutable judicial protection against administrative decisions; rather, the ordinary legislator enjoys some discretion in regulating the manner and effectiveness of the judicial protection available (Judgments no. 100 of 1987, no. 161 of 1971 and no. 87 of 1962). More specifically, this Court stated that "[t]he second paragraph of Article 113 cannot be interpreted without linking it to the paragraph immediately following it, which contains the provision whereby the law may determine which court or tribunal may annul measures of the public administration in the circumstances and with the effects provided for by the law itself. This means that this power to annul is not granted to all courts and tribunals without distinction, nor is it permitted in all cases, and it does not produce the same effects in all cases" (Judgment no. 87 of 1962). This applies, provided, of course that, for the constitutional principle referred to in Articles 24 and 113 of the Constitution to be considered to have been respected, it is in any case "indispensable [...] that a provision departing from the generally accepted model for challenging administrative measures be both reasonable and adequate" (Judgment no. 100 of 1987).
3.2.4. – Limitations on judicial protection – of which the referring court complains, emphasizing the lack of a remedy able to fully restore a compromised legally protected position – lie not only, as seen above, within what is constitutionally tolerable as a result of the above-described balancing but, in any case, are not unknown to the legal system.
As also recalled in Judgment no. 49 of 2011 (point 4.5. of the *Considerations on points of Law*, which mentions the provision of Article 2058 of the Civil Code, referenced by Article 30 of the Code of Administrative Procedure), the exclusion of the constitutive protection afforded by annulment and the limitation of judicial remedies to compensation for damages is not an unknown option in our legal order. On the contrary, this choice

represents a “very widespread form of remedy considered fully legitimate in various sensitive areas”, including, as the case law of the Court of Cassation has observed, the field of employment law, precisely in connection with the provisions challenged here (Court of Cassation, Joint Civil Divisions, Judgment no. 32358 of 13 December 2018). And this Court too, ruling on the same question of compulsory safeguards in the field of employment, “has expressly denied that the balance of values underlying Articles 4 and 41 of the Constitution, an area in which the legislator cannot but exercise its discretion, imposes a specific system of safeguards (Judgment no. 46 of 2000, point 5. of the *Considerations on points of law*)”, recognizing that “[i]n the exercise of its discretion, the legislator may well provide for a protection mechanism, including one merely entailing pecuniary compensation (Judgment no. 303 of 2011), provided that this system is in accordance with the principle of reasonableness” (Judgment no. 194 of 2018).
On the other hand, if, as we have seen above, compensation is not in general terms an inadequate form of protection of the rights of persons who have been subjected to sports sanctions, one must not overlook, in a context pertaining to public law such as that in question, the importance assumed by the administrative court’s incidental evaluation of the legitimacy of the measure in question, which the sports justice system is also required to take into consideration.
The exclusion of constitutive protection does not, as a rule, involve constitutionally unacceptable consequences for the adequacy of protective measures, namely, the impossibility of obtaining the temporary suspension of the effectiveness of measures imposing disciplinary sports sanctions. The need for forms of temporary protection with regard to claims brought before a court, itself falling within the scope of the guarantees offered by Articles 24, 103 and 113 of the Constitution, can indeed be met by the fact that the precautionary measures available to it are atypical and broad. Under Article 55 of the Code of Administrative Procedure, courts may adopt those “protective measures [...] that appear, according to the circumstances, most suitable to provisionally guarantee the effects of the decision regarding the appeal”. Such protection can also be afforded through the possible issuing of orders to pay sums of money on a provisional basis in such circumstances.

[omitted]

4.– In conclusion, all the questions raised by the referring court are unfounded.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

declares unfounded the questions of constitutionality of Article 2(1)(b) and (2) of Decree-law no. 220 of 19 August 2003 (*Urgent provisions on sports justice*), converted with amendments into Law no. 280 of 17 October 2003, raised by the Regional Administrative Tribunal of Lazio, with reference to Articles 24, 103 and 113 of the Constitution, with the order referred to in the headnote.
Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 17 April 2019.