



Ca' Foscari
University
of Venice

**Master's Degree programme
in Economia e gestione delle aziende
Curriculum: International Management
"Second Cycle (D.M. 270/2004)"**

Final Thesis

**A multi-level analysis of the contractual
relationship between professional footballers
and football clubs.**

Supervisor

Ch. Prof. Vania Brino

Assistant supervisor

Ch. Prof. Adalberto Perulli

Graduand

Marco Granzotto

Matriculation Number: 842849

Academic Year

2016 / 2017

Index

Introduction	1
Chapter 1. The normative framework regulating the profession of professional footballers in Italy.	6
1.1 The relationship between the State legal system and the sport legal system in Italy.	6
1.2 The sport employment relationship before the law 23 marzo 1981, n.91.....	9
1.3 The law 23 marzo 1981, n. 91 Norme in materia di rapporti tra societa' e sportivi professionisti (Norms on the relationship between society and sport professionals).....	12
1.4 The role of F.I.G.C. and the N.O.I.F. (Norme organizzative interne).....	27
1.5 The collective bargaining agreements between the A.I.C. (Associazione Italiana Calciatori), the L.N.P.A. and the F.I.G.C. (Federazione Italiana Giuoco Calcio).....	43
Chapter 2. An historical analysis on the evolution of the EU sport law.	58
2.1 The Walrave and Donà cases.	58
2.2 The Bosman ruling.....	61
2.3 The role of the UEFA in the European football industry.....	83
2.4 The Treaty of Lisbon.	91
Chapter 3. The international regulatory system of football.	98
3.1 The FIFA.....	98
3.2 The use of codes of conduct and codes of ethics in football.....	114
Conclusions	126
Bibliography	138

Introduction

The aim of this thesis is to examine the contractual relationship between professional footballers and their clubs, as regulated by national and international laws and organisms. The base for this work is represented by the current legislation: the Italian sport law system, especially the law 23 marzo 1981, n. 91 Norme in materia di rapporti tra società e sportivi professionisti (Norms on the relationship between society and sport professionals), the European regulation on the matter, and the “The professional Football Player Contract Minimum Requirements” and other norms promulgated by the international organism of the Fédération Internationale de Football Association (FIFA), among others.

As it will be examined, the regulatory landscape that characterizes the world of football is composed by a plethora of different legislative interventions and by several actors. In order to have a clear vision of this situation, the thesis will follow a precise path, proceeding along the legislative pyramid, starting from the Italian sport law, passing through the European legislation on the matter and arriving to analyse the role of the most important football institution, the FIFA.

The topics treated are particularly interesting because they allow to see football under ‘a different light’, focusing the attention not on the sporting character of it, but on the legislative, economic and social ones of one of the most globalized social phenomena in the world. The social relevance of football is an aspect that has to be underlined, this sport in fact this sport is one of the few that is able to involve so many people worldwide and to be part of the national culture in almost all the countries in the world.

The thesis is structured in three chapters corresponding to three different levels, as we said before, of the legislative pyramid: national, European and international.

The first chapter begins framing the sport legal system into the wider State legal system in Italy. This distinction is necessary to recognize the autonomy of the sport legal system, even though it remains subordinate to the State one, and of the institutions operating in this field, as the F.I.G.C.. and the C.O.N.I. –the first paragraph of the chapter lists the duties and the role of this institution –.

Talking about the sport employment relationship of athletes in Italy requires to symbolically divide the legislative landscape into two periods, one before the law n.91/1981 and one after. The period before this law is characterized by the sentences of the organisms characterizing the Italian justice system that tried to cover the legislative gap created by the lack of legislative references on sport and specifically on the sport employment relationship – the presence of the law n.91/1981 has not stopped the interventions of the judges –.

In this sense, the law n.91/1981 intervened to solve this situation, regulating the relationship between society and sport professional, which since that moment was qualified as a subordinate employment relationship. This law finally provided a legislative reference for the profession of the professional athletes, listing also a series of duties and rights that their employment conditions implies.

Among the different institutions that have helped to regulate on these matters, the F.I.G.C. is the most important for what concerns football. The paragraph dedicated to it starts analysing the structure and the role of this association, focusing the attention on one of the most powerful legislative intervention of the F.I.G.C., the N.O.I.F.. These norms treat several topics, some of them are the same of the law n.91/1981, from the regulation of the professional clubs to the norms regulating the contractual relationship between clubs and footballers.

However, the role of the Federation is not limited to the promulgation of this norms, in fact, among the roles of this organisms, we can find how it have had an active role in the promulgation of the collective bargaining agreements between the A.I.C., the L.N.P.A. and the F.I.G.C itself. This agreement, one of the three involving the different leagues, is emanated with the intention to give actuation to the article 4 of the above-mentioned law, which, as we will see, transfer the responsibility to edit the standard contract to the different sport federations, in conjunction with the representatives of the categories involved. As in the case of the law n.91/1981, this Agreement covers many aspects that regard the employment relationship between footballers and clubs, specifying them widely and defining duties and rights of both the parties. An analysis of the content of the standard contract of the L.N.P.A., which is one of the documents annexed to the Agreement, concludes the chapter on the Italian legislative framework regulating the profession of professional footballers.

The passage from the Italian to the European legislation on the matter – 2nd chapter – implies an immersion on a vaguer legislative landscape. In fact, with regard to sport, the legislation at an European level appears to be scarce, due to the fact that until the Treaty of Lisbon – approved in 2009 –, sport did not have a legislative reference in the treaties of the EU.

Before that Treaty, the legislative system was based principally on the interventions of the ECJ, such as the ones in the Walrave and Donà cases. However, the Bosman judgment in 1995 was the one that change profoundly the EU sport law and not only. In fact, this judgement established that the '3+2' rule, envisaged by the UEFA, was contrary to the principle of freedom of movement of the workers and that the transfer fee in case of expired contract was an inapplicable rule, basing this decision on the article 48 of the EEC.

This judgement revolutionized the world of football in Europe, causing a direct intervention of the UEFA which during the years has intervened regulating the European football through, for example, the home-grown player rule or the FFP. These interventions are analysed, in addition with the agreement on the minimum requirement for standard player contract, in the paragraph dedicated to the UEFA.

As we have said before, sport was not among the ‘objects’ of the treaties of the EU until the Treaty of Lisbon. In this sense, the last paragraph of the chapter aims to provide a clear vision of the legislative path that has conducted the EU’s institutions to legislate on this matter, however it is important to remember that the insertion of the sport in a treaty is only the first step of a path that has to be started by the EU.

If the EU is only at the beginning of this path, the FIFA, at an international level, is actively involved since many years in the regulatory activity of football. As we will see in the third chapter, this organism has been able to gain more and more power during the years, acquiring a position of hegemony in the world of football.

After an introduction on the FIFA, the chapter will deal with two of the most important documents emanated by this institution, the Professional football player contract minimum requirements and the Regulations on the Status and Transfer of Players, concluding the dissertation with some considerations about the role of the FIFA framed in the international regulatory system.

After that, the chapter will conclude this thesis with an analysis of the role of the code of conduct and ethics, first in general and then specifically with regard to the world of football – in this case the analysis will proceed from the top, the FIFA Code of Ethics, to the bottom, the Juventus FC Code of Ethics –.

In order to treat the topics of this thesis, many sources have been considered such as the official documents and websites of the different institutions – F.I.G.C., UEFA, FIFA, EU –, the official documents of the judgements considered and the existing doctrine and scientific studies on this matter, available online and not.

Chapter 1. The normative framework regulating the profession of professional footballers in Italy.

1.1 The relationship between the State legal system and the sport legal system in Italy.

In order to explain the relationship between the State legal system and the sport legal system, preliminary for the analysis of contractual relationship between professional footballers and football clubs in Italy, an introduction on the sources of the law is fundamental.

The State legal system refers to “the set of rules of law that regulate a community”¹, identifying a hierarchy of sources as defined in the Italian legal system: 1) the Treaty establishing the European Economic Community (TEEC) and the EU regulations; 2) the Italian Constitution and the constitutional laws; 3) the ordinary law of the State; 4) the regional laws; 5) the regulations; 6) the customary law.²

The plurality of the legal systems is nowadays fully accepted into the State legal system, considered as a whole³, and among them it is possible to distinguish a set of rules unified and identified as the sport legal system.

The definition of the sport legal system as a sectorial legal system requires, following the thought of Giannini⁴, the presence of three elements: the plurality of the juridical subjects, the norm-setting and a form of organization.

¹ GALGANO F., *Diritto privato*, XV edizione, ed. CEDAM, 2012, p.12.

² *Ibid.*, p.34.

³ CARETTI P., DE SIERVO U., *Diritto costituzionale e pubblico*, Giappichelli editore, 2012, p.9-10. The plurality of the legal systems has as “founding father” in Italy the jurist Santi Romano in the first years of the XX century.

⁴ GIANNINI M.S., *Prime osservazioni sugli ordinamenti giuridici*, Riv. Dir. Sport, 1949 (cited by Dalla Costa).

The recognition of an “autonomous” sport legal system came progressively, starting from the work of Cesarini Sforza⁵, and in parallel with the structuring of the sport, from playful activity to competitive and working activity. However, it is opportune to remember two characteristics. First of all, this distinction between legal systems does not imply a subordination of the State legal system, which operates as sovereign, in respect with others and, secondly, the sport legal system has a global nature, with I.O.C. as central institution.⁶

Given this vision of the law systems, it is then important to single out the sources of the norms regulating the world of sport in Italy, focusing our attention on those related to football, that, after a long debate, are recognized in: the Comitato Olimpico Nazionale Italiano C.O.N.I. (the Italian Olympic Committee), as recognized member of the I.O.C., the sport federations (F.I.G.C. relatively to the world of football), the Italian State, the EU, the UEFA and the FIFA (these two operating at a European and international level).⁷

In this chapter we will focus our attention on the role of the C.O.N.I., being it the most important institution in the sport’s system in Italy and in the world, leaving the dissertation about the other organisms and their role for the second part of the thesis.

The C.O.N.I. is the public entity responsible for “the coordination and the control of the organization of the sport activities on the national territory”⁸, born in 1914 as a private entity thanks to the initiative of the pre-existent federations and posed as member of the International Olympic Committee (I.O.C.).

⁵ For a more detailed study: W. CESARINI SFORZA, *La teoria della pluralità degli ordinamenti giuridici e il diritto sportivo*.

⁶ VALORI G., *Il diritto nello sport*, Giappichelli Editore, 2016, p.6.

⁷ DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, ed. Egida, 1993, p. 9-13.

⁸ C.O.N.I., *Statuto*, 2014, article 2-11, p.5-19.

The actual shape and functions of the C.O.N.I. are the result of different legislative modifications occurred since its foundation.⁹ Among them it is fundamental to mention: the law 16 febbraio 1942, n.426 – the so-called “legge istitutiva del C.O.N.I.” – (regulation that recognized C.O.N.I.), the law 20 marzo 1975, n.70 (disposition on the reorganisation of the public institutions) and the law 15 marzo 1997, n.59 (the Bassanini law) that led to the so-called decree law Melandri, which implied a complete restructuring of the C.O.N.I. and the sport federations¹⁰.

Keeping in mind the distinction between C.O.N.I. as political organisms and the operating arm of the C.O.N.I. Servizi S.p.a.¹¹, nowadays it is responsible for: “the promotion of the maximum diffusion of sport activity”, the norms for the prevention and the repression of the use of performance-enhancing drugs (institution of the Tribunale Nazionale Antidoping as body of justice), the norms that “regulate the membership of foreign athletes”, the principles needed to “conciliate the economic and the social dimension of sport”, the approval of the statutes of the single federations, the guarantee of “fair legal procedures for the dispute settlement in the sport legal system”, the supply of public funds to the federations, “the protection of the educational formation of young athletes” and the safeguard of the health of the athletes among others.¹²

Inside the structure of the C.O.N.I. are instituted the Collegio di Garanzia dello Sport (the Guarantee Committee of Sport) and the Procura Generale dello Sport (the Public Prosecutor Office of sport), as part of the sport disciplinary body. The first institution is the last instance

⁹ VALORI G., *Il diritto nello sport*, p. 30-36.

¹⁰ Decree law modified and integrated by the decree law Urbani-Pescante (decree law 8 gennaio 2004, n.15).

¹¹ Institution of C.O.N.I. Servizi S.p.a. thanks to the law 8 agosto 2002, n.178.

¹² Ibid.em.

of the sport justice, the second is the organism responsible for the coordination and the control of the activities conducted by the public prosecutors.¹³

Certainly, one of the most important documents emanated by the C.O.N.I. is the code of sport conduct¹⁴ that defines “the duties of loyalty, honesty and probity, based on the principles and practice recognized by the different federations”, which all the athletes and the people committed in sport activities are encouraged to respect.¹⁵

Despite the autonomy and power accorded to the C.O.N.I., its activities and role have to be exercised in accordance with the Italian legislative system, which has its roots in the law n.91 marzo 1981, as far as the sport legal system concerned.

1.2 The sport employment relationship before the law 23 marzo 1981, n.91.

Although nowadays the professional side of the sport, and not only its recreational one, is fully recognized by the society and the jurisprudence, a deeper historical and normative analysis tells us that it was not always like this.

The law 23 marzo 1981, n.91 (Norms on the relationship between society and sport professionals) is only a middle step, although the most important, in the evolutive process of the juridical discipline regarding the sport legal system and the sport employment relationship in particular.

¹³ Ibid., article 12, p. 20.

¹⁴ The content of the code of conduct will be treated in the second part of the thesis.

¹⁵ Ibid., article 13 bis, p. 26.

The first step of this process in Italy can be found in the law 16 febbraio 1942, n.426 the so called “legge istitutiva del C.O.N.I.” (regulation that recognized C.O.N.I.). Nevertheless, it represented a rare example of the intervention of the Italian legislative organism until 1981.

Otherwise it is possible to find during this period many judgements of the Supreme Court of Cassation and tribunals, sometimes also discordant, which tried to cover the legislative gap, qualifying the sport employment relationship.

The judgement 21 ottobre 1961, n.2324 of the Supreme Court of Cassation, relatively to a litigation between A.C. Milan and its employee, the footballer Raccis, sentenced that the employment relationship can be subsumed within the context of the subordination¹⁶, as configured by the article 2094 of the Civil Code.

According to this judgement, footballers are subjected to the hierarchical and directive power of the club and their performances, as professional athletes, present the nature of the continuity, exclusivity and professionalism.

This interpretation was also given in the judgement 26 gennaio 1971, n.174, in favour of the Torino Calcio, relatively to the request of compensation after the death of the footballer Gigi Meroni, reconducting the employment relationship to the nature of credit relationship, so in the nature of subordination.¹⁷

Different orientations regarding the sport employment relationship, successively resulted in contradiction with the one of the law 23 marzo 1981, n.91, were given during ‘60s and ‘70s.

A first juridical orientation was inclined to configure the sport employment relationship as an associative contract, with the scope of the performance of the sport activity, assuming

¹⁶ FANFANI P., *La causa del contratto di collaborazione sportiva. Spunti per una ricerca*, Riv. Giustiziasportiva.it, 2007, 3, p. 8.

¹⁷ DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 34-35.

a coordination between club and athlete, rather than a dependency link. This vision was strongly contrasted observing that the economic nature of the relationship has the predominance in front of the associative one.¹⁸

A second orientation has conducted the sport employment within the field of the unnamed contracts, referring to the autonomy of the will of the part, as established by the article 1322 of the Civil Code. This interpretation was applied by the Tribunal of Turin in the judgement regarding a litigation between the Associazione Football Club Juventus and the Amministrazione delle Finanze.¹⁹

Other theses were debated during those years, and even later, arriving to assimilate the employment relationship to the contract for the provision of professional services, starting from the conditions of the self-employment, or also to configure the employment relationship as a form of atypical contract. This last interpretation was well supported by elements such as the presence of signing bonuses for the transferred footballers and the possibility to lend the employee for a determined agonistic period, cases that do not appear in a normal employment contract.²⁰

Among the different orientations, as it will be explained subsequently, the prevailing one declared the subordinate nature of the employment relationship.

¹⁸ Critique moved in CANAPELE, *Appunti sul rapporto giurico tra società sportive e calciatori*, Riv. Dir. sport., 1950, 3-4, p.23 as cited in DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 36.

¹⁹ VESPIGNANI L., *Il rapporto tra il giocatore e le società sportive*, Riv. Dir. sport., 1960, p.339 as cited in DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 37.

²⁰ DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 39-41.

1.3 The law 23 marzo 1981, n. 91 Norme in materia di rapporti tra societa' e sportivi professionisti (Norms on the relationship between society and sport professionals).

A great incentive for the emanation of the law 23 marzo 1981, n. 91 came from the magistrate's order promulgated by the Milan's district court on 7th July 1978, which prevented the representatives of football clubs from conducting negotiations and stipulating contracts, the so-called *calcio-mercato*.²¹

According to the order, the footballers were defined as subordinate workers, obliged to be subject to the placement norms established by the law n.264/1949, an orientation in contrast with the assertion of the Cassation in the pronouncement 2 aprile 1963, n.811.

In order to prevent the interruption of the football season, the Italian government immediately intervened issuing the legislative decree 14 luglio 1978, n.367, converted in law n.430/1978, which excluded the sport employment relationship from the application of the placement norms. The decree, however, did not cover the legislative gap on the juridical qualification of it.

The debate regarding the qualification of the employment relationship, widespread during the '60s and '70s as explained previously, also involved the Italian Parliament during the parliamentary discussion about the final legislative text of the law 23 marzo 1981, n. 91.

In fact, the original draft law, approved as first by the Senate, imagined the qualification of the athletes as self-employed, but this vision was changed, by the text approved by the Chamber of Deputies, into the opposite solution, identifying them as subordinate workers.²²

²¹ MAIETTA A., *Lineamenti di diritto dello sport*, Giappichelli Editore, 2016, p. 72.

²² LIOTTA G., SANTORO L., *Lezioni di diritto sportivo*, Giuffrè editore, 2016, p. 127-128.

The law 23 marzo 1981, n. 91 has represented and represents the starting point of the normative production on the professional sport, followed during the years by several interventions of the Italian legislative organisms.

Now it is opportune to examine in detail the articles of this law that directly affect the employment relationship between professional athletes and clubs, as modified by the successive interventions occurred, examining also possible interpretative problems and possible interpretations.²³

1.3.1 The articles of law n.91/1981.

The first chapter of the law is dedicated to the “professional sport”, starting with the definition of the ‘sport activity’ contained in the first article that is, as defined by Durante, the celebration of the sport²⁴ as a “free activity that can be conducted collectively or individually, in a professional or non-professional (amateurish) way”.

This definition establishes that the professional and the amateurish part of sport are distinct, in conjunction with the article 2 and the regulation of the single federations and the C.O.N.I., specifying that sport is a free activity that, extending the meaning of the definition, can be conducted outside the structures considered by the law.²⁵

Instead, the definition of the categories subjected to this law is delegated to the second article, which states that “The athletes, the trainers, the technical-sporting instructors and the athletic trainers are defined professional sportsmen if they exercise continually the sport activity in exchange for payment.”

²³ The articles not related with the employment relationship will not be indicated by the thesis.

²⁴ DURANTI D., *L'attività sportiva come prestazione di lavoro*, Riv. Dir. lav., 1983, p.704 as cited by MAIETTA A., *Lineamenti di diritto dello sport*, p. 74.

²⁵ DI NELLA L., *Il fenomeno sportivo nell'ordinamento giuridico*, Pubblicazioni della Scuola di specializzazione in diritto civile dell'Università di Camerino, 1999, p.146.

The article refers to the norms promulgated by the federations, in accordance with the directives of the C.O.N.I., in order to define the fields in which the law is applied.

What emerges from article 2 is that it is not the conduction of the sport activity that qualifies the professional sportsman, but rather the recognition of the sport federations, strengthening in this way the autonomy of the sport legal system.

As a consequence, this definition seems to exclude all the athletes of those federations that do not recognize the professionalism, for which the relative normative has to be considered referring to the general labour law²⁶, evaluating the application from time to time.²⁷

Nevertheless, according to the majority of scholars, this definition must not be interpreted in a restrictive way²⁸, considering that the legislator did not intend to exclude a possible extension of the plethora.²⁹

Once given the definition of the set of individuals which the law refers to, the article 3 solves the most debated controversy regarding the sport employment relationship, establishing that “the performance for consideration of the athlete constitutes object of a subordinate employment contract regulated by the norms of this law”.

In addition, the legislator provides a range of conditions that imply the application of the norms related to the contract of self-employment, which confirm the necessary continuative nature of the relationship for the subordinate one, as stated by the article 2.³⁰

Despite the fact that this last provision was, and is still nowadays, criticized because of the presence of the subsection c, which states a temporal limitation (8 hours per weeks, or 5

²⁶ TOSI P., *Sport e diritto del lavoro*, Argomenti di diritto del lavoro, Volume 3, 2006, p.717-718.

²⁷ VALORI G., *Il diritto nello sport*, p. 263-264.

²⁸ SANINO M., VERDE F., *Il diritto sportivo*, ed. CEDAM, 2015, p.227

²⁹ MAIETTA A., *Lineamenti di diritto dello sport*, p. 75.

³⁰ For a deeper analysis, it is possible to examine the D.M. 31 gennaio 2003, n. 98.

days per month, or 30 days per year) for the application of the self-employment typology of contract, using although the expression “even having continuative nature”.

According to the doctrine, this provision constitutes a modification of the type of the subordination, as provided by the article 2094 of the Civil Code, for which the temporary and occasional of the performance do not imply the exclusion of the subordinate nature.

Another problem is that the article cites exclusively the athletes, not including the other professional figures present in the article 2. Some scholars have argued that the legislator did not want to provide them with the same type of absolute presumption, leaving the evaluation to be made by case to case, as also confirmed by the jurisprudence interventions, which pose their attention especially on the negotiation will of the parts and the modalities of its conduction.³¹

After the dispositions of the article 3, the law passes to the article 4 which regards the “discipline of the subordinate sport employment”, establishing that “the relationship of sport performance for compensation is constituted through direct hiring and with the stipulation of a written contract, under penalty of nullity, between the sportsman and the recipient society, according to the standard contract prepared, in accordance with the agreement stipulated every three years between the national federations and the representatives of the categories interested.”

In addition, it also states: “the duty for the society of the contract’s deposit at the federation for the approval”, “the intervention of the standard contract clauses in case of pejorative ones”, “the duty to insert in the individual contract the clause containing the obligation of the sportsman to respect the technical instructions and prescriptions for the achievement of the agonistic scopes”, “the faculty to introduce an arbitration clause”, “the

³¹ MAIETTA A., *Lineamenti di diritto dello sport*, p. 76-77.

prohibition to insert non-compete clauses” and “the faculty of the federations to constitute a fund for the payment of the compensation for seniority”.

The article confirms the onerousness of the contract, as stated also by the article 3, and the incompatibility with the application of the placement norms of the law n.294/1949, allowing the professional to negotiate directly, or through an agent, the conditions of his contract.

It is debated in the doctrine whether or not the four requisites established for the stipulation of the contract of sport subordinate employment (written form, conformity with the prescriptions of the federations, deposit of the contract, approval of the responsible federation) should be prescribed for the validity of the contract, or if the nature is recognized only to the written form, as the aside “under penalty of nullity” seems to indicate.

According to the more widespread opinion and the jurisprudence ³², the interpretation that appears is the one that envisages the nullity also referred to the other three requisites; opinion sustained also by the presence of the possibility of the intervention of the standard contract clauses in case of pejorative ones.³³

Particularly interesting is also the insertion of the duty of professionals to respect the technical instructions given by the society, which has, for its part, the obligation to allow the athlete to participate at the training and the physical preparation, as recognized by the jurisprudence and the collective agreements.

Inspired by the will to not limit the mobility of the professionals, the provision of a non-compete clause seems to work in parallel with the article 2105 of the Civil Code that establishes the obligation of loyalty, although the collective bargaining agreement between

³² Cass. civ., 4 marzo 1999, n.1855; Cass. civ. 23 febbraio 2004, n.3545.

³³ LIOTTA G., SANTORO L., *Lezioni di diritto sportivo*, p. 153-154.

A.I.C., F.I.G.C., LNP includes the possibility to insert option clauses, under determined conditions.³⁴

In addition to the above-mentioned clauses, as the non-compete one, the article 5 establishes that the contract governing the employment relationship between the professional sportsman and the sport society can contain “the apposition of a termination deadline, not exceeding five years since the beginning of the relationship.”

It also foresees the possibility to renew the terms of the contract and also “the release of the contract between societies, before its expiration, as long as the other side agrees and the modalities established by the federations are observed”, peculiarity largely applied especially in the football industry, where the trading of footballers has assumed important economic relevance.

Regarding football, the modalities are determined by the N.O.I.F. (Norme organizzative interne, the internal organisational norms of the F.I.G.C.) in the articles n.95, 102 and 103, as it will be examined in the next paragraphs.

According to some scholars, article 5 seems to embrace the theory of the article 1406 of the Civil Code about the release of the contract. It is possible, however, to cite many interventions of the doctrine and the jurisprudence, prior to the law n.91/1981, which attributed the contractual nature of the release of the footballers³⁵, without the necessary agreement of the athlete himself.³⁶

It is also necessary to note that the contract between the athlete and the acquiring company can have a different content in respect with the previous one, an aspect that seems

³⁴ MAIETTA A., Lineamenti di diritto dello sport, p.82-83.

³⁵ Ibid., p.86-87.

³⁶ Judgement of the tribunal of Florence, 28 ottobre 1960.

to exclude the release of the contract in the field of sport by the negotiating scheme, as delineated by the article 1406 and following.³⁷

After several dispositions regarding principally the professional sportsmen subject to the law n.91/1981, the article 6 refers to the clubs recognizing in favour of the society a bonus of training and technical formation that must be granted to the society in which the athlete has conducted its last amateurish or juvenile activity, this in case of first contract, recognizing also the right of this society to stipulate the first professional contract with the athlete.

After that, the law enters in a series of three articles which result particularly important, concerning fundamental rights and provisions recognized to professional sportsmen, that regard three different spheres: the health protection, the risk insurance and the pension.

The health protection is one of the fundamental objectives of the Italian State, decreed by the article 32 of the Constitution which states that “the Republic protects the health as a fundamental right of the individual and interest of the community and guarantees free medical care for indigents [...]”. It is also included within the duties that the sport societies are obliged to observe in their working relationship with its athletes, according to the article 2087 of the Civil Code – duty of protection of the working conditions³⁸ –.

This pillar is at the base of the article 7 of the law n.91/1981 that regards the health protection of people performing professional sporting activity, which can be “carried out under medical controls, according to norms established by the federations and approved with a decree of the Ministry of health”.

³⁷ LIOTTA G., SANTORO L., *Lezioni di diritto sportivo*, p. 162-163.

³⁸ This thesis is sustained in SANINO M., VERDE F., *Il diritto sportivo*, p.251-252.

The law prescribes repeatability of the controls and also “the creation of a medical card which has to be updated every six months and safeguarded by the sport society”, which must pay the related expenses, or by the athletes in case of autonomous employment relationship.

The legislator has wanted to introduce a specific protection for the athletes due to the peculiarity of the sport activity, aiming at guaranteeing a more incisive preventive phase. In addition, given the provision of the article, it seems correct to exclude the other professional figures indicated by the article 2 of the law by this form of protection, as many scholars has suggested.³⁹

The figure of the team doctor of the sport society results particularly important regarding the health protection of the athletes, because it is responsible for several compliances such as: the creation and the update of the health card, the custody of it, the transmission of the card to the other society in case of release of the athlete’s contract, the predisposition of the periodical effectuation of the medical controls, the constant control of the health conditions of the athletes verifying also eventual contraindications to the practice of the sport activity and many others.⁴⁰

It is also important to remember that the sport society, the president or who is responsible could be responsible for the work of the team doctor, according to the disposition of the article 2049 of the Civil Code.⁴¹

Inter alia, article 8 recognizes the right of the professional sportsmen to be covered by a risk insurance. In fact, it states that “the sport societies must stipulate an individual insurance policy in favour of the professional sportsman against the risk of death and injuries, which can prejudice the prosecution of the professional sport activity, within the insurance

³⁹ DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 92-93

⁴⁰ VALORI G., *Il diritto nello sport*, p. 274-275.

⁴¹ DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 94-95.

limits established by the federations, in relation with the age and the patrimonial content of the contract and in conjunction with the representatives of the interested categories”.

Differently from the health protection, the risk insurance is guaranteed to all the subjects specified by the second article of the law, performing a sport activity both subordinate and autonomous. Regarding football, it is established that the insurance has to cover also the risks deriving by events outside the sport practice.⁴²

The insurance policy must be stipulated within the date of convocation of the athlete at the beginning of the sporting season and it has to indicate the footballer or his entitled as beneficiaries.⁴³

Until the 3rd October 2007, the sportsmen’s policies were administrated by the SPORTASS (the insurance entity of sportsmen) which since that date has been deleted and substituted by the INPS (Istituto nazionale della previdenza sociale, the Italian institute for the social insurance).

What makes this type of policy peculiar is the particularity of the sporting activity. The sporting injuries are, in their nature, different from the ones suffered by other workers, being in sport the risks freely and voluntarily assumed by athletes, in the majority of cases. According to some scholars, this nature did not seem to render the insurance protection obliged for the sportsmen, rather than voluntary under the regulation of the legislative decree n.38/2000.⁴⁴

Instead, with reference to the theme of the pension, article 9 foresees that “the compulsory insurance for the invalidity, senility and survivors, as delineated by the law 14 giugno 1973, n.366, for footballers and football trainers is extended to all the sportsmen indicated by the article 2 of the current law”.

⁴² Ibid., p.95-96

⁴³ Other beneficiaries present in the insurance policy render the policy invalid.

⁴⁴ DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, p. 96-97.

Furthermore, the article contains provisions regarding: the calculation of the contribution for the financing of the insurance, the divisions of the contribution between the sport societies (2/3 of the total amount) and the assured (1/3 of the amount), the institution of a vigilance committee and the possibility to repurchase the periods antecedents the current law.

Until the law 24 dicembre 2011, n.214, the institution responsible for the compulsory insurance was the ENPALS (Ente nazionale di previdenza e di assistenza dei lavoratori dello spettacolo, the national institution of pension and assistance of the workers in the entertainment industry), which was substituted in its functions by the INPS, as in the case of SPORTASS.

It is also important to notice that the article underlines the distinction between subordinates and autonomous workers, which are more burdened with formalities and contributions than the former, considering for example only the contribution in order to be covered by the insurance.

In addition, there is also the distinction between workers with necessary contributory seniority at the 31st December 1995, which use a remunerative pension system, and the ones without, that use a contributory system.⁴⁵

Before moving on one of the most significant articles, the law envisages dispositions that regard the sport societies and the national sport federations, from article 10 to article 14⁴⁶, and tributary norms presented in article 15.⁴⁷

⁴⁵ LIOTTA G., SANTORO L., *Lezioni di diritto sportivo*, p. 157-158.

⁴⁶ The articles included in the chapter III will not regard the dissertation of this thesis, because concerning norms related to sport societies and national sport federation and not directly to the professional athletes.

⁴⁷ These tributary norms regard primarily the sport societies, indicating a series of decrees and laws that regulate the matter.

Instead, the following article regards the abolition of the *vincolo sportivo* (the players' commitment to clubs) – one of the most debated topics on the Italian sport law, given the peculiarity of it –.

The article 16 states that “the limitations to the contractual liberty of the professional athlete, identified as *vincolo sportivo* in the current sport legal system, will be gradually eliminated within five years since the date of entry into force of the present law, according to modalities and parameters established by the national sport federations and approved by the C.O.N.I. [...]”. The article continues moreover listing some necessary accounting requirements, referred to the societies, in order to comply with the new dispositions.

The provision of the article 16 has to be read in light of what is specified in the first article of the law n.91/1981, which states the liberty of the practice of sport. Article 16 represents in this sense the maximum expression of this liberty, recognising the mobility of the professional athletes – the amateurs are excluded by the abolition of the *vincolo sportivo*, remaining tied to the societies indefinitely –.⁴⁸

Before the intervention of the law n.91/1981, the *vincolo sportivo* (the players' commitment to clubs) configured a situation of subjection of the athletes towards the clubs, with which the relationship could be loosed only with the permissions of these last.

This peculiar juridical situation was introduced in the United Kingdom at the beginning of the 19th century with the intent to protect the football clubs from an economic point of view, especially those with less economic power. Moreover, this disposition incentivized the investments on the training and education of the athletes of the youth fields of the football clubs, protecting the societies from losses of their human capital in favour of the richest ones.

⁴⁸ M. VERRINI, *Il rapporto di lavoro sportivo*, 2005, p.100

The *vincolo sportivo* is one of the most debated topics regarding the sport law, especially concerning the juridical nature of the *vincolo*. The oldest interpretation configured it as a non-compete agreement, based on the article 2125⁴⁹ of the Civil code; however, another vision⁵⁰, shared also by the Associazione Italiana Calciatori (A.I.C., the Italian footballers association), read it as a prohibition for the worker of unilateral termination, in contrast with the disposition of the article 2118 of the Civil Code⁵¹ and the article 4 of the Italian Constitution⁵².

Article 16 allowed to abolish every type of obstacle for the movement of the professional athletes, based on the principle that sport societies in the 80s should be considered, especially in football, as firms in the entertainment industry.⁵³

Nowadays, in presence of a contract with a limited duration, the transfer of the athlete can be actuated through the transfer of the contract, as long as the athlete accepts and the federation's norms are respected, in accordance with the dispositions of the article 5 of the law n.91 and the article 1406 of the Civil Code.

Moreover, article 16 established the abolition of the preparation and promotion compensation substituting it with the training and technical formation reward – as modified by the law n.586 of the 18th November 1996, in accordance with the Bosman judgement –.⁵⁴

In conclusion, the abolition of the *vincolo sportivo* has mitigated the atypical nature of the employment relationship between professional athletes and sport societies, rendering it compliant with the current labor legislation.

⁴⁹ PAGLIARA F., *La libertà contrattuale dell'atleta*, in Riv. dir. sport., 1990, as in M. VERRINI, *Il rapporto di lavoro sportivo*, 2005.

⁵⁰ C. SMURAGLIA, *Il vincolo tra atleti e società*, in Riv. dir. sport., 1966, as in M. VERRINI, *Il rapporto di lavoro sportivo*, 2005.

⁵¹ Article 2118 of the Civil Code: termination of the contract with unlimited duration.

⁵² The article regards the right of the citizens to work.

⁵³ P.P. MENNEA, M. OLIVIERI, *Diritto e ordinamento istituzionale sportivo*, Società stampa sportiva, 1996, as in M. VERRINI, *Il rapporto di lavoro sportivo*, 2005.

⁵⁴ M. VERRINI, *Il rapporto di lavoro sportivo*, 2005, p.100-104

Unfortunately, the institution of the *vincolo sportivo* is still present for the amateurs, a situation that needs to be modified in order to protect the liberty of these individuals too.

It is important to underline that although the law 23 marzo 1981 n.91 refers to the norms on the relationship between society and professional sportsmen – including in this way every type of sport that foresees the presence of a category of professional athletes –, this law was almost exclusively written to regulate the football system.

It is undeniable that nowadays, as in the past, football maintains its central role in the sport system in Italy, thanks to its economic power and market share in terms of active participants and number of supporters.

In this sense, looking at the regulatory system based on the law 23 marzo 1981, n.91, it is desirable that in the future the legislator will intervene not only under the political pressure brought by the football system, but also worrying about the requests moved by the other sport disciplines, especially those having only the category of amateurs, which results, in football too, less protected than the professional one.

1.3.2 The jurisprudence.

Among the different sources that compose the sport regulatory system in Italy, it is important to consider also the jurisprudence. For the purpose of this discussion, the judgements will be at first temporarily divided into two groups: those occurred before the emanation of the law n.91/1981, operating in a normative system that did not recognize a peculiar discipline on the matter of sport, and those occurred later.

As we said before, it is not unusual to find, during the period before the approval of the above-mentioned law, many judgements of the Supreme Court, but also of the tribunals, which gave their interpretations about disputes regarding especially topics related to the qualification of the sport employment.

In that specific period, as it was previously mentioned, three judgements characterized the juridical scene: the judgement of the Supreme Court on the dispute between A.C. Milan and the player Raccis, the judgement in favour of the Torino Calcio regarding the request of compensation for the death of Meroni and the promulgation by the Milan's district court on the suspension of the *calcio-mercato*. All these cases, which have already been object of discussion in this thesis, have generated a jurisprudence that has continued its effects over the following years.

The difference of the judgements was substantial being these based on the legislative reference of the law n.91/1981. Even if a complete reference about these judgements results unworkable and beyond the scope of this thesis, it is opportune to cite some of these interventions.

Considering the first group, it is possible to mention the judgement of the Tribunal of Venice on the 5th of November 1983 about the case Siviero v. Ballarin, which, referring to the subordinate employment relationship of the footballers in relation with their clubs, indicates that the “footballers are tied to their association through an economic indisputable commitment that integrates a subordinate atypical employment relationship [...]”.⁵⁵

Very often, the cases regard the interpretation of the law n.91/1981, especially for what concerns article 4, as for example the judgement of the magistrate's court of Rome on the 9th July 1994 which stated the anomalous nature of the arbitration on the matters concerning the relationship between sport societies and member of the F.I.G.C..

⁵⁵http://pluriscedam.utetgiuridica.it/main.html#mask=main,ds_name=REP,pos=2,opera=44,id=44MA0000095772,mode=search,stack_pos=0,sel_tab=REP,menu=home,highlight=siviero,npid=761398883,m=bd, last access: 18th February 2018.

Article 4 was also the object of the judgement of the Court of Cassation on the 4th March 1999, n.1855⁵⁶. In this case the doubt arose from the text of the article 4 of the law, that the Court interpreted by declaring that “the professional sportsman does not have any autonomy, meaning that it is not possible to deviate from the standard contract of the Federation [...]”.⁵⁷

Moreover, this interpretation was similarly used in other judgements⁵⁸ of the Court of Cassation, such as on the sentence of the 12th October 1999 n. 11462⁵⁹ that established that the deposit of the contract can be made by the athlete, who have the right to receive a compensation in this case, but also established the nullity of the contract in case of additional pacts, because of the lack of any written form, but also because of the lack of adoption of the standard contract. On the contrary, the judgement of the Tribunal of Rome established on the 3rd August 1994 that the preliminary agreements between societies and footballers are valid, even if stipulated on the modules of the Federation.⁶⁰

Being the employment relationship of the footballers defined as subordinate, many cases regard the applicability of the norms regarding subordinate workers and the article 18 in particular.

The Tribunal of Siena⁶¹, for example, underlined the peculiarity of the employment relationship between sport societies and professional sportsmen – this employment relationship is attributable to the normative branch of the subordinate one –, however considered contradictory the application of the article 18 to the sport societies in the cases of the computation of the footballers among the number of the employees.

⁵⁶ Sez. Lav., sentence n. 1855, 04/03/1999, Monelli v. Soc. Pescara Calcio.

⁵⁷ <https://www.wikilabour.it/Lavoro%20sportivo.ashx>, last access: 18th February 2018.

⁵⁸ Interpretation present also in Court of Cassation - Sez. Sesta civile - Judgement 5830, 13.03.2014.

⁵⁹ Cass. Civ. Sez. Lav., n. 11462, 12/10/1999, Calcio Perugia Spa v. altri.

⁶⁰ <http://www.ilnuovodiritto sportivo.it/rassegna-di-giurisprudenza-sulla-legge-n-91-del-1981-e-sul-rapporto-di-lavoro-sportivo/>, last access: 18th February 2018.

⁶¹ Trib. Siena 12/2/2004 ord., Pres. Cavoto Rel. Serrao.

On the contrary, a few months before, in another case, the same Tribunal of Siena sustained the opposite thesis, declaring that the professional sportsmen could be counted among the employees, given the subordinate nature of their employment relationship.⁶²

These are only a few examples of the wide jurisprudence regarding sport. It is clear how the emanation of the law n.91/1981 has provoked a change on the topics of the disputes, from the definition of the typology of the employment relationship in the first cases to the judgements about the applicability of the subordinate employment normative and the interpretation of the article of the above-mentioned law.

Now it is opportune to shift the focus to the legislation regarding the footballers, focusing the attention especially on the role of the F.I.G.C. and its N.O.I.F..

1.4 The role of F.I.G.C. and the N.O.I.F. (Norme organizzative interne).

1.4.1 The F.I.G.C..

The most relevant and represented federation operating under the authority of C.O.N.I. is the F.I.G.C. (Federazione Italiana Giuoco Calcio, the Italian football federation).

The F.I.G.C. is “a recognised association governed by private law associated with the C.O.N.I., whose principal aim is to promote and govern the activity association football and related aspects.”

It is composed by clubs and associations, among them the A.I.C. (Associazione Italiana Calciatori, the Italian association of footballers) is one of the most relevant, and also by

⁶² Trib. Siena 26/11/2003 ord., Est. Cammarosano, consulted on <https://www.wikilabour.it/Lavoro%20sportivo.ashx>, last access: 18th February 2018.

member organisations who perform activities that are instrumental in the pursuit of the aforesaid aim.”⁶³

The F.I.G.C. is also a member of the FIFA and UEFA⁶⁴, implying it that all the members of the federation must underlie to the by-laws, directives, principles and decisions of these two organisms, in addition to the regulation of the C.O.N.I. and the I.O.C..⁶⁵

Among the tasks of the F.I.G.C., it is important to remember: “governing sports activities”, “performing regulatory and supervisory tasks on clubs with special reference to sport justice”, “governing the affiliation of members and clubs”, “establishing the organisation of championship and the control systems”, “allocating the resources”, “issuing the guiding principles”, safeguarding the health of the athletes through the predisposition of appropriate rules (in conformity with the regulation of C.O.N.I.) and many others.⁶⁶

The importance of the F.I.G.C. in the sport legal system is evident examining its role in relation with the clubs. The article 7 of the Statute is dedicated to the norms that partially regulate the relationship between clubs and footballers, which are classified as professionals, amateurs and youngsters. It also establishes the obligation of a limitation in the duration of the *vincolo sportivo*⁶⁷ and the federal legislative power in the matter of players’ commitment to clubs and their transfers among clubs.

The F.I.G.C. is responsible for the predisposition of the rules necessary in order to assure that clubs “implement suitable organisational management and governance models”, which should comprehend: “measures that ensures that the activity is carried out in compliance with the law and the sports regulations”, “the adoption of codes of conduct, control mechanisms,

⁶³ 2014, article 1, p. 1.

⁶⁴ The role of the FIFA and UEFA in the sport legal system will be treated in the second part of the thesis.

⁶⁵ F.I.G.C., Statute, article 2, p. 1.

⁶⁶ Ibid., article 3, p.2.

⁶⁷ *Vincolo sportivo* is commonly known as the players’ commitment to clubs.

decision-making procedures, an internal disciplinary system and the designation of a supervisory body”.

The role of F.I.G.C. is also extended on the financial and economic sphere of the clubs which must comply with “the auditory system and the relative measures established by the Federation”⁶⁸. As granted by the article 2049 of the Italian Civil Code of Procedure, the F.I.G.C. is authorized to initiate legal proceedings against professional clubs.

Among the F.I.G.C., a supervisory body (COVISOC, Commissione di Vigilanza sulle Società di Calcio Professionistiche) is constituted, which is designated to “exercise control over the economic-financial balance and the observance of principles for the correct running of professional football clubs”.⁶⁹

1.4.2 The N.O.I.F..

It is, however, with the emanation of the N.O.I.F. (the operative internal norms) – which are promulgated by the Consiglio federale (Federation Council of the F.I.G.C.), as stated by the article 4 of the Statute – that the regulatory role of the F.I.G.C. finds its maximum expression.

These norms are focused primarily on the regulation of the professional football clubs and the articulation of the F.I.G.C. itself, but they are also focused on topics directly related with the professional athletes such as the health care and the norms regarding their membership and the contractual relationship between clubs and professional footballers.

The N.O.I.F. are articulated in 118 articles and 13 titles which are grouped into two distinct parts: the subjects and the functions. It is now opportune to depict briefly those

⁶⁸ F.I.G.C., Statute, article 19, p. 11-12.

⁶⁹ The COVISOC is instituted as prescribed by the article 78 of the N.O.I.F.s (Norme organizzative interne della F.I.G.C., Internal organisation norms of the Federation).

articles of the N.O.I.F. that are directed and influence directly the employment and contractual conditions of the professional footballers.⁷⁰

The first part of the N.O.I.F. is dedicated to dispositions that regard the F.I.G.C., the societies, the leagues and the A.I.A. (the Italian association of the referees), and, given that these topics are outside the perimeter of this thesis, they will not be treated in our dissertation.

After this part, from article 27 to article 35, the N.O.I.F. envisage a series of dispositions that involve directly the footballers. In fact, these articles operate in line with the regulatory system defined by the law 23 marzo 1981, n.91, having an important influence on the contractual and employment conditions of the footballers.

The footballer that are members of the F.I.G.C. are distinguished, based on the article 27 of the N.O.I.F., in: professionals, non-professionals (amateurs following the most used juridical expression) and youngsters.

The distinction between these categories results particularly important if read in light of the provisions of the law n.91/1981, which are referred explicitly to professionals athletes as stated by the first and the second article of it.

Professionals are defined by the N.O.I.F. as: "The footballers who exercise continuatively the sport activity in exchange for payment and that are members of societies associated with the Lega Nazionale Professionisti or in the Lega Professionisti Serie C".⁷¹

To these subjects it is applied the limitation to stipulate a contract with a club that must not exceed the duration of five sporting seasons for adults and three for the athletes under

⁷⁰ Some titles and articles which are not directly related with the employment conditions of the professional footballers will be listed in order to have a more complete vision about the function of the N.O.I.F..

⁷¹ Art.28 N.O.I.F..

the age of eighteen, in accordance with the article 5 of the law n.91/1981 and the collective agreements stipulated by the representatives of the categories.

This disposition is clearly a direct consequence of the already cited abolition of the *vincolo sportivo*, foreseen by the article 16 of the law n.91/1981, which is not applied to the category of non-professionals as well as to the young non-professionals.

These subjects in fact are excluded by every type of employment relationship - autonomous and subordinate-, as stated by the article 29 of the N.O.I.F. for the non-professionals and by the article 32 for the young non-professionals, and are tied to their clubs until the age of 25.⁷²

As said before, the young professional athletes under the age of eighteen, can acquire the qualification of *giovani di serie* subscribing the membership for one of the football societies associated with one of the professional leagues.⁷³

This membership implies the assumption of a particular commitment that allows the societies to “train and prepare them to play in the league disputed by the club itself” until the season in which the player becomes 19 years old.

Moreover, the article 33 of the N.O.I.F. envisages the duty for the societies to correspond the players a premium in the last sporting season, as recognition for the period of technical training. In addition, the professional clubs have the possibility to stipulate with the young player (*giovane di serie*) a contract, that can have a maximum duration of three years and can be signed starting from the 16th birthday of the athlete.

⁷² Art. 32 bis N.O.I.F..

⁷³ Art. 33 N.O.I.F..

This last provision is a solution devised in order to mitigate the effects of the abolition of the *vincolo sportivo*, which was utilized by the professional clubs, until its suppression, as a form of safeguard for their most important assets, the footballers.

Due to the presence of the dispositions of the article 33 of the N.O.I.F., the clubs are not disincetivized to invest in their youth fields, safeguarded by the possibility to secure the human assets stipulating a contract.

The last article of this title of the N.O.I.F., number 35, recognizes the authority of the Federation Council of the F.I.G.C. to establish “the criteria for the recognition of the associations of the categories”.

The recognition of the membership of the different categories is instead referred to the articles from 36 to 42.⁷⁴ In fact, these articles deal with the norms that regulate the membership of: the federal executives, the referees, the executives and collaborators in the management of the sporting part of the societies, the trainers and the footballers.

Concerning these last subjects, the article 39 of the N.O.I.F. establishes that the footballers are “made members of the F.I.G.C. on request, subscribed and sent through the society for which they intend to perform the sport activity”.

In addition to these provisions, the following articles of the title establish some limitations to the membership. Among them, some dispositions are particularly important because they are related to the regulatory systems of the EU and the FIFA.⁷⁵

Article 40 states that footballers that are citizens of countries adhering to the EU or the E.E.E. (the European economic area) can become freely members of the societies participating to the professional leagues.

⁷⁴ Many dispositions of these articles regard categories of subjects different from the footballers. For this reason, some of the articles of this title will not be treated by our dissertation.

⁷⁵ These regulatory systems will be treated in the next chapters of the thesis.

On the contrary the membership rules for those that are not Italian or citizens of the EU or the E.E.E. are emanated yearly by the Federal Council – currently it is possible to make member of the societies participating to the Serie A only two athletes per year, with several other limitations –.⁷⁶

The impact of these dispositions emerges clearly the data concerning the presence of non-Italian players in the Serie A: 306 players from 56 countries representing the 56% of the total amount of athletes⁷⁷ – these data refer to statistics collected before the opening of the transfer period in January 2016 and remain a unique case in the Italian football system, which remains based on the Italian athletes, especially in the lower professional categories –.

As conclusion of the title I of the part II, the article 42 of the N.O.I.F. lists the cases that provoke the revocation of the membership which are: the invalidity or illegitimacy, the physical ineligibility of the footballers as envisaged by article 43, and the presence of exceptional motivations based on a determination of the President of the Federation.

After these last two articles, the N.O.I.F. envisage the regulation of the so called ‘protections’ of the professional individuals. In fact, there articles, from 43 to 46,⁷⁸ are the result of the transposition into the N.O.I.F. of the articles 7, 8 and 9 of the law 23 marzo 1981, n.91: the articles 43 and 44 regard the health protection, focusing especially on the compliances that the team doctor has to perform, the article 45 regards the risks insurance that the F.I.G.C. and the professional leagues have to stipulate, the article 46 is the pension stating the inscription of the athletes to the ENPALS and the INPS.

⁷⁶ This topic will be discussed in the next chapter which is related to the EU’s regulatory system.

⁷⁷ Sole 24 ore, Italy, <http://www.ilsole24ore.com/art/commenti-e-idee/2016-01-04/calcio-basket-volley-vincere-non-basta-straniero-074735.shtml?uuid=ACnoUj3B>, last access: 18th February 2018.

⁷⁸ These articles will not be explained in detail because they represent the exact reproduction of the articles of the law n.91/1981 regarding these topics.

Totally different are the subjects of the following articles, from article 47 to 70⁷⁹, that regard the regulation of the championships and the matches and especially: the organisation of the different championships, the *titolo sportivo*, the UEFA licenses, the institution of the Co.Vi.So.D. (a vigilance commission for the amateur societies), the regulation of the matches, the juvenile activity, dispositions on the playing fields and the management of the matches, dispositions on the activity of the referees and the safeguard of the public security.

Instead, the discipline of footballers on the playing field, from article 71 to article 74,⁸⁰ and the organisation of the national teams, from article 75 to article 76,⁸¹ are the topics covered by the fourth and fifth title of the N.O.I.F.. On the contrary, the sixth is dedicated to the dispositions concerning the “control over the economic and financial management of the professional societies”.

Specifically, these articles, from 77 to 90⁸², are focused primarily on the activity of the technical organism called Co.Vi.So.C. which is instituted as part of the F.I.G.C., but also on the dispositions about the system of the national licenses and the institution of the Commissione Criteri Infrastrutturali e Sportivo-Organizzativi.

This organism is assigned to several tasks such as the consultation activity for the Federation, the activity of control over the societies and the championships, and it is designated for the predisposition of sanctions -in case of violation of the dispatch of the documentation required in compliance with the articles 80 and 85- and the activity of inspection on the societies.

⁷⁹ These articles are not examined in detail because they do not regard directly the employment conditions of the professional footballers.

⁸⁰ See note 73.

⁸¹ See note 73.

⁸² These articles are referred to the professional clubs and for this reason will not be explained in detail.

Concerning the employment relationship between footballers and clubs, the Co.Vi.So.C. is responsible for the control over the compliances of the societies related to the payment of the compensations in favour of the members, the employees and collaborators of the clubs. These compensations, the deductions and the contributes -Irpef, contributes INPS and Fondo Fine Carriera- in favour of the above-mentioned subjects have to be deposited by the societies within the 16th of the month following the closing of each of the six two-month periods, as stated by the article 85 of the N.O.I.F..

After these dispositions of title VI, the N.O.I.F. move on to one of the most important parts of their regulation, the title VII which regulates the “*relationships between societies and footballers*”, proceeding on the regulatory base established by the law n.91/1981, widely explicated from article 91 to article 118.⁸³

The first of these articles states that the societies have to “guarantee for each member the possibility to perform the sport activity” in accordance with the federation’s legislation and the first article of the law n.91/1981, which declares the liberty to perform the sport activity -the deferment to the sports justice is foreseen in case of violations-.

In parallel with this duty imposed to the societies, the following article 92 establishes also duties that the members⁸⁴ are compelled to observe such as: the observance of the dispositions emanated by the F.I.G.C., the leagues and their societies, the compliance with the collective agreement⁸⁵ and the stipulations contained in the individual contracts -these last two duties are recognized only for the trainers and the professional players-.

⁸³ Some articles and dispositions will not be treated because related only to non-professional footballers.

⁸⁴ The term “members” is not limited to the category of the footballers.

⁸⁵ The collective bargaining agreement between the A.I.C. (Associazione Italiana Calciatori) and the F.I.G.C. (Federazione Italiana Giuoco Calcio) will be discussed in the next paragraph.

Instead, a different nature characterizes the articles 93 and 94 of the N.O.I.F., which discipline several aspects about the relationship between footballers and their societies.

The first of these two articles establishes a high degree of formalism -contracts must be in conformity with the type established by the collective agreements with the categories' associations and compiled only on the forms provided by the league in charge-. The purpose of this disposition is the protection of the footballers, who result in many cases result as the weakest part during the negotiations; this same purpose moves also the duty to report the name of the agent who has participated to the conclusion of the contract -article 93 of the N.O.I.F. in accordance with the FIFA's legislation-.

The second part of the subsection of the article 93 regards the collective bonuses which "are allowed, as long as resulting from agreements deposited within the league in charge"- the terms for the deposit are determined through the collective agreement or not more than the 30th June-.

Individual bonuses are recognized too, but they have to result by "agreements stipulated with players and trainers at the same time of the stipulation of the contract or by integrative agreements", within the same terms established for the collective bonuses.

The last disposition of the article 93, which stands out for its peculiarity, states that "the validity of the contract between a society and a footballer could not be conditioned by the results of medical exams and/or the release of a work permit".⁸⁶ However, this article seems to be contradicted by many cases in which the apposition of a termination clause has been considered acceptable in accordance with the norms of the Federation.⁸⁷

⁸⁶ A similar disposition is foreseen by the article 95 of the N.O.I.F. with regard to the transfer of the contract.

⁸⁷ V. FRATTAROLO, *Il rapporto di lavoro sportivo*, 2017, p.78, consulted on:

http://www.ilnuovodirittosportivo.it/wp-content/uploads/2016/04/Frattarolo_Lavoro_Sportivo.pdf

The article 94 instead establishes sanctions, foreseen by the Code of Sport Justice, that forbid: “the agreements that are in contrast with federation’s norms and the contractual stipulation between societies and members” and “the payment of compensations or bonuses greater than those established in the contract and its modifications.”

Certainly, another important topic, related with the previous articles, and identified as one of the most complex in the sport law, as we will see also in relation with the Bosman case, involve the transfer regulation and the transfer of the contract. On this matter are focused the article 95 and the article 95 bis.

The first subsection of article 95 can be considered an integration of article 93, imposing that “the transfer of the professional footballer or his contract must be expressed in writing through the utilisation of the special modules prepared by the leagues, otherwise it is not valid”- the high degree of formalism requested by the article 93 is here respected⁸⁸-.

An additional disposition is prescribed by the article 95 which states that “in the same sporting season a professional player can be member of a maximum of three societies, but he can play in official matches only for two of these.”. This prescription aims at guaranteeing the stability of the Italian football system, which historically is characterized by a significant number of transfers if compared with other nations.

A series of technical prescriptions continues the article: “the agreement for the transfer or the transfer of the contract must be signed only by those that can effectively commit to the societies [...] and by the player [...]”; the stipulations regarding the following season have to result as particular clauses [...]”; “the clauses that are in contrast with the norms of the federation [...] are invalid”.

⁸⁸ STINCARDINI R., *La cessione del contratto: dalla disciplina codicistica alle peculiari ipotesi d'applicazione in ambito calcistico*, volume 4, 2008, p.134 in *Rivista di diritto ed economia dello sport*

The last disposition establishes a “fair compensation” for those players that in case of transfer or new stipulation suffer a damage due to the “economic capacity” of the society. This prescription results particularly important, considering the economic and financial sufferings that many societies have been facing in the recent years⁸⁹, especially in the Serie C (ex Lega Pro).

Instead, article 95 bis regards the discipline of the competition, regulating the situation of the footballers with contracts without the expiry date at the end of the sporting season and those whose contracts are expiring.

The former situation envisages two dispositions. The first establishes the power of the society owner of the contract to sell the contract itself with the consensus of the footballer, the second states the “prohibition of contacts and negotiations, direct or through third parties, between another society and the footballers without the prior authorization of the society owner of the contract.”

The latter situation also envisages two dispositions. The first proceeds along the same path of the above-mentioned “prohibition of contacts and negotiations with other societies with the necessary authorization of the society owner”, the second states the possibility, starting from January the 1st, to conduct negotiations, contacts and also stipulate preliminary agreements with another society -it is still present the necessity of a contact between the two societies before the stipulation of the new contract-.⁹⁰

These regulations are the response to the Bosman ruling⁹¹ which allowed players to move from a club to another in the EU at the end of the contract, without a transfer fee. Article

⁸⁹ The recent cases of the Modena FC and the Parma FC are only two of the many critique situations that the Italian football system is dealing with.

⁹⁰ STINCARDINI R., *La cessione del contratto: dalla disciplina codicistica alle peculiari ipotesi d'applicazione in ambito calcistico*, p.139-143.

⁹¹ This topic will be disserted in the next chapter of the thesis.

95 bis envisages also some sanctions for the executives, the players -two months at minimum- and the societies which conduct behaviours in contrast with the prior dispositions.

Article 96 is instead addressed to the societies that requires for the first time the membership as “giovane di serie”, “giovane dilettante” or “non professionista”⁹² of players that were members as “giovani”. The disposition envisages that these societies have to pay a “preparation reward” to the clubs that have trained the athletes in the previous sporting seasons -some limits and prescriptions are fixed in the second part of the article-.

This article aims at encouraging the investments in the youth fields of the clubs, trying to distribute resources through the different levels of the Italian football system. As a matter of fact, it represents certainly a consequence of the abolition of the *vincolo sportivo*, stated by the article 16 of the law n.91/1981, proceeding along the path of the protection of the clubs’ investments on the human capital, represented by the footballers.

This path is represented also by the dispositions of articles 99 -training and technical formation reward- and 99 bis of the N.O.I.F. -carrier reward-.⁹³

Proceeding along the normative path regarding the transfer regulation, the article 102 recognizes the transfer -temporary or definitive- of the contract of the professional footballer, under the condition of acceptance of the athlete involved, between societies of the professional leagues – the article is successive to a series of dispositions regulating the temporary (art.101) and not temporary transfer (art.100) of “non professionisti”, “giovani dilettanti” and “giovani di serie”–.

⁹² These are different categories of membership-as defined by the F.I.G.C. in the N.O.I.F.-.

⁹³ In few defined cases, it is foreseen the payment of 18000 euros for each year of formation of the player previously qualified as “giovane” or “giovane dilettante” that disputes a match in the Serie A or the first official match in the National team or in the Under 21 National team.

It also establishes other disposals such as: “the new contract stipulated by the player can have a different duration compared to the precedent one”, “the definitive transfer agreement can comprehend clauses that foresee performance bonuses”, “the Federation determines the modalities and the limits for the transfer of the contracts”, “the transfer can happen only in the period established by the Federation’s Council”, “the leagues can limit the number of players temporarily transferred for each society”.

Article 102 is followed by article 102 bis that, despite the fact that has been abrogated since the 27th May 2014, has represented a peculiarity of the Italian football system. It established the possibility for the societies to share half of the *cartellino*⁹⁴ of the player considered (this procedure was referred to as *comproprietà*). This practice was overused by the societies, which utilized it as a way to maintain the control over a great number of footballers, but also as a financial and economic leverage, not always legally.

The separation of the ownership weakened the situation of the footballers involved, who resulted subordinated to the control of two societies, even though the legislation envisaged peculiar norms and regulations for these peculiar situations.

Despite the abolition of the practice, the societies have found contractual clauses that have substituted the *comproprietà*, such as the so called *clausola di recompra*, which foresees the possibility for the seller to re-buy the footballers at determined amounts along a defined period, or the *prestito con diritto di riscatto*, which envisages the possibility to transfer temporarily a footballer including in the contract the faculty to transform the transfer in definitive at determined conditions – this practice was diffused before the abolition of the *comproprietà* –.

⁹⁴ *Cartellino* is defined as the badge documenting the membership of the athlete to a determined society.

With regard to the different typologies temporary transfer of the footballer's contract, the article 103 establishes some limits of time, which can have a minimum duration "equal to the one existing between two transfer periods" and a maximum duration that "cannot exceed the duration of the contract and cannot be longer than two sporting seasons".

Moreover, this article entails some provisions that aims to align the regulatory system to the most common practices present in the transfer contracts. Among them, the ones recognized by the article 103 are: the right of option granted to the society that is buying, the clauses that foresee an appreciation bonus or a performance bonus, the clauses that allow to transform the transfer from temporary to definitive under determined sport conditions.

The provisions of the article 103 aim on the whole to limit the practice of the temporary transfers, favouring the stability of the job position of the footballers, more extensively safeguarded by the definitive transfer of the contract. This purpose however should not interfere with the principal objective of the temporary transfer: the development of the youngest athletes.⁹⁵

In addition, always regarding this typology of transfer, the article 103 bis guarantees the possibility to proceed with the consensual resolution of the contract relative to the temporary transfer of the professional footballer. In line with regulatory system of the N.O.I.F., the article prescribes the duty to compile the specific module of resolution provided by the Federation and states the obligation to have the consensus of both the societies and the footballer involved.

Instead, article 105 envisages the possibility to stipulate preliminary agreements under determined conditions. The norm regards the contracts which have as object the transfer, in

⁹⁵ STINCARDINI R., *La cessione del contratto: dalla disciplina codicistica alle peculiari ipotesi d'applicazione in ambito calcistico*, p.143-144.

this case the preliminary agreement can be stipulate only in the periods determined by the Council of the Federation, the stipulation of a new contract with the footballer or the renewal of it.

Moreover, the N.O.I.F. in the article 110 foresee also the hypothesis of release⁹⁶ of the footballers in case of inactivity of the society. In the last years, this provision has been used as the last resort in case of bankruptcy of professional clubs- the exclusion from the Serie C of the Modena FC is the most recent example-. Clearly the purpose of this norm is to safeguard the position of the footballers that otherwise would remain contractually tied up with societies unable to guarantee them from an economic point of view.

Another typology of release is envisaged by the article 117 which regards exclusively the release of the contractual relationship with the professional footballers.⁹⁷ This type of release can happen consensually or in the cases established by the collective agreement or the federation's norms.

Starting from the moment in which the release enters into force, the footballers can become members of another society – the periods available for the new membership are defined by the Federation Council –.

As it is possible to see by the provisions of its Statute and the N.O.I.F., the F.I.G.C. has an active role in the football legislative system, influencing directly the daily-life of the clubs and the members of the federation, maintaining however its role of subordination in front of the C.O.N.I. and other sport and football organisms.

⁹⁶ Other articles envisage different cases for the release of the footballer.

⁹⁷ This provision is in line with the norms that are direct consequence of the abolition of the *vincolo sportivo*.

Now it is opportune to analyse the role of the collective bargaining agreement between the A.I.C. (Associazione Italiana Calciatori) and the F.I.G.C. (Federazione Italiana Giuoco Calcio).

1.5 The collective bargaining agreements between the A.I.C. (Associazione Italiana Calciatori), the L.N.P.A. and the F.I.G.C. (Federazione Italiana Giuoco Calcio).

Regarding the world of football in Italy, the collective bargaining agreements are the result of the negotiations between the A.I.C. (the Italian footballers association), the different Leagues represented and the F.I.G.C., as mediator.

Currently in Italy, it is possible to identify three collective bargaining agreements stipulated between the A.I.C. and three of the Leagues composing the F.I.G.C.: the L.N.P.A (Lega Nazionale Professionisti Serie A), the L.N.P.B (Lega Nazionale Professionisti Serie B) and the Lega Italiana Calcio Professionistico (representative of the Lega Pro, now Serie C).

These agreements are emanated with the intent to give actuation to the article 4 of the law 23 marzo 1981 n.91, which transfers the responsibility to edit the standard contract to the different sport federations, in conjunction with the representatives of the categories involved.

About this responsibility, some scholars have underlined the peculiarity of the union representation in the sport legal system. In fact, the union representation of the societies is attributed to the different federations and the workers in the sport sector are represented by the representatives of the categories – according to Frattarolo, there are not limits to the freedom of union association or pluralism, as some authors have pointed out –.

However, the issue arises taking into consideration the comments to the law n.91/1981, which impose the validity of the collective bargaining agreement in case of worker that are not represented by a union. In this case, the standard contract assumes efficacy *erga omnes*, an interpretation that seems to collide with the freedom of union association, as stated by the article 39 of the Italian Constitution.⁹⁸

However, as some authors have underlined, the trade union freedom does not seem to be compressed and the union pluralism in the sport sector remains unknown, but legally possible.

Despite remaining subordinate to the State legal system, which remains superior to the regulation moved by the collective bargaining agreements, these peculiar type of normative regulation is at the centre of the football system in Italy.

1.5.1 The collective bargaining agreement between the L.N.P.A., F.I.G.C. and A.I.C..

In our dissertation, we will consider only the collective bargaining agreement (hereinafter, agreement) between A.I.C., F.I.G.C. and L.N.P.A, which represents the most important example also for the agreements which involve the L.N.P.B and the Lega Italiana Calcio Professionistico – these agreements differ only in few details by the one considered –. It is now opportune to analyse in detail the most relevant clauses of the Agreement.⁹⁹

In the first clause, the Agreement identifies the documents annexed to the agreement and the main objective of it: “governs the financial and legal relationship between the Professional Football Players and the Clubs taking part in the Serie A national championship”.

It is important to underline that for what concerns the economic relationship between footballers and clubs, the standard contract represents the reference document. For what

⁹⁸ V. FRATTAROLO, *Il rapporto di lavoro sportivo*, 2017, p.35-36, consulted on: http://www.ilnuovodirittosportivo.it/wp-content/uploads/2016/04/Frattarolo_Lavoro_Sportivo.pdf

⁹⁹ Some articles will not be analysed in detail because they regard only administrative procedures.

regards the rights and the duties of the subjects, the reference document is the Collective agreement as primary source.¹⁰⁰

In addition, a central point to keep in mind for further considerations is that how this agreement is addressed specifically to the category of footballers of the Serie A, excluding in this way the other categories of the article 2 of the law n.91/1981, but also the footballers participating in other professional championships – these subjects deal with the above-mentioned collective agreements –.

The second clause regards the “form of individual contract. Agreements limiting the professional freedom”. On this matter, the Agreement recalls the prescriptions present in the law n.91/1981 and in the N.O.I.F.: the duty to draw up the individual contract on the specific standard contract, the duty to have the signs of the player and a representative of the club, the prohibition of the presence of non-compete clauses¹⁰¹.

The clause envisages also the possibility to stipulate option agreements in favour of footballers or the clubs – some limits are present – and prohibits the presence of pre-emption agreements.

Instead, with regard to the contract, the Agreement is extremely precise indicating the modalities of filling of the contracts, as prescribed by clause 3. The dispositions foreseen appear more restrictive than the ones in the previous agreements, imposing the control of the Lega Serie A over the contract and the definitive approval of the F.I.G.C..

In addition, it is granted to the footballers the power to deposit by himself the contract within 60 days; this provision represents a further safeguard for the footballers to have recognized their agreements with the respective societies.

¹⁰⁰ SPERDUTI M., *Il nuovo accordo collettivo per la Serie A di calcio*, volume 7, 2011 p.59 in *Rivista di diritto ed economia dello sport*.

¹⁰¹ Article 4 of the law n.91/1981.

Another important innovation stated by the clause regards the possibility of recovery guaranteed to the societies against any third party responsible for the non-approval of the contract by the F.I.G.C. and the possibility for footballers to have a fair indemnity from the club in these cases.¹⁰²

After that, it starts with the clause 4 the core part of the Agreement, which disciplines the economic compensation of footballers. The clause envisages the possibility that the salary can be composed by a fixed part and by a variable part.

This latter part of the compensation is the most regulated by the clause. It can be tied to individual or team objectives and it can also be related to the non-sporting objectives of the players – this provision was largely debated and was finally included thanks to the pressure of the Lega Serie A – .¹⁰³

The clause prescribes some limitations about the amount of the variable part that must not exceed the 100% of the fixed part, if this is under the gross amount of 400,000.00 euros, or can be without limits if exceeding the above-mentioned amount or in the case of first contract as professional player.

These restrictions are intended to limit the use of bonuses and variables, that is dangerously increased in the recent years and that could affect economically the remuneration of the footballers.

In addition, the clause states that the contract must report the amounts for each sporting season and that “the salary must be expressed as the gross figure”, eliminating the

¹⁰² SPERDUTI M., *Il nuovo accordo collettivo per la Serie A di calcio*, p.60.

¹⁰³ These provisions are not changed in comparison to the preceding agreements. For a comparison: AMATO P., SARTORI S., *Gli effetti del Nuovo accordo collettivo sul rapporto di lavoro del calciatore professionista. Primi commenti e principali innovazioni rispetto al testo 1989/1992*, volume 2, 2006, in *Rivista di diritto ed economia dello sport*.

power of the parts to specify the net amount – this was possible with the preceding agreements –.

The clause envisages also: the possibility to “conclude specific agreements on Collective Bonuses” – specifying some prescriptions that regard the deposit of the necessary documents –, the predisposition of a minimum remuneration, the possibility to have different salaries according to the competition in which the club participates, dispositions on the “gross portion due for the participation in the club’s promotional and publicity initiatives”.

As a complementary clause, operates the clause 5 which contains some provisions regarding the modalities of payment of the salary. It recognizes to the footballers the right to receive the emoluments, indemnities, allowances and other types of recompenses that constitute the fixed part¹⁰⁴ of the salary within “the 20th day of the next calendar month”.

This last provision represents an innovation in comparison with the previous versions of the Agreement and it is added to the other change brought by the introduction of the duty to correspond the salary exclusively “by bank credit transfer to the bank details provided by the player”.¹⁰⁵ Both the dispositions aim to guarantee the certainty of the payment of the salary for the footballers.

Other dispositions of the clause concern the mechanisms that intervene in case of delay of the payment and in case of disciplinary measures that involve the footballers – in some cases the payment of the salary is suspended –.

On the contrary, the topic of the clause 6 is totally different from the previous ones. In fact, this clause envisages the duty of club to “promote and support initiatives or institution

¹⁰⁴ This disposition is remained the same from the preceding Agreement as presented by AMATO P., SARTORI S., *Gli effetti del Nuovo accordo collettivo sul rapporto di lavoro del calciatore professionista. Primi commenti e principali innovazioni rispetto al testo 1989/1992*, p.89.

¹⁰⁵ SPERDUTI M., *Il nuovo accordo collettivo per la Serie A di calcio*, p.62.

for cultural improvement and development in accordance with its registered Players' aspirations".

These dispositions have been introduced in order to guarantee the young footballers that are still in the school age and those that have manifested the intention to prosecute or conclude their studies, imposing to the club the duty "to facilitate the attendance of courses and the preparation for examinations."

After this, there is the clause 7 regarding the "pre-championship preparation and training. Participation in competitions. Transfers.", which has represented one of the points of harder contrast between the A.I.C. and the Lega Serie A.¹⁰⁶

The clause declares that "the club shall provide the player with suitable equipment for preparation and shall provide an environment compatible with his professional status. In any event the player has the right to take part in training sessions and pre-championship preparation with the first team [...]. Without prejudice to cases of proven illness or injury, the player must take part in all the training sessions at the time and place arranged by the club [...]".

The aim of the Serie A clubs was to modify this clause in order to institutionalize the case of the so-called *fuori rosa* players – footballers that are members of the society but are obliged to attend individual trainings without the rest of the team –. In the recent years, this practice has been utilized more and more as a punishment or sanction towards some footballers and not just as a procedure for the execution of personalized or recovery trainings.

For this reason, the A.I.C. has contested the point of the Lega Serie A, specifying that the regulation of the *fuori rosa* practice could have resulted in conducts qualifiable as mobbing.

¹⁰⁶ Ibid., p.62-63.

The discussion was resolved with the intervention of the F.I.G.C. that nominated three experts in order to solve the dispute. It recognized to the footballers the right to access “the environment compatible with his professional status”, but also at the same time the right of the clubs to organize the preparation of the team in the best way in order to achieve its objectives.¹⁰⁷

Among the innovations brought by this version of the Agreement, there is the clause 8 which states that the footballers cannot perform “other sports, employment or business activities without the express advanced authorization by the club”.

In case of negative response, the clubs are obliged to motivate their decision and the footballers have the right to contest the conviction in front of the Arbitration Panel.

In line with what is stated by the N.O.I.F and the law n.91/1981, clause 9 refers to the protection of health. It prescribes the duty for footballers to “take care of his own physical and psychological health in view of the sporting services [...]”, trying to avoid the activities that can affect their conditions. This prescription is in accordance with the article 2104 of the Civil Code which imposes the duty of diligence to the employees.¹⁰⁸

All the societies have proceeded to adopt internal codes of conduct and codes of ethics that foresee, in many cases, sanctions that can facilitate the prevention of negative behaviours of footballers that could affect their physical and psychological health, but also the club.

Moreover the clause states the obligation for clubs and players to observe the provisions of the law – the law n.91/1981 in particular –, C.O.N.I. and the F.I.G.C..

Similarly to the previous one, also the clause 10 proceeds in line with the text of the law n.91/1981. It regards the “technical instructions, obligations and rules of behaviour” and it

¹⁰⁷ Ibid.em.

¹⁰⁸ AMATO P., SARTORI S., *Gli effetti del Nuovo accordo collettivo sul rapporto di lavoro del calciatore professionista. Primi commenti e principali innovazioni rispetto al testo 1989/1992*, p.83.

responds directly to the prescription inserted in the article 4 of the n.91/1981 which states, as mentioned before, the duty “insert in the individual contract the clause containing the obligation of the sportsman to respect the technical instructions and prescriptions for the achievement of the agonistic scopes”. This norm seems to respond to the general duty of obedience imposed to the employees by the article 2104 of the Civil Code.¹⁰⁹

In addition, it requires to the players “to comply strictly with his duties of loyalty to the club”. This provision is the transposition of the article 2105 of the Civil Code into the Agreement.¹¹⁰ This implies that the players have to avoid behaviours that could affect the society and its image, but it has also to be interpreted as the inhibition of the footballers to perform other sporting or business activities without the authorization of the club.¹¹¹

The last subparagraphs of the clause regard the duty of footballers to “take good care of the sports clothes and materials provided by the club [...]”¹¹² and the prohibition for the footballers to “interfere with the technical, management and corporate choices of the Club.”

Among the clauses changed in relation with the previous versions of the Agreement, there is also the clause 11 about “breach and penalty clauses”.

The new formulation establishes sanctions that can be applied to the footballers in case of breach of the duties derived by their employment relationship and the regulation on the matter (Federation’s norms, Federation regulations and so on).

The clause foresees in the first subparagraph the following sanctions: written warning, fine, salary reduction, temporary exclusion from training sessions or pre-championship preparation with first team, termination of the contract.

¹⁰⁹ Ibid.em.

¹¹⁰ Article 2105 of the Civil Codes states the duty of loyalty of the employees.

¹¹¹ <http://www.csddl.it/csddl/atleti-professionisti-e-dilettanti/i-doveri-dello-sportivo-professionista.html>, last access: 18th February 2018.

¹¹² V. FRATTAROLO, *Il rapporto di lavoro sportivo*, 2017, p.62.

The successive paragraphs are dedicated to the specific definition of the different sanctions, specifying the documents, the procedures and the modalities requested by each.¹¹³

Instead, the “actions for protection of the player’s rights” are the subject of the clause 12¹¹⁴ that promotes the actions that a footballer can move in order to safeguard its rights. It establishes the right of the footballer “to obtain, by application to the Arbitration Panel, compensation in damages and/or the termination of the contract in the event of breach by the Club of its contractual obligations vis-à-vis the player”, specifying also the modalities of objection in case of breach of the provisions stated by the clause 7 of the Agreement.¹¹⁵

Among the player’s rights which the clause 12 refers to, the right to obtain the payment foreseen by contract on time is one the most important and the Agreement foresees for this reason a dedicated article, the thirteenth.

This article was the object of a hard debate between the A.I.C. and the Lega Serie A. This one proposed the possibility for the footballer to require the termination of the contract after six months of late payment for the fixed part of the salary and three months for the variable one.

These periods were considered by the A.I.C., but also by the experts consulted, too long in relation with the economic and patrimonial needs of the footballers.¹¹⁶ As a conclusion of the debate, the terms were fixed in 20 days for both the salary parts, but only after the additional condition of the deposit of letter with which the club is placed in arrears.

¹¹³ SPERDUTI M., *Il nuovo accordo collettivo per la Serie A di calcio*, p.65-67.

¹¹⁴ The article will not be treated extensively because it refers to administrative procedures regarding the actions for protection of the player’s rights.

¹¹⁵ It refers to the right of the footballer to have access to a suitable equipment for preparation and an environment compatible with his professional status.

¹¹⁶ SPERDUTI M., *Il nuovo accordo collettivo per la Serie A di calcio*, p.65.

In addition, the clause establishes also: the amount that the footballers have the right to receive as compensation in case of termination of the contract, the consequences that arise from the termination, the modalities and the procedures required in other peculiar cases.

The Agreement envisages also dispositions regarding the case of “illness and injury”, clause 14, and the case of “incapacity and unfitness of the player”, clause 15.

The first of these two clauses states that “in the event of illness or injury for the period of incapacity the player is entitled to the salary established by the contract [...]”, recognizing to the club the possibility to have “the benefit of any insurance policies agreed in its favour” – the subparagraph 4 foresees also the possibility to conclude a “specific healthcare insurance policy” –.

This clause was object of a debate between the A.I.C. and the Lega Serie A. The latter required the insertion of a duty for the footballers to use exclusively the healthcare facilities indicated by the Club. This position was motivated by the fear that the footballers could utilize non-professional doctors or facilities.¹¹⁷

However, the Collective Bargaining Agreements has reaffirmed the priority of the footballers regarding their healthcare – the footballer has to “give timely written notice to the club” in case of different facilities than those proposed by the club –.

Instead, the second of the above-mentioned clauses, the fifteenth, extends the medical conditions, foreseen by the clause 14, to the cases of incapacity and unfitness of the player. After a definition of the two conditions, the clause establishes the rules that regard the certification of the condition of the incapacity, which has to be made by a “sport doctor or by a medical facility, appointed by the Arbitration Panel.”

¹¹⁷ Ibid., p.64.

In addition, the clause continues establishing the cases in which the society can require the reduction of salary by half or the termination of the contract – six months is the time usually fixed in order to proceed in these cases –.

In line with the dispositions of the law n.91/1981 and the N.O.I.F., after the health protection, the Agreement moves on the matter of the insurances, imposing to the club the duty to “insure the player with a leading insurance company against injuries and illness [...]” which has to be stipulated at the beginning of the sporting season – this condition is mandatory for the participation to any sports activities –.

It continues establishing a series of rules that regards the stipulation of the insurance and the duties that the footballers are obliged to follow.

The text of this clause was object of a major modification, based on the requests of the A.I.C., in relation to the preceding versions of the Collective Bargaining Agreement. In the new Agreement, in fact, the upper limits of the policies have been implemented from the amount of 203.000 euros to the amount of 350.000 euros for each player.¹¹⁸

In addition to the stipulation of an insurance against injuries and illness, the following clause, the seventeenth, imposes to the clubs the payment of “the contributions required by the law to the social security and national insurance institutes [...]”.

The last part of the Agreement envisages several rights recognized to the footballers from the clause 18 to clause 20.

The first of these three clauses recognizes the right of the footballers to have one rest day every week and four weeks as a period of annual vacation.

However, the peculiarity of the profession of footballers requires some specifications and exceptions. The rest day and the period of vacation have to take into consideration the

¹¹⁸ Ibid., p.58-59.

agonistic calendars, which usually foresee the matches during the usual public holidays and the periods of vacation during summer.

Given these cases, the rule that imposes the respect of the Sunday rest, affirmed by the law, is not applied to the footballers – the article 2109 of the Civil Code and the article 9 of the legislative decree 8th April 2003, n.66 –.¹¹⁹

Instead, the clause 19 recognizes the possibility to require a “paid matrimonial leave of at least five consecutive days since the day prior the wedding, but taking into considerations the needs dictated by the sport activities”.

The last of the three above-mentioned clauses, the twentieth, recognizes that, in compliance with the article 4 of the law n.91/1981, the footballer has the right to receive the end of career indemnity – a delayed compensation with a social security aim –.

The amount of the indemnity is deposited by the society into the fund “Fondo accantonamento” instituted by the F.I.G.C. and it is paid at the definitive end of the working relationship with the society.¹²⁰

Finally, the last clause that is opportune to signal is the clause 21 that establishes the presence of an arbitration clause, stating that the “individual contract for sporting services must contain an arbitration clause on the basis of which the solution of all disputes [...] is deferred for resolution by the Arbitration Panel”.

The functioning of the Arbitration Panel is disciplined by a specific regulation attached to the Agreement. All the professional footballers and the societies can file an appeal to the Arbitration Panel, with the only exception of the ones of the Serie C.¹²¹

¹¹⁹ V. FRATTAROLO, *Il rapporto di lavoro sportivo*, p.61.

¹²⁰ AMATO P., SARTORI S., *Gli effetti del Nuovo accordo collettivo sul rapporto di lavoro del calciatore professionista. Primi commenti e principali innovazioni rispetto al testo 1989/1992*, p.90.

¹²¹ *Ibid.*, 93-94.

This clause completes the analysis of the Collective Bargaining Agreement that, it is important to underline, has been extended in its duration until 30th June 2018, as foreseen by the private contract signed by the President of the F.I.G.C., the President of the A.I.C. and the special commissioner of the L.N.P.A..

1.5.2 The standard contract of the L.N.P.A..

Among the documents annexed to the Agreement¹²², the standard contract is certainly the most important.

The structure of the contract is composed of three parts as follows: a first part, in which both the Club and the player involved in the negotiation are required to insert their personal information; then the part dedicated to the clauses and finally the one reserved for the signatures and eventually 'other documents'.

The information required in the first part of the contract are necessary to identify precisely the Club and its representative during the stipulation of the agreement and the player and his agent, if present.

The first clause specifies the period in which the player is obliged to provide his services to the Club, while the second clause identifies the fixed and the variable amounts of the payments due to him.

Instead, the other four clauses are inserted as standard in the contract, stating: the acknowledgement of the conditions of the Collective Bargaining Agreement, the reference to the Arbitration Panel in case of disputes between the society and the player, the compliance with the rules and the decisions of the F.I.G.C. and the election of the reference addresses for both the contractors.

¹²² The documents are: the standard contract form, the form containing other documents, the Arbitration Panel Regulations, the tables referred to in clause 4.7.

The last part of the contract is destined to the apposition of the signatures and the eventual annexation of documents as envisaged by the clause 3.5 of the Agreement.

In relation of the standard contract, it is important to highlight that, as established by the article 4 of the law n.91/1981, the employment relationship between professional sportsmen and sport societies is constituted through the stipulation, exclusively in a written form, of the standard contract itself, which is part of the agreement between the national federations, the F.I.G.C. in this case, and the representatives of the categories interested, the L.N.P.A. and A.I.C. for what concerns the footballers.

While writing this article, as in many other cases, the legislator has considered the peculiarity of the employment relationship of sportsmen compared to the normative system to which the subordinate workers commonly refer, envisaging explicitly in the text of the article 4 the reference to the predisposition of a standard contract.

Given what is prescribed in this article, the legislator wanted in this case to limit widely the autonomy of the parts and the intervention of the legislation in the process of defining the content of the contract, transferring this burden on the federations and the categories.

Exactly the role of the federation appears to be a breaking-point compared to the other typologies of collective bargaining agreements (CCNL, *contratto collettivo nazionale di lavoro*) that characterize the Italian normative system.

In fact, if from one side we have the representatives of the categories, as in all the CCNL, –those of the societies, united under the L.N.P.A., and those of the A.I.C., representing the professional footballers –, on the other side there is the F.I.G.C., that it is obliged to participate in the process of negotiation between the parties, as prescribed by the article 4 of the law n.91/1981.

The peculiarities, in this case, emerge from two aspects: first of all, in the composition of the F.I.G.C., that is constituted by members of the clubs and the associations; among them, there is also the A.I.C. – given this situation, the federation should have a role of mediator between the parties, being it composed by members of both. Secondly, in the fact that a “recognised association governed by private law and associated with the C.O.N.I.”, as the F.I.G.C. is, is called to have an active role in the predisposition of the standard contract.

1.5.3 Conclusion.

These analyses of the Agreement and the standard contract of the L.N.P.A. finish the second chapter that has been dedicated to the Italian normative system regulating the profession of professional footballers in Italy.

As it has been widely explained, this regulatory system is composed of several normative interventions which operate at different levels. First of all, the regulation of the State, based primarily on the law n.91/1981, which acts as a pillar of the entire sport law in Italy.

Then the regulation of the F.I.G.C., “a recognised association governed by private law associated with the C.O.N.I.” that intervene on football through its role in the negotiations of the Collective Bargaining Agreements and directly through the emanation of the N.O.I.F..

Among these mechanisms, the judgements of the judiciary operate in some cases in order to settle potential normative doubts.

Given the compliance of the Italian legislative system to the EU regulatory one, it is now opportune to move the focus of the next chapter from the national level to the European level, seeing how this one has influenced the Italian regulations.

Chapter 2. An historical analysis on the evolution of the EU sport law.

The passage from the Italian level to the European one implies, with regard to the employment and contractual conditions of the professional footballers, a shift from the specific regulation of the Italian law system to a general one, clustered under the vague legislation on sport present in the EU, focusing also the attention on the role played by the UEFA within the entire regulatory system.

In order to have a clear vision of the EU sport law, it is necessary to start our dissertation at the European level with the analysis of some of the judgements that have marked the normative path.

In fact, before the entering into force of the Treaty of Lisbon, the regulatory system about sport was based solely on the interpretations given by the ECJ (European Court of Justice). Among them it is possible to identify the judgement on the Walrave and Koch case¹²³ as the “landmark decision” on the matter and the Donà case as its ‘prosecution’.

2.1 The Walrave and Donà cases.

In the case Walrave, the ECJ was called to express its opinion about the interpretation of the articles 7¹²⁴, 48¹²⁵ and 59¹²⁶ of the EEC Treaty and the compatibility of the them with a clause that was inserted in regulation of the UCI (Union Cycliste Internationale, the

¹²³ ECJ, Case 36/74, 12th December 1974.

¹²⁴ Article 7 of the TEEC states that “[...] any discrimination on the grounds of nationality shall hereby be prohibited [...]”.

¹²⁵ Article 48 of the TEEC states that “The free movement of workers shall be ensured within the Community [...]. This shall involve the abolition of any discrimination based on nationality between workers of the Member States [...]”.

¹²⁶ Article 59 of the TEEC states that “[...] restrictions on the free supply of services within the Community shall be progressively abolished [...]”.

International Cycling Union) by which the cyclist and the trainer had to be of the same nationality to participate to the World Championship of stayers.¹²⁷

In its judgement, the ECJ has instituted three pillars about the relationship between sport and European law. The first is that the sporting activity is posed under the EU jurisdiction if and only if it is configured as an economic activity, specifying also the articles applicable in case of subordinate or autonomous employment relationship.

The second is that the private nature of the sport federations is not a sufficient motivation to subtract them from the EU law. The third is that the ECJ has limited the rule that subject the sporting-economic activity to the EU law¹²⁸, underlying that the principle of non-discrimination does not concern the composition of the sporting societies, because it is not configurable as an economic activity.¹²⁹

This conclusion is the most important, even though it is opened to several interpretations: a more restrictive one that considers this exception to the general principle only applicable to the case of national teams¹³⁰, or a wider one that considers the exception as valid also in the case of football national leagues, for example, which however seem to be under the typology of economic activities, so inapplicable according to the provisions of the Walrave judgment.¹³¹

Two years later the ECJ was called again to give its opinion on the dispute Gaetano Donà v. Mario Mantero¹³², regarding the interpretation of the articles 7, 48 and 59 of the TEEC – the same of the case Walrave –.

¹²⁷ This discipline consists of races in which the cyclist has to race behind a stayer (motorcycle).

¹²⁸ NASCIMBENE B., BASTIANON S., *Diritto europeo dello sport*, p.12-13.

¹²⁹ WEATHERILL S., *EU Sports Law. Collected papers*, Asser press, 2007, p.20.

¹³⁰ See note 130.

¹³¹ See note 131.

¹³² ECJ, Case 13/76, 14th July 1976.

The dispute involved Mario Mantero, chairman of the Rovigo football club, and Gaetano Donà, an agent, regarding primarily the applicability and legitimacy of the Italian discriminatory rules that imposed the use of Italian player during the competitions organised by the Italian Football Federation.

First of all, the judgment of the Court referenced the principle stated by the Walrave judgement under which sport has to be considered subjected to the EU law, if configured as an economic activity. It also recognizes the possibility to “exclude foreign players from the participation in certain matches for reasons which are not of an economic nature [...]”, judging the “rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question [...]” incompatible with the articles above-mentioned.

Even though, the Donà judgement seems to underline most than the Walrave one the exceptional nature of the cases examined, the results are not clarifying. In fact, the non-economic motivations in order to exclude foreign players are not specified and the reference to matches between national team seems to retrace the Walrave judgement.¹³³

The principles declared in these two judgments were not treated for almost 20 years, until the judgement that revolutionized the world of football and the EU sport law, the Bosman judgement.

¹³³ NASCIMBENE B., BASTIANON S., *Diritto europeo dello sport*, p.12-13.

2.2 The Bosman ruling.

2.2.1 Introduction to the case.¹³⁴

Among the different ECJ's judgements that have shaped the EU sport law during the years, the Bosman case can be certainly identified as the most representative and important.

The case C-415/93, or better known as the Bosman ruling, is a judgement of the European Court, dated 15th December 1995, that has revolutionized the world of football and it can be considered as a breaking point of the EU normative on sport.

In this case the Court was called to give its opinion about the interpretation of the articles 48, 85 and 86 of the EEC. These regard: the freedom of movement for workers (art.48), the prohibition of collusion that restricts competition (art.85) and the prohibition of the abusive exploitation of a dominant position (art.86). Among these three, the Bosman ruling have had a great impact especially on the first one, changing completely the modalities of transfer of the footballers in the EU.

Compared to the above-mentioned Walrave and Donà cases, the Bosman ruling results to be more complicated, being composed by three different cases consolidated in one judgement. These cases are: Union Royale Belge des Sociétés de Football Association ASBL (Belgian Football association, URBSFA) v. Jean-Marc Bosman; the Royal Club Liégeois SA (RC Liege) v. Jean-Marc Bosman, the SA d'Economie Mixte Sportive de l'Union Sportive du Littoral de Dunkerque (USL Dunkerque), the Union Royale Belge des Sociétés de Football Association ASBL, the Union des associations Européennes de Football (UEFA); the Union des associations Européennes de Football (UEFA) v. Jean-Marc Bosman.

¹³⁴ Part of the description of the case is contained in the text of the final judgement of the ECJ.

Despite the final judgment of the ECJ came in 1995, the Bosman cases started five years early. At that time, Jean-Marc Bosman played for a first league Belgian team, the RC Liege. His contract expired on the 30th June 1990 and the club offered him a new contract, as imposed by the Belgian Football Association, but only at the minimum wage required by the Federation and almost at a quarter of the previous one.

Given the rejection of these conditions by Bosman, the club put him on a transfer list, reaching after a while an agreement with a Second Division French club, the USL Dunkerque, accepted by Bosman himself.

However, the transfer was not concluded due to the uncertain solvency of the French club and the lack of the transfer certificate provided by the Belgian Football Association, on request of the RC Liege.

The failure of the transfer brought the suspension of Jean-Marc Bosman, as allowed by the norms of the URBSFA, that could render him unable to play during the 1990-1991 season. Given the circumstances, Bosman proceeded at the beginning of the season – on 8th August 1990 – against the Belgian Football association through the Belgian Court of First Instance.¹³⁵

Successively this first proceeding, the Court of Appeal emanated a provisory disposition that allowed Bosman to deal with other clubs, which however seemed to boycott the player.¹³⁶ In fact, he was able to play in the years until 1995 for minor French clubs as the Olympique Saint-Quentin and the Saint-Denis de la Réunion and once returned in the homeland ‘was obliged’ to play in the lowest leagues as with the club Olympique Charleroi.

¹³⁵ KRANZ A. O., *The Bosman case: the relationship between European Union law and the transfer system in European Football*, Columbia Journal of European Law, 1999, p.435.

¹³⁶ The ECJ states explicitly that “Mr Bosman has been boycotted by all the European clubs which might have engaged him.”

During this period, Bosman was also obliged to face several obstacles in front of national courts, until, after two failed references – articles 173 and 215 of the EEC Treaty were cited–, the ECJ was compelled by the Appeal of Liege “to hear an article 177 preliminary reference”¹³⁷ and the process started in October 1993.

2.2.2 The transfer rules in football and the nationality restrictions.

The transfer rules in football vary from State to State, even though are influenced by the UEFA and FIFA regulations, which are implemented in many cases by the single national federations.

Given this plurality, there was a debate in the Bosman about which rules were relevant, reaching the conclusion of the applicability of the FIFA regulation at that time – July 1990 –.

With several shades, the central theme of these different regulations was the absence of a freedom of transfer for the footballers at the expiring date of the contract -the distinction between professional and amateurish players is taken into account-.

So, the footballer was not free to conclude another contract even though his¹³⁸ one was expired. On the contrary, he must wait until the selling club concluded a transfer agreement, usually involving the payment of a transfer fee, with the buying one¹³⁹– few years later Jean-Marc Bosman defined this situation as "slavery"¹⁴⁰.

This happened until 1991 when UEFA negotiated with the Commission the insertion of a clause that allowed professional footballers to “to enter into a new contract, at the expiry

¹³⁷ Article 177 of the EEC Treaty states that “The Court of Justice shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community and of the ECB; (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. [...]”.

¹³⁸ This situation is present also in case of female athletes and the rules valid for men are also applicable in the cases of women.

¹³⁹ WEATHERILL S., *EU Sports Law. Collected papers*, p.88-90.

¹⁴⁰ Bosman, dalla gloria all'inferno"Alcol e depressione i miei nemici", 2011, accessed on: http://www.repubblica.it/sport/calcio/calciomercato/2011/03/21/news/bosman_dalla_fama_all_inferno_alcol_e_depressione_i_miei_nemici-13913032/

of the old one” – provision incorporated in the ‘Principles of Cooperation between Member Associations of UEFA and their clubs’ – and a similar rule was adopted by the FIFA in the same year too.

However, this new provision of the UEFA was implemented two years later with the insertion of a compensation fee for training or development – in case of disagreement between clubs in the above-mentioned situation of a new contract after the expiry it is foreseen the intervention of a UEFA board of experts –.¹⁴¹

Despite these regulations, the transfer rules continued to be different from State to State, because of the non-direct applicability of the UEFA and FIFA regulations in the single federations’ systems.

In this sense, the Bosman case results particularly interesting due to the complexity and the degree of restriction of the Belgian Football association regulation. The situation of Jean-Marc Bosman touched several provisions of this regulation such as the mandatory placement on a transfer list in case of refusal to the renewal of the contract or the suspension of the player in case of an additional refusal of the player, with the consequent reclassification as amateur without permission to play.¹⁴²

In addition to these, other typologies of restrictions were frequent in Belgium and UEFA’s Member States in the pre-Bosman era, as the nationality restrictions, like those illustrated by the Donà case.

The different football associations in Europe shaped during the years different systems in order to limit the number of foreign players in their leagues – systems that are still present

¹⁴¹ VAN DEN BOGAERT S., *Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman*, Kluwer law international, 2005, p.176-178.

¹⁴² *Ibid.*, p.178-179.

in Europe, but applicable only to the non-EU players –, used as a way to protect the national football movements, favouring the national athletes.

These different systems were partially harmonized thanks to the intervention of the Commission and the UEFA, which established the ‘3+2’ model. According to this, the clubs “may field three foreign players plus two assimilated players”.¹⁴³ Usually this norm was bypassed by the single national federations that allowed the presence of more foreign players. However, the rule became mandatory for all the competitions organized by the UEFA, creating a gap between the national regulatory systems and the European one.¹⁴⁴

2.2.3 The Bosman judgement.

The Bosman judgement begins with the paragraph “Jurisdiction of the Court to give a preliminary ruling on the questions submitted” in which the ECJ discusses the claimed exposed by different institution.

Firstly, UEFA and URBSFA contested the relation between Community law and the Bosman case and the Court jurisdiction on the matter, underlying also the non-application of the UEFA regulations at the moment of the rejection of the transfer to the USL Dunkerque.

Secondly, UEFA, URBSFA, the Danish, French and Italian governments and the Commission challenged the reference to the nationality clause in a case regarding the transfer rules, affirming that the footballer Jean-Marc Bosman had only hypothetical impediments to his career, rendering not justifiable the request for the interpretation of the Treaty.

Thirdly, URBSFA and UEFA argued the proceedings regarding the national clause, on the base of the judgement of the Cour the Cassation of 30th March 1995 stating that the Cour

¹⁴³ GARDINER S., WELCH R., *Bosman – There and Back Again: The legitimacy of Playing Quotas under European Union Sports Policy*, European Law Journal, Vol. 17, Number 6, 2011, p.828-829.

¹⁴⁴ STEWART S., *The development of Sports Law in the European Union, its globalisation, and the Competition Law aspects of European sport broadcasting rights*, Sports Lawyers Journal, Volume 16, 2009, p.188-189.

d'Appel did not "accept as admissible Mr Bosman's claims for a declaration that the nationality clauses in the URBSFA regulations were not applicable to him."¹⁴⁵

The ECJ responded to these questions in its final judgement from the paragraph 59 to the paragraph 67.

The ECJ stated its faculty to be consulted in the Bosman case, given the provision of the article 177 of the Treaty and the requests submitted by the national court and related the interpretation of the Treaty, framed in a context of cooperation between the ECJ and the national courts.

Moreover, the ECJ contested the question posed by the UEFA, the URBSFA and three governments, declaring how "the issues of the main proceedings, taken as a whole, are not hypothetical" and the national court has provided "clear statement of the surrounding facts."¹⁴⁶

Given the preventive actions moved by Jean-Marc Bosman against UEFA and URBSFA, the ECJ resulted, according to its judgement, authorized to interpret the "compatibility of the Community law of the transfer system set up by the UEFA", even if the two institutions have contested its application.

With regard to the admissibility of the questions concerning the nationality clauses in the case, the ECJ considered effective the presence of a limitation for the Bosman's career brought by the presence of the above-mentioned clauses, as confirmed also by the judgement of the Cour the Cassation of 30th March 1995.

¹⁴⁵ PARRISH R., *Sports law and policy in the European Union*, Manchester University Press, 2003, p.230.

¹⁴⁶ DUVAL A., VAN ROMPUY B., *The legacy of Bosman, Revisiting the relationship between EU law and Sport*, Springer, 2016, p.39.

Once confirmed the “jurisdiction of the Court with regard to the preliminary ruling on the questions submitted”, the ECJ passed to give its interpretation of “the article 48 of the Treaty with regard to the transfer rules”.

Also in this passage of the judgement the ECJ had to respond to the questions posed by several institutions.

The URBSFA argued as how the small clubs “carry on an economic activity only to a negligible extent”. Being the RC Liège identified as a small club with a limited economic activity, the reference to the article 48 of Treaty would result inapplicable to the Bosman case.

UEFA reinforced this concept asserting how the Community have respected the autonomy of sport and how a judgement of the Court involving a professional footballer could radically change the entire system, in addition it also required a “degree of flexibility [...] because of the particular nature of the sport”.¹⁴⁷

Moreover, concerning these considerations, the German government added how football cannot be considered as an economic activity, being part of the regional and national different cultures of the Member States¹⁴⁸. With regard to the freedom of association of the sporting federations and the principle of subsidiarity, it stated how the intervention of the Community and the public institutions should be strictly limited.¹⁴⁹

In its response to these arguments, the ECJ underlined how the sport was subject to the Community law when constitutes an economic activity, since the Walrave and Donà cases. However, in addition to these references, the ECJ enlarged the operating area, specifying how given the remunerated employment condition of professional and semi-professional

¹⁴⁷ WEATHERILL S., *EU Sports Law. Collected papers*, p.94.

¹⁴⁸ Reference to the article 128 of the EC Treaty.

¹⁴⁹ KRANZ A. O., *The Bosman case: the relationship between European Union law and the transfer system in European Football*, p.437.

footballers, the economic activity can be extended also this area – it is sufficient the intention to create an employment relationship –.

With regard to the freedom of movement, the ECJ has specified as the related provisions of the Community law do not exclude regulations and practices that take into account the peculiar nature of sport, however this specificity cannot go beyond its scope, leading to the exclusion of sport from the applicability of the Treaty.

In relation with the effects of the Bosman judgment, the ECJ has recognized the potential great impact on the football system, underlying nevertheless how this “cannot go so far as to diminish the objective character of the law”.¹⁵⁰

Instead, the connection between culture and sport was not accepted in relation with the Bosman case, because not related with the question submitted by the national court, concerning primarily the freedom of movement of workers.¹⁵¹

With regard to the freedom of association, the ECJ reaffirmed how this principle is present in the “constitutional traditions common to the Member States”, in the “European Convention for the Protection of Human Rights and Fundamental Freedoms” and in other documents.

Instead, the principle of subsidiarity, as interpreted by the German government, does not mean that the public institutions have the right to develop regulations that could affect the rights of the individuals, as the freedom of movement, recognized by the Treaty – in the case of Bosman, the intervention of the ECJ is justified –.¹⁵²

¹⁵⁰ WEATHERILL S., *EU Sports Law. Collected papers*, p.94.

¹⁵¹ VAN DEN BOGAERT S., *Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman*, Kluwer law international, 2005, p.18-19.

¹⁵² *Ibid.*, p.20-21.

In addition, about this topic, the Court has stated how the abolition of the obstacles to the movement of people and services would be compromised in case of barriers imposed by the “exercise of the legal autonomy by associations or organisations”, therefore the abolition of obstacles has necessarily to involve the public and the private spheres of the EU, as also underlined in the Walrave case.

In the above-mentioned case, the ECJ stated how the Article 48 of the Treaty was intended to be applied not only to “the action of the public authorities”, but also to rules of any nature “aimed at regulating gainful employment in a collective manner”. Successively in Bosman case, the Court has added how if confined to the public sphere, the aim of the Article 48 would be damaged with the possibility of the creation of inequality.

Therefore, given the justified applicability of the Article 48 to the private regulation, the rules emanated by the URBSFA, FIFA and UEFA, determining the employment conditions of the athletes, resulted subjected to this article, according to the Bosman judgement.

UEFA tried also to argue the application of the Article 48, stating how the Bosman situation had a “purely internal nature”. In fact, according to the maximum European football institution, the Bosman dispute concerned a case involving a Belgian player, Jean-Marc Bosman, a Belgian club, the RC Liege, and a Belgian association, the URBSFA.

The duty of non-interference of the provisions of the Article 48 in case of situations internal to a Member states was confirmed by the ECJ, however, Jean-Marc Bosman signed an employment contract with a club in another Member State, rendering applicable the dispositions of the above-mentioned article.¹⁵³

¹⁵³ KRANZ A. O., *The Bosman case: the relationship between European Union law and the transfer system in European Football*, p.438.

With the regard of “the existence of an obstacle to freedom of movement for workers”, the Court has underlined how the intent of the provisions of the Treaty with regard to the freedom of movement is to facilitate the economic and occupational activities of the Community citizens in other Member States, as also widely observed in the judgements of other cases.

In particular, dispositions that affects the rights of individuals to leave their country of origin, constitute an obstacle to the freedom of movement, even though not related to concerns regarding the nationality of workers.¹⁵⁴ In addition, the dispositions of the Article 58 aim also to prohibit that Member States hinder the establishment of one of their citizens in another Member States and the same considerations can be applied also to the Article 48 in the cases of movement for gainful employment.

In this last case, as claimed by Jean-Marc Bosman, the Advocate General and the Danish government, the transfer rules seemed to “restrict the freedom of movement of the players”, blocking them from leaving the club even in the cases of expiration of the employment contract. Given the necessity, as in the Bosman case, to have a regular payment of a transfer fee, the transfer rules seemed to “constitute an obstacle to the freedom of movement for workers”.

In its judgement, the ECJ proceeded also judging about the “existence of justifications”. In fact, the URBSFA, UEFA and the French and Italian governments tried to justify the regulations of the transfer rules, motivating them as a system to “maintain a financial and competitive balance between clubs” and also as a way to support the training of young players and the investment in the youth fields of the clubs. The Court itself has considered these

¹⁵⁴ See also the case C-10/90 Masgio v. Bundesknappschaft.

considerations acceptable in a view of maintenance of the high level of competition between clubs.

However, it has underlined how the transfer, development or training fees required for young players are unrelated with the costs of training them, considering also the uncertain nature of the sporting future of the athletes.

The last part of the Bosman judgement refers to the “interpretation of Article 48 of the Treaty with regard to the nationality clauses”, in particular the national court wanted to ensure whether the Article 48 of the Treaty precluded the application of rules of the sporting associations limiting the number of non-national players in some competitions.

The Article 48 on the matter states that the “freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States [...]”. This provision was also extended by the Regulation EEC in which the Council establishes that the restrictions by number or percentage of the employment of foreign nationals are not applied in case of nationals of other Member States.

The same principle has been applied to the regulations of the sporting associations limiting in football matches the number of national players of other Member States, considering that the restrictions in the participation in these matches affects the “chances of employment of the player concerned”.

Also with regard to this topic, the Court has proceeded to judge about the “existence of justifications”. In fact, URBSFA, UEFA and the Italian, German and French governments sustained the use of nationality clauses because based on non-economic reasons. According to them, these clauses were a system to maintain the link between clubs and their countries, ensuring that these clubs represented their countries in the international competitions.

The preservation of a pool of players for the national teams and the maintenance of a “competitive balance between clubs” were the other two justifications brought in order to sustain this thesis, with the UEFA claiming also that the rule ‘3+2’ was made in collaboration with Commission.

With the aim of responding to these justifications, the ECJ cited the Donà case that, as explained in the previous paragraph, did not exclude the adoption of regulations excluding foreign players from some matches, based on the reasons of non-economic nature, citing the cases of national team matches.

However, in the case of Bosman, the nationality clauses are not related to the participation to national team matches, but regard all the official matches between professional clubs. So, in this case, the nationality clauses cannot be considered in accordance with the Article 48 because in contrast with the right of “free access to employment which the Treaty confers individually [...]”.

In order to sustain the thesis of non-applicability of the nationality clauses in these cases, the ECJ discussed each question posed by the above-mentioned institutions.

About the link between clubs and countries, the ECJ has highlighted how within the single countries there are not preclusions with regard to the region or the town of origin in the State itself; moreover, about the use of foreign players, the participation to international competitions is reserved to clubs which have obtained significant results in their countries, without taking into account the use of players with different nationalities.

For what concerns the national teams, even though they must be composed by players of the country of origin, this fact does not preclude the possibility that these players could be employed in clubs of other States. Moreover, the ECJ added that the opening of the

employment market would not consist in the reduction of employment opportunities for the nationals, that could have the possibility to be signed by clubs of other Member States.¹⁵⁵

Similarly, the possible limitation of the nationality clauses should not affect the possibility of the clubs “to recruit the best national players”, keeping thus the same system present at the time of the Bosman case, which did not ensure a competitive balance.

Finally, the last response to the justifications posed by the different institutions concerns the ‘3+2’ rule, which, as underlined by the ECJ, despite having been elaborated with the participation of the Commission, did not have the guarantee to be in compliance with the Treaty.

Finished the section on the interpretation of the Article 48, the last part of the Bosman judgement is dedicated to the interpretation of Articles 85 and 86 of the Treaty. This part consists of only one paragraph in which the Court sustained how, given that the questions posed by the national court were contrary to Article 48, there were no necessity to give an interpretation of the other two above-mentioned articles.

2.2.4 The final rulings of the Court.

After having debated all the questions posed by the counterparts, the ECJ proceeded to promulgate its final rulings.

Firstly, the Court stated that the Article 48 of the EEC Treaty precludes the applicability of rules emanated by sporting associations that forbid the transfer of the players of Member States unless the new club pays a fee, even if their contract is expired.

¹⁵⁵KRANZ A. O., *The Bosman case: the relationship between European Union law and the transfer system in European Football*, p.446-448.

Secondly, the Court established also, in presence of the Article 48, the non-applicability of the rules that limit, in some competitions, the number of players that are nationals of other Member States.

Thirdly, the Court underlined how the effects of the Bosman judgement were not extended to the transfer that were already concluded at the moment of the sentence, with the exception of those cases that have raised similar claims.

2.2.5 The Bosman case: some considerations.

As already mentioned, the Bosman ruling represent the most important decision of the European Court of Justice on the matter of sport.

This importance can be conducted to three correlated aspects: the first is that the judgement involved the most popular and economically relevant sport in Europe and worldwide; the second is represented by the effects that this judgement has had on football, revolutionizing it from an economic, social and juridical point of view; the third regards the fact that two of the pillars of the European football organisation, the transfer system and the norms on foreigners, were drastically affected by the Bosman case.

The first of these two pillars, the transfer system, as already underlined, constituted, according to the ECJ, an obstacle to the freedom of movement of workers. The direct consequence of the Bosman judgement was its modification, rendering it compliant with the EU legislation.

The greatness of this change is evident keeping in mind that the rule imposing the prohibition of the transfer, in case of unpaid transfer fee, lasted for more than a century. In fact, the origin of the transfer system preceding Bosman can be found in England at the end of the 19th century.

The figure of the professional footballer emerged in 1885, when the richest clubs of England started to pay secretly some players representing them during the matches. However, this profession was recognized one year later, when the Football Association instituted the regulatory system regarding the transfer of the players from a club to another – actually the first regulatory scheme envisaged the free movement of the players among clubs at the end of the season –.

Unfortunately, this system lasted only two years, because the Football Association (FA) decided to change it in correspondence to the creation of the English Football League in 1888.¹⁵⁶

In order to “safeguard the interests of all League clubs”, the FA modified the system rendering stricter the rules on player movement, instituting the rule that obliged players to have the permission of their old clubs to move to another at the end of the season, even if their contracts were expired. It was not long before this regulation faces the English law, in fact in 1890 “Nottingham Forest sought an injunction to prevent Campbell from playing for Blackburn Rovers”.

This legal action, identified as the Radford vs. Campbell case, can be considered an ancestor of the Bosman case despite the different judgement – in the Radford case, the Court of Appeal decided to avoid its intervention on the case –. In the following years there were other similar cases, however, the transfer system, that spread itself across the Europe, did not change until the decision of the ECJ in 1995.¹⁵⁷

Returning to the consequences of the Bosman ruling on the transfer system, it is useful to remember an article of Fulvio Bianchi on the Italian newspaper *La Repubblica*. It helps to

¹⁵⁶ MCARDLE D., *One Hundred Years of Servitude: Contractual Conflict in English Professional Football before Bosman.*, Web Journal of Current Legal Issues, 2000, consulted on: <http://archive.is/9RfY#selection-87.20-87.55>.

¹⁵⁷ Ibidem.

give an idea of the impact of Bosman, starting from the same day of the judgement. In that day, the UEFA Executive Committee organized a meeting in order to discuss the Bosman ruling that was immediately entered into force – according to the president of UEFA at that time, Lennart Johansson, the quotas system and the transfer system were automatically modified since 16th December 1995 –.

UEFA could not lodge an appeal and should find a solution “to prevent the collapse of the system”. The phrases pronounced that days by the principal actors involved give an apocalyptic image of the situation, showing that the maximum organisms of football were unprepared to the Bosman judgement and how they overreacted to the real situation.¹⁵⁸

The direct effect on the transfer system was the end of the transfer fees paid in the cases of players’ contracts expired. This led to the interventions of the different football Federations composing UEFA and governments, which modified, in accordance with the Bosman ruling, their rules governing the transfers within their borders of jurisdiction.

Given the plurality of the transfer systems and the impossibility to depict a complete image of the different situations, in order to have a better understanding of the consequences of the Bosman judgement, it is useful to show the intervention on one transfer system, the Italian one – the legislator intervened in this case almost ten months after the Bosman judgement–.

The first direct effect of the judgement was on the balance sheets of the football societies. In fact, the credits deriving from the future training fees, that the societies registered as an asset, should be cancelled from an accounting point of view.

¹⁵⁸ <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1995/12/16/un-favore-ai-piu-ricchi.html>, last access: 18th February 2018.

Moreover, this situation could have led to losses in the balance sheets of the societies that must be registered on the same fiscal year. This could collapse the system, provoking the bankruptcy of many football society and for this reason the Italian government decided to intervene¹⁵⁹ with the decree law 20 settembre 1996, n.485 called “*misure urgenti per le società sportive*” (in English, “urgent measures for the sporting societies”)¹⁶⁰.

The decree law n.485/1996 intervened on the law n.91/1981 modifying the articles 6, 10, 15 and 16 with the intention to “render less heavy for the balance sheets of the sporting societies the effects of the recent community decisions on the transfers of the athletes”.

The legislative intervention was also rendered necessary because of the creation of the differentiation, due to the Bosman judgement, between transfers of athletes within the Community borders and transfers of athletes in the internal market. For the first category, the transfer fee in case of contract expired were not allowed, for the latter instead the fee could still be required, creating in this way a “substantial alteration of the market”.¹⁶¹

In order to prevent this situation, the legislator modified the article 6 of the law n.91/1981 abolishing the duty to pay a transfer fee to the old club in case of expired contract, establishing, as mentioned in the previous chapter, the possibility for the old society to require “the payment of a bonus of training and technical formation that must be granted to the society in which the athlete has conducted its last amateurish or juvenile activity [...]”. Moreover, the amounts due in these cases were established to be exempt from VAT, as envisaged by article 2 of the decree law n.485/1996.

¹⁵⁹ BASTIANON S., *La sentenza Bosman vent'anni dopo*, G. Giappichelli editore, 2015, p.137-138.

¹⁶⁰ http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1996-09-21&atto.codiceRedazionale=096G0513&elenco30giorni=false, last access: 18th February 2018.

¹⁶¹ BASTIANON S., *La sentenza Bosman vent'anni dopo*, p.137 citing MANCIN M., *Il bilancio delle società sportive professionistiche*, 2011, p.34.

In addition to these dispositions, the decree law at article 3 aimed to reduce the impact of the losses, due to the accounting changes caused by the Bosman ruling, allowing the societies to amortize the amounts registered as training and promotion allowances over three fiscal years, instead of one – this decree law was also called “*decreto spalma-perdite*” for this reason –.¹⁶²

This decree law was converted, at the third attempt, into the law 18 novembre 1996, n.586, which introduced also two additional dispositions prescribing: the duty to destine at least 10% of the revenues to the youth fields and the possibility for the sporting societies to conduct other activities in addition to the sporting one.¹⁶³

However, the impact on the balance sheets of the societies was not the only consequence of the change of the transfer systems. In fact, the abolition of the transfer fees and the training and formation allowances, with the exception of the cases foreseen by the law n.586/1996, allowed clubs to save these costs that could be translated into “more favourable economically offers to the players in terms of salary”.

This provoked a redistribution of the resources in favour of players at the expense of the clubs that previously could use the fees and the allowances, deriving from the transfer of the players with the contract expired, to improve the results of their balance sheets, realizing in many cases important capital gains.

The increase of the salaries was evident also in the cases of renewals of the players’ contracts, considering the increase importance to avoid the expiry date and the consequent loss of the asset represented by the players. As a direct effect, the renewals became ever more

¹⁶² Ivi, p.138.

¹⁶³ <http://www.gazzettaufficiale.it/eli/id/1996/11/20/096G0616/sg>, last access: 18th February 2018.

the occasion not only to extend the last of the contract, but also to increase the amount paid to the athletes.

Certainly, the Bosman judgement has had an influence on this increase, however, other factors have affected it, as the growth of the revenues since the 90s, boosted principally by merchandising and media rights.

These circumstances have brought to an increase of the incidence of the salaries on the revenues that is passed, in the case of Italy, from the 58% of the season 1996/1997 to the 99% of the season 2001/2002¹⁶⁴, decreasing until the more recent result of the 72% of the season 2014/2015¹⁶⁵ – this trend is confirmed also by the other 4 top leagues in Europe, even if the incidence is more restrained in some cases–.

All these considerations on the transfer systems and the implications of the Bosman ruling cannot be fully explained and understood without reading them in the light of the modifications of the quotas system present in Europe at the time of the judgement, and how this was changed taking into consideration the sentence of the ECJ.

The quotas system, as it was explained before, represented a pillar of the European football organisation and for this reason was firmly defended by the URBSFA and UEFA, with the support of many Member states, arguing that the ‘3+2’ rule was a necessary exception to the antidiscrimination rules foreseen by the EU, justified by “sporting reasons”.

This and other justifications for the presence of the nationality quotas systems were rejected by the ECJ that, as previously mentioned, established the “the non-applicability of the rules that limit, in some competitions, the number of players that are nationals of other Member States.”

¹⁶⁴ Deloitte, Football money league cited by BASTIANON S., *La sentenza Bosman vent'anni dopo*, p.153.

¹⁶⁵ <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/sports-business-group/deloitte-uk-annual-review-of-football-finance-2016.pdf>, last access: 18th February 2018.

Even in this case, the Bosman judgement had immediate effects on the quota systems present in the different Member States and in the UEFA competitions – these systems, despite the differences, were inspired by the principles established through the ‘3+2’ rule of the UEFA–.

In fact, starting from the day after the sentence of the ECJ, the UEFA executive committee, represented by the figure of the president Lennart Johansson, considered, as we have already mentioned, the quota system ineffective, rendering in this way possible for the clubs to line up in the field as much athletes of the Member States ‘as they want’ – the limitations for not-EU players were still present –.¹⁶⁶

In reality, the increase of foreign players was not immediate, given the fact that the sport season was already started at the moment of the judgement, however eight months later the situation changed drastically.

In order to provide a clearer image of the effects, it is important to look at the data on the number of foreign players in the on the best leagues in Europe, the Serie A. In fact, the number of foreign players increased from 71 on 480 athletes – 14,79% – in the sport season 1995/1996 – the last season before the Bosman ruling – to 103 on 519 athletes – 19,84% – during the sport season 1996/1997 – the first season after Bosman –.

These number increased even more conspicuously and constantly during the following seasons, reaching for example in the season 2014/2015 the number of 306 foreign players on 545 athletes¹⁶⁷ – 56,11% –, arriving also to establish the curious record of 22 foreign players

¹⁶⁶ <http://ricerca.repubblica.it/repubblica/archivio/repubblica/1995/12/16/un-favore-ai-piu-ricchi.html>, last access: 18th February 2018.

¹⁶⁷ NUZZOLO M., TURCATO E., *Stranieri. Cosa tolgono e cosa danno davvero allo sport italiano*, Lit Edizioni, 2015.

on the field during Inter-Udinese on 2016 – this record was established in the Premier League 7 years before during Portsmouth-Arsenal –.

However, this phenomenon was not isolated to the Italian case, and not even to the football industry, but was present also in many other sports, even if less diffused, and in other football leagues. In fact, the other 5 top leagues in Europe show a similar trend, which seems to be balanced in the recent years – Premier more than 50% of foreigners, Bundesliga and Liga with almost 40% and Ligue 1 with 30% ¹⁶⁸–.

The growth of the number of foreigners has had other consequences, as the decrease of the number of club-trained players. In fact, analysing the data provided by the CIES Football Observatory, it is important to notice how the increased mobility of players and the inflow of foreign athletes in the different leagues has provoked negative effects on the youth fields of the principal clubs – this negative effect is partially counterbalanced by the increased possibility to loan the young players, allowing them to acquire experience in other clubs –.

As we mentioned before, the number of club-trained players utilized is constantly declined, reaching percentages as 10% in England and Italy¹⁶⁹ – considering the phenomenon of the foreign athletes, these numbers are even lower, due to the fact that nowadays many youth fields of the top clubs are composed by young foreigners –.

Another direct effect of the Bosman judgement on football was the rise of the mobility of the athletes. In fact, thanks to the abolition of the transfer and training and development fees at the expiration of the contract and the reshaping of the quotas systems, footballers were freer to change clubs, being able to choose on as many societies as never before.

¹⁶⁸ FIGC, *Report Calcio 2016* available at <http://www.figc.it/other/ReportCalcio2016/ReportCalcio%202016.pdf>.

¹⁶⁹ CIES, *Club-trained players: the European league rankings*, consulted on: <http://www.football-observatory.com/IMG/sites/b5wp/2016/164/en/>

As the data of the CDES show, the number of transfers of footballers in the EU augmented of almost 50% in 5 years and tripled after 10 years since the Bosman judgement – from 5.725 transfers in the season 1994-95 to 15.952 of the season 2005-2006¹⁷⁰ –. Nowadays this trend has reached a point of equilibrium in terms of number of transfers, at the contrary what it is constantly increased is the total value of this transfer, passed from 400 million euros in the season 1994-1995 to 5 billion euros 15 years later, boosted primarily by the growth of the revenues of the European clubs¹⁷¹ – these numbers are even bigger considering the most recent sport seasons –.

Looking at this data, it is possible to ascertain how, despite the concern of the principal actors of the European football, the transfer system is remained an important mechanism of redistribution of resources, even if the polarization of it is more substantial than in the past.

However, in order to completely understand the relevance of the Bosman ruling, it is important to remember how, according to the data provided by the ECA, almost the 70% of the transfers per year, on average, regards out-of-contract players¹⁷² – subtracted the players corresponding to this category, the number of transfers would be almost at the same level of the pre-Bosman era –.

Looking at these effects above-mentioned, it is evident how the Bosman ruling has changed, united with the increasing economic and social relevance acquired by the sport industry, the football landscape. As in the Italian case, many institutions and organisms within the EU's borders have responded to these changes with efficient solutions.

Among these actors, the UEFA have played a fundamental role in terms of regulation of the football system at the European level, acting in coordination with the EU institutions, in

¹⁷⁰ http://www.keanet.eu/docs/full_study_transferofplayers.pdf, last access: 18th February 2018.

¹⁷¹ ECA, *Study on the transfer system in Europe*, 2012, p.12-13.

¹⁷² Ivi, p.18.

order to find solutions that could preserve and protect the status quo of the sector and, at the same time, could solve the regulatory gap created by the Bosman ruling, especially concerning the quotas systems, and guide football through the complex evolution that has faced, and that is currently facing, in the recent years – as it will be shown in the next paragraph, the maintenance of the status quo was impossible to reach, given the importance of the judgement and the increasing complexity of the dynamics of the football industry –.

The second more active actor was the set of EU's Member States that have decided, with the Treaty of Lisbon, to start a path that will bring sport, as we will see, more and more at the centre of the EU's action, thanks to a more solid legislative base, no longer grounded on the interventions of the ECJ.

Now, we will focus our attention on the role of the UEFA in the European football landscape, emphasizing in particular the importance of the Home-grown player rule (HGPR), the Financial Fair Play regulations (FFP), and the agreement regarding the minimum requirements for standard player contracts in the professional football sector in the European Union and the rest of the UEFA territory.¹⁷³

2.3 The role of the UEFA in the European football industry.

2.3.1 The UEFA.

The UEFA (Union of the European Football Associations) is the most important institution of football in Europe – many of the States of the football associations that compose the UEFA, 55 in total, are located in Asia –. Together with the CONCACAF, the CONMEBOL, the CAF, the AFC and the OFC, it is one of the six confederations of football that form the FIFA.

¹⁷³ These regulations will be treated in the chronological order of adoption.

As the maximum European organism, the UEFA has several ambitious objectives and tasks such as: “to deal with all questions relating to European football”, “to promote football”, “to safeguard the values of European football”, “promote and protect ethical standards and good governance in European football”, “maintain relations with all stakeholders involved in European football”, “support and safeguard its member associations” and many others.¹⁷⁴

It is possible to identify three main reasons that brought to the creation of the UEFA. The first regards one of the most important duties of the UEFA since its creation in 1954: the organisation and the regulation of many competitions, for clubs and national teams, such as the UEFA European Championship, UEFA Champions League, UEFA Europa League and the UEFA Super Cup.

The second of the three above-mentioned reasons was the necessity to contrast the “declining influence of Europe within FIFA”. Instead, the third and last reason has been identified as the need to provide “focal point for a united European football movement”.¹⁷⁵

This last objective, the achieving of a central role, has been reached progressively, and it is evident looking at not only the power acquire by this association, but also the position had by the UEFA in relation with important counterparts such as the EU’s institutions, especially in the responses needed after the changes brought by the Bosman judgement and the evolutionary dynamics of football in the recent years.

2.3.2 The Home-grown player rule.

About the former ‘shock’, the solution elaborated by the UEFA consists in the home-grown player rule (HGPR). This rule envisages the attempt of the maximum European institution of football to reintroduce, even with significant differences, a sort of quotas system

¹⁷⁴ <https://www.uefa.com/insideuefa/about-uefa/index.html>, last access: 18th February 2018.

¹⁷⁵ UEFA, *Vision Europe: “the direction and development of European football over the next decade”*, 2005, p.15.

applied to the shortlists of the clubs participating to the competitions organised by the UEFA, Champions League and Europe League – the HGPR proposal was said to be not concerning the introduction of quotas systems or every sort of rule that limits the freedom of movement of the workers –.

The HGPR was adopted by UEFA's Executive Committee on 2nd February 2005 and approved by the Europe's national football associations on 21st April 2005. It requires clubs participating to UEFA competitions to have, within its twenty-five men squad, four club-trained players and four players trained by other clubs belonging to the same national association – it regards the squad eligible for the UEFA competitions, in fact clubs are not limited in the number of players employable –.

Moreover, the rule identifies and defines the two categories of players requested to the clubs: the club-trained players are athletes who irrespective of their nationality and age have been registered with their current club for three years between the ages of fifteen and twenty-one, similarly association trained players are required to meet the same criteria but at another club belonging to the same football association – in the case that these conditions are not centred the maximum number of players available will be reduced proportionally – .¹⁷⁶

At a first glance, despite the declaration of the UEFA's representatives, the HGPR, also called '4+4' rule, seems to rely on the same premises of the '3+2' rule that was the object of the judgement of the ECJ on the Bosman case, however the differences are substantial as also evidenced by the independent study elaborated by many eminent scholars on request of the European Commission.

¹⁷⁶ FREEBURN L., *European football's home-grown players rules and nationality discrimination under the European Community Treaty*, Marquette Sports Law Review, Vol. 20, 2009, p.179-180.

This study examines the points and the reasons that could be considered vulnerable taking into consideration the legislative structure of the EU. First of all, according to the opinion of the experts consulted, the HGPR restricts the workers' freedom of movement precluding or reducing the possibilities of nationals of other Member States to leave their countries for employment reason, as the ECJ established also for the '3+2' rule, however it is necessary to consider in the EU law three typologies of restrictions: directly, indirectly and non-directly discriminatory.

In this sense, the HGPR could to be encountered on the category of the indirectly discriminatory rules because it does not discriminate directly on the base of the nationality, however migrant workers seem to have a disadvantage in relation with national workers. This situation can be considered acceptable in the case that the rule "pursues a legitimate aim compatible with the Treaty", justified only because related to questions of public interest.

About that, the UEFA supported the HGPR sustaining that it is a necessary disposition in order to promote "a competitive balance" and "encourage the training and development of young players", however this was not sufficient to centre the two required 'tests' of suitability and necessity.

Even if the second of the above-mentioned objectives seems to be reached, however there are not sufficient evidences to demonstrate that the increase use of home grown players in the first squad is directly related and provoked by the '4+4' rule. In addition, the experts involved by the European Commission pointed out how this increase of the home-grown players does not seem to be a sufficient objective that could justify a restriction of the freedom of movement – little evidences are also present considering the effects of the rule on the competitive balance of the Champions and the Europa League –.

In conclusion the experts established that, in order to consider the rule fully in accordance with the EU law, the UEFA should demonstrate how the restriction of the freedom of movement of the workers is proportional with the results obtained and that there are no other solutions which could be less restrictive and more efficient than the '4+4' rule.¹⁷⁷

2.3.3 The Financial Fair Play.

Among these solutions, the experts have identified the Financial Fair Play. This regulation was approved unanimously by the UEFA Executive Committee in the 2009 and adopted progressively starting from the sport season 2010-2011. It consists in a series of measures and rules such as the duty to reach the break-even point of the balance sheet or the duty to pay promptly the employees; to these rules correspond different sanctions that UEFA can impose to clubs participating in its competitions.

This regulatory system is set up in order to reach ambitious objectives such as: the discipline and rationalization of the finances of the football clubs, the encouragement of clubs to count exclusively on their profits, the safeguard of the long-term sustainability of the European football, the improvement of the guarantee of the payment of the clubs' debts, the limitation of the inflation effects, the encouragement of long-term investments on the youth fields and the infrastructures and the reduction of the pressure on the salaries and the transfers.¹⁷⁸

Given the fact that the first objectives of the FFP listed here, though important, are outside the perimeter of our dissertation, we will focus our attention on the last one of them.

¹⁷⁷ DALZIEL M., DOWNWARD P., PARRISH R., PEARSON G., SEMENS A., *Study on the Assessment of UEFA's 'Home Grown Player Rule'*, 2013, p.1-8.

¹⁷⁸ <http://it.uefa.com/insideuefa/protecting-the-game/club-licensing-and-financial-fair-play/index.html>, last access: 18th February 2018.

The reduction of the pressure brought by the increases of the salaries and the amounts of the transfers has become an impellent question for the European football since the Bosman judgement, that has had among the consequences, as we already discussed, an outbreak of the salaries.

Certainly, the Bosman ruling is not the only reason that have provoked this effect, but has to be read in the light of the evolutive dynamics that the football industry has encountered in the recent years, as the constant growth of the revenues of all the clubs thanks to the earnings brought by the media rights and the merchandising, which have also boosted the amounts of the transfers, in many cases with an overestimation of the real value of the players – only in the season 2017/2018 five transfers are entered in the top 10 of the most expensive transfers of all time, 16 in the top 50 –.

The FFP tries to limit the effects of these growths, fixing some limits that the clubs have to respect in order to participate to UEFA competitions. In this sense, the break-even rule seems to create a sort of indirect salary cap. In fact, the FFP, imposing clubs to spend as much as they earn, forces them to reduce the part of the expenses dedicated to the salaries of the footballers, also partially limiting the contractual power acquired by the category thanks to the Bosman ruling. However, even though in some other cases the effects are measurable, the impact of the FFP on the salaries is difficult to interpret, given also the changeable current situation of the football industry.

For sure, the adoption of the FFP has been, and still is, at the centre of fierce debates between the supporters of the regulation – among them it is possible also to insert the European Commission¹⁷⁹ – and its opponents that accuse it to be especially an anti-competitive system, which is polarizing the European football in favour of the richest clubs –

¹⁷⁹ http://ec.europa.eu/competition/sectors/sports/joint_statement_en.pdf, last access: 18th February 2018.

this topic would require a wider explanation, which would not be related to the topic of this thesis –.

2.3.4 The agreement regarding the minimum requirements for standard player contracts in the professional football in the EU and the rest of the UEFA territory.

The agreement regarding the minimum requirements for standard player contracts in the professional football in the EU and the rest of the UEFA territory (named only MRSPC, from now on) is the result of the negotiations between the UEFA, the EPFL (The European Football Leagues), the ECA (the European Club Association) and the FIFPro (The International Union of footballers).

This agreement born by the necessity to uniform as much as possible the normative of the different Member States of the UEFA with regard to the contractual relationship between professional footballers and clubs. This objective is also recognized by the European Social Dialogue Committee in the Professional Football Sector in which framework is inserted the MRSPC¹⁸⁰. The support of the European Commission to this agreement has to be read in the light of the cooperation instituted in the recent years between the UEFA and the European institutions, confirmed also by the direct reference to the EU Treaties, the Charter of Fundamental Rights of the European Union and the secondary EU law with regard to the regulation of the professional football players' contracts.

Taking as a benchmark the Collective bargaining agreement and the text of the law n.91/1981, already discussed in our dissertation, the provisions of the MRSPC are not dissimilar by those contained in the just mentioned documents.

In fact, the MRSPC in the first part establishes the formalities that the contract has to follow, the duty of the written form for example, and the information that have to be inserted

¹⁸⁰ <http://ec.europa.eu/social/main.jsp?catId=480&intPageId=1848&langId=en>, last access: 18th February 2018.

in the contract, by both the parties¹⁸¹, as similarly are also required by the standard contract annexed to the Collective bargaining agreement between the L.N.P.A., F.I.G.C. and A.I.C..

Despite its importance and role, the MRSPC states clearly at the article 5 that it is subordinate to the national legislation, if not differently foreseen. The agreement establishes the obligations that the club have to respect toward the players – financial obligations, paid leave, protection of human rights and many others – and also the obligations that the footballers themselves have to respect – play matches with their best abilities, participate in training and match preparations, maintain a healthy lifestyle and many others –.

Among the other regulations of the MRSPC, it is possible to find: the duty for clubs to establish a system of disciplinary rules and sanctions, the duty of players and clubs to comply with anti-doping regulations, the duty to comply with the national collective bargaining agreements, the necessity of indications on the contracts about the dispute resolution mechanisms and, at the article 16, the imposition of the commitment of the clubs and players to “act against racism and other discriminatory acts in football”¹⁸².

The role of this agreement has to be read taking into consideration a ‘path’ that the UEFA and the European institution have started few years before the Bosman case. According to the scholar Borja Garcia, this path is formed by three rounds or phases: the first is the confrontation – in the period before Bosman –, the second is called ‘dialogue, adjustment and transition’ – in this phase the contacts between football and European institution increased progressively – and the last that is called ‘cooperation’.¹⁸³

¹⁸¹ UEFA, *Agreement regarding the minimum requirements for standard player contracts in the professional football in the EU and the rest of the UEFA territory*, 2011, p.5-6.

¹⁸² Ivi, p.7-12.

¹⁸³ GARCIA B., *UEFA and the European Union: From Confrontation to Co-operation?*, JCER, Vol.3, p.206-213.

The MRSPC could be inserted in this last phase, being it the result of an intense activity of cooperation, pursued also in the elaboration of the FFP for example, that is characterizing the relationship between the EU and UEFA in the recent years, as we will see also in the next paragraph in which will be also analysed briefly the opinion of the UEFA on Treaty of Lisbon.

2.4 The Treaty of Lisbon.

With the exception of the determinations of the European Court of Justice, sport¹⁸⁴ is a phenomenon that is not present in the European treaties until the 29th October 2004, day of the signature of the Treaty establishing a Constitution for Europe (TCE), or commonly called the European Constitution.¹⁸⁵

Despite the signature of the TCE, this is not entered into force because of the decision of France and Ireland that have not ratified it. For this reason, the presence of sport in the treaties can be found, probably for the first time, in the Treaty of Lisbon, which has been ratified by all the member states in 2009.

The absence of the phenomenon in the treaties of the EU does not mean an apathy with regard to sport, but rather it is the result of a lack of Community competences, which many times has obligated the Commission to declare its incompetence on the matter.

In fact, until the adoption of the Treaty of Lisbon, the EU sports policies, as we have seen, were guided by the references to other policies areas such as employment, culture, media, by other documents, even without direct legislative effects, and by the judgements of the European Court of Justice (ECJ).

¹⁸⁴ The scarcity of references about sport in the normative system of the EU is transposed clearly on football.

¹⁸⁵ TOGNON J., *Diritto comunitario dello sport*, ed. Giappichelli, 2009, p.3-4.

The Treaty of Lisbon can be considered as a milestone of a path, with regard to sport, started few years before by the EU's institutions. Even if there were other interventions before, the beginning of this path can be marked with the year 1997. In fact, in that year, the Head of State and Government meeting decided to promulgate, and annex to the Amsterdam Treaty, the so-called 'Declaration on Sport' stating that "the Conference emphasises the social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the European Union to listen to sports associations when important questions affecting sport are at issue. In this connection, special consideration should be given to the particular characteristics of amateur sport."¹⁸⁶

Despite the Declaration did not recognize the "legal competence for sport" of the EU, it represented a significant document because of its content, that could be considered as a direct critique of the Bosman ruling– in fact, the Declaration underlines the social nature of sport, in contrast with the economic one identified by the ECJ, and the importance of the opinion of the competent associations in case of issues related to sport –, and also because it could be considered as the first political act on sport of the EU.¹⁸⁷

The process started with the Amsterdam Declaration led to the Helsinki Report on sport promulgated on December 1999. It represented the answer of the European Commission to the invitation of the European Council to provide a report on, as stated in the preface, the "safeguard of current sports structures and maintenance of the social function of sport within the Community framework".

The Helsinki Report was the emblem of the new approach of the EU which aimed to "apply EU law to sport" while "preserving the traditional values of sport, while at the same

¹⁸⁶ EUROPEAN PARLIAMENT, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European communities and certain related acts*, 1997, p.136.

¹⁸⁷ PARRISH R., *Sports law and policy in the European Union*, Manchester University Press, 2003, p.15.

time assimilating a changing economic and legal environment” – using the words of Parrish, the Report tried to establish an embryonic EU sports policy –.

The Report affirmed the need to strengthen the “educational and social function of sport” protecting it by the treats brought by the evolutive directions taken in the recent years. From a legal point of view, it would have been necessary that the Community helped to “clarify the legal environment on sport”, even without direct references on the Treaties.

What was important in the Report was also the invitation to all the European institutions to provide their maximum effort to collaborate at all levels in order to implement this new approach. From this perspective, the Report can be seen as the first attempt “to coordinate the Single Market and socio-cultural policy strands of its involvement in sport”, as underlined by Parrish.¹⁸⁸

The impact of this Report, in addition with the Amsterdam Declaration of few years before, led to the Nice Declaration on Sport, emanated on 2000 as a Presidency Conclusion. With this document, the Member States of the EU intended to give their contribution “to the debate on the birth of the EU sport law as a part of the wider EU sports policy”.

As the above-mentioned documents, the Nice Declaration did not provide a legislative reference, but it was important anyway because it strengthens the effects of the ‘soft law’ instruments utilized by the EU institutions, establishing “political guidelines for EU involvement on sport”.¹⁸⁹

The White paper on sport, emanated on 2007, went in this same direction, reviving a debate on sport that remained suspended between 2000 and 2007. In this document, the Commission embraced the considerations presented in the Nice Declaration, elaborating an

¹⁸⁸ EUROPEAN COMMISSION, *The Helsinki Report on Sport*, 1999, p.1-7.

¹⁸⁹ PARRISH R., *Sports law and policy in the European Union*, p.19, 70.

action plan for three years which included a series of measures related to “the social and the economic aspects of sport”.

Even though the themes treated by the White paper were the same of Nice Declaration, it was more important considering the fact that it paved the way to the most important document for sport in the EU, until this moment, that is the Treaty of Lisbon.

In fact, on 2009, the Treaty of Lisbon finally gave a normative reference to sport. In fact, the article 165 of this Treaty states that “the Union shall contribute to the promotion of European sporting issues while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.” – this article retraces the terms and the references on sport of the above-mentioned documents, as the White paper on sport –.

It also establishes the aims of the Union action such as: “developing the European dimension in sport”, “fostering openness in competitions and cooperation between institutions”, “protecting the physical and moral integrity of sporting individuals”.

In addition, it states that “the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe” and that “in order to contribute to the achievement of the objectives referred to in this Article: the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, [...] shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States [...]”.

Despite the innovation of the introduction of sport into a treaty, the provisions of the article 165 have not produced a great impact over the legislative power of the EU on the subject.¹⁹⁰

The Treaty, with regard to sport, seems to be built cautiously, recognizing also the primary competence of the Member States. However, it is necessary to keep in mind that the article 165 represents only the first milestone posed on this subject, so it has to be considered as the starting point of a future legislative path with more solid basis.¹⁹¹

In particular, the statement about the specific nature of sport provides a normative reference to a concept that was underlined by many judgements on the matter, stating that the EU “has not only an economic but also a social purpose”.¹⁹²

This allows to partially exclude, under legitimate purposes, sport by the application of the norms with regard to the freedom of movement and the competition that has constituted the core of the EU sport law, until the Treaty of Lisbon.

This mean that if discrimination based on nationality is not tolerated, from another point of view the Treaty gives the possibility to have norms imposing the presence of home-grown players and limits in the transfer of young athletes – the protection of this last category is clearly stated by the article 165 of the Treaty –.¹⁹³

Another important innovation brought by the Treaty regards the reference to the social and educational functions of sport, which facilitates the task of the EU, as a whole, to promote sport and increase the cooperation between institutions.

¹⁹⁰ EUROPEAN PARLIAMENT, *The Lisbon Treaty and EU sports policy*, 2010, p.3-6.

¹⁹¹ NASCIMBENE B., BASTIANON S., *Diritto europeo dello sport*, Ed. Giappichelli, 2011, p.72.

¹⁹² ECJ, Case C-438/05 *International Transport Workers’ Federation v Viking Line*.

¹⁹³ TOGNON J., *Diritto comunitario dello sport*, p.38.

However, from a legislative point of view, the article 165 has tied the activity of the EU, which cannot proceed with the “harmonisation of the laws and regulations of the Member States”. Therefore, even though on one side sport has been inserted among the competences of the EU, on the other side the Treaty has recognized the predominance of the national dispositions on the matter, underlying, however, how the EU institutions in the future will work favouring the collaboration between the different actors involved.

As analysed previously, with regard to football, this collaborative activity has been carried on also with the UEFA and in this sense the document provided by the maximum European football institution with its opinion on the article 165 of the Treaty of Lisbon has to be read as a clear example of the above-mentioned collaboration.

In this document, the UEFA gives a positive opinion on the article 165 of the TFEU defining it as “beneficial for European sport”, providing also some tips for all the European institutions. For example, it invites them to “reaffirm their support for the European sports model”, recognising the role of the sport federations, underlying how the EU law should not “prejudice their ability to discharge their legitimate and statutory functions” and “clarifying the legal treatment of sport under Community law”.

With regard to sporting competition, the UEFA invites the European institutions to reaffirm the principle of open and accessible competition, supporting measures as the FFP or the centralised and territorial system of sale of audiovisual rights. Same support is also required on matters concerning the youngest athletes, which training should be more encouraged by the European institutions – at the same time the protection of their educational path is another important point stressed by the UEFA –, but also on matters

concerning the violence, the racism and the doping, phenomena strongly fought by the UEFA and FIFA.¹⁹⁴

As it is possible to see the UEFA has accepted positively the provisions of the article 165 of the Treaty of Lisbon, underlying however how these should be implemented with, for example, the suggestions contained in the UEFA's document.

Certainly, the EU's institutions are aware that the article 165 needs implementations and that it represents, as we already remembered, only the first step of a longer path that in the future, maybe, will be able to completely involve sport in the legislative system of the EU.

Having concluded with this document the analysis of the EU regulation on sport and on the contractual relationship between clubs and professional footballers, it is now opportune to climb another level of the hypothetical hierarchy of this thesis, analysing the normative reference on the matter at an international level.

¹⁹⁴ UEFA, *UEFA's position on Article 165 of the Lisbon Treaty*, 2010, p.1-9.

Chapter 3. The international regulatory system of football.

The passage from the European level to the international one requires to focus the attention on the activity of the maximum institution with regard to football, the FIFA. As it will be explained, this organism has acquired during the years more and more power, posing itself as a regulator, in many cases, even beyond the legislative authority of the single national governments.

After a brief introduction on the history and the structure of FIFA, the chapter will treat about two relevant documents promulgated by the Federation: the Professional football player contract minimum requirements and the Regulations on the Status and Transfer of Players. After that, the focus will aim to insert the activity of the FIFA within the international regulatory system, analysing also the impact of some of the most diffused tools of soft law nowadays: the codes of conduct and the codes of ethics. As we said before, we will start our dissertation in this chapter analysing the activities of the FIFA.

3.1 The FIFA.

3.1.1 The history of the FIFA.

The FIFA (the Fédération Internationale de Football Association) is an international association that represents the maximum international organism of football – it governs also futsal and beach soccer –.

The history of the FIFA started in 1904 in Switzerland when the representatives of seven football associations founded it with the intent of organise football at an international level – the original founder associations were: USFSA (France), UBSSA (Belgium), DBU (Denmark), NVB (Netherlands), Madrid Football Club (Spain), SBF (Sweden), ASF (Switzerland) –.

The first steps of this organisation regarded the establishment of few bureaucratic common rules, the creation of the 'Laws of the Game' regulating the playing of the matches and extension of the plethora of the member associations. During the year after the foundation, the FIFA was joined by the FA – the football association of England, the most important at that time – and also by the football associations of Italy, Germany, Austria and Hungary, with the addition, few years later, of the first associations outside the borders of Europe: South Africa in 1909, Argentina and Chile in 1912 and United States in 1913.

Among the first ideas, there was the creation of international tournaments, a task that still represents nowadays one of the core activities of the FIFA. The first embryonic tournaments of the World Cup were held in 1908 and in 1912, during the Olympic Games, and were won by the England team. During that years, the FIFA was also able to render compulsory the 'Laws of the Game' developed few years before, rendering in this way more uniform the football.¹⁹⁵

The beginning of the WWI stopped the process of growth, reducing the contacts between the members to few letters. Finally, the election of a new Board of the organisation were held in 1920 and a year later Jules Rimet was elected as President.

He lasted 33 years as President, changing completely the history of FIFA and football. He was able to move the Federation from 20 members in 1921 to 85 in 1954, when he left. Under its presidency, the FIFA was able to organise the Olympic Football Tournaments in 1924 and 1928, won both by the Uruguay's team.

However, these successes are marginal if compared with the creation of the first FIFA's world championship, the FIFA World Cup. This tournament was organised in two years, between 1928 and 1930, and was played in Uruguay, starting from 19th July 1930.

¹⁹⁵ <http://www.fifa.com/about-fifa/who-we-are/history/index.html>, last access: 18th February 2018.

The winner was the host national team and the event was a success, partially ruined by the fact that only 4 European teams participated, due to the problems brought by the long travel towards South America. After that edition, the FIFA failed to participate to the Olympic tournament, in 1932, due to problems regarding the recognition of professional footballers.

Two years later this failure was 'avenged' with the organisation of the second edition of the FIFA World Cup, played in Italy, that envisaged for the first time some qualifying matches to decide the 16 finalists. The following edition was held in France in 1938 and represented the last edition before an inevitable stop of twelve years due to the outbreak of the WWII – during the first Congress after the war, the delegates decided to rename the World Cup trophy, the Jules Rimet Cup, honouring in this way the figure of the President of the Federation at that time –.¹⁹⁶

During the 50's, the 60's and the 70's, the FIFA continued its activity, even under financial restrictions due to the fact that FIFA was a private institution, extending the number of affiliates with the entrance in the organisation of the association of newly independent nations and expanding its popularity, and that of the football, thanks also to the advent of the television.¹⁹⁷

On 11th June 1974, the delegates of FIFA elected the first non-European President, the Brazilian Dr. Joao Havelange, starting a new era for the Federation. As a President, Havelange tried to change the ways the FIFA operated, rendering it more dynamic and more administratively structured – the number of employees passed from 12 to more than a hundred –.

¹⁹⁶ <http://www.fifa.com/about-fifa/who-we-are/history/more-associations-follow.html>, last access: 18th February 2018.

¹⁹⁷ <http://www.fifa.com/about-fifa/who-we-are/history/50th-anniversary.html>, last access: 18th February 2018.

Exceptional was the decision of Havelange to extend the number of participants to the World Cup from 16 to 24 teams in 1982 – this path has been followed also by his successors, passing from 24 to 32 teams in 1998 and from 32 to 48 in the future edition of 2026 –.

Havelange did not limited its activity, operating also at a political level during years of great international tensions. In this sense, he leveraged football as a tool capable of favouring the dialogue between States as in 1993 between the States fighting in the Gulf War, which peacefully collaborate in order to find a solution for the qualification round for the World Cup 1994 – it is important to remember also the diplomatic position held by the FIFA in dealing with the Koreas and Israeli situations –.

Havelange governed FIFA towards the years that have transformed football into a globalised phenomenon, involving more than 200 million active players, included into 208 recognized member associations.¹⁹⁸ On 8th June 1998 Havelange was substituted by Joseph “Sepp” Blatter.¹⁹⁹

The years of the Presidency Blatter have been some of the more complicated for the FIFA, given the ‘controversial’ professional ethic of the President and many members of the FIFA and of the football associations and confederation.

During the years, he was accused of corruption, fraud, racism and even sexual harassment. He concluded his administration, resigning on 2nd June 2015, after the corruption scandal that hit the FIFA²⁰⁰, and finally he was condemned by the Ethic Committee of the Federation, together with the UEFA President Michael Platini, for corruption – the condemn implied for them a ban of 6 years from the FIFA –.

¹⁹⁸ <http://www.fifa.com/about-fifa/who-we-are/history/new-era.html>, last access: 18th February 2018.

¹⁹⁹ <http://www.fifa.com/about-fifa/who-we-are/history>, last access: 18th February 2018.

²⁰⁰ The corruption accuses have regarded principally the assignment of the organisation of the 2022 World Cup. In fact, Qatar, which will be the organiser of it, has been accused of corruption of many members of the other federations in order to direct the vote in favour of the Qatar itself.

3.1.2 The structure and the statute of the FIFA.

In order to fulfil its tasks as the international body governing football, the FIFA during the years has been equipped with a complex administrative structure composed by: the FIFA Congress, the Council, the General secretariat, the Committees, the Presidency.

All these organisms have different tasks, nevertheless aiming to the same objectives defined by the FIFA: the promotion and the improvement of football and its values worldwide, the organisation of international competitions, the regulation of football, the control of the different football associations composing the FIFA, the financing of football and the safeguard and development of women's football.²⁰¹

Proceeding with the analysis of the FIFA's authorities, the Congress can be considered as the heart of the Federation, being it the "supreme and legislative body". It can be called as ordinary or extraordinary and it is composed by the members of the different football associations and confederations recognized by the FIFA – honorary presidents, vice-presidents and honorary members could be nominated as permanent members of the Congress –.

Among the tasks of the Congress is possible to identify: the approval of the FIFA agenda, the decisions regarding the suspension, the admission or the expulsion of a member association, the election of the President, "the approval of the budget", the decisions regarding the modification of the Statutes and the Regulations, the designation of the host country of the FIFA World Cups and many others.

Instead, different role is covered by the Council, which is composed by 37 members – at the contrary the Congress is composed by more than two hundred members –. It can be defined as the "strategic and oversight body", that has among its powers the possibility to "define the FIFA's mission, strategic direction, policies and values". The Council has also tasks

²⁰¹ FIFA, *FIFA Statutes*, 2016, p.6.

related to the business and financial sphere of the FIFA, being responsible for the definition of standards, policies and procedures with regard to “the commercial contracts, the development grants, the costs of FIFA” and other matters.

As we have seen, among the responsibilities of the Congress there is also the election of the President. This figure, as the history of the FIFA tells, has had a great importance during the years for the development of the Federation. In fact, the President “represents FIFA generally”, promoting the image of the Federation and acting as a guarantor for the realization of the FIFA’s objectives and mission.²⁰²

Another important body of the FIFA is the General secretariat, the “executive, operational and administrative body”, which is directed by the Secretary General, the CEO of the FIFA. Among the operational duties of this organism, it is possible to encounter: “the organisation of the FIFA competitions, the negotiation of the commercial contracts, the administrative support to the different committees, the management of the day-to-day business of FIFA and other administrative matters.”

Together with these organisms, the FIFA’s structure entails also several standing committees that “shall advise and assist the Council in its functions”. These committees are: the Governance Committee, the Finance Committee with responsibilities related to the financial sphere, the Development Committee responsible for the implementation of development programmes, the Organising Committee for FIFA Competitions, the Football Stakeholders Committee, the Member Associations Committee, the Players’ Status Committee active in relation to the transfers of the players, the Referees Committee and the Medical Committee.

²⁰² Ivi, p.18-35

In additions to these, there are also three committees that operate as judicial bodies of the FIFA. The Disciplinary Committee “may pronounce sanctions” on member associations, clubs and players principally, as contained in the Statutes and the FIFA disciplinary Code. The Ethics Committee, the one that has banned the President Blatter, can impose sanctions in relation to violation of the FIFA Code of ethics. The Appeal Committee is responsible for hearing “appeals against the decisions” of the other two judicial bodies above-mentioned.

Over these three bodies, the FIFA recognises the authority of the Court of Arbitration for Sport (CAS) which is entitled to solve the dispute between the Federation, members associations, leagues and other actors.²⁰³

Through all these bodies the FIFA operates governing the football system, from the laws of the game, to the regulatory activities and the organisation of international competitions. The Influence and the legislative power of the FIFA, operating internationally, is extended also to the regulation of the “employment relationship of professional football players” and the “status and transfer of player”. Starting from the first of these two duties of the FIFA, we will try to provide an analysis of the regulatory activity of the Federation on these two important matters.

3.1.3 Professional football player contract minimum requirements.

As the most important international institution with regard to football, the FIFA has to pose itself as a landmark for all the other actors composing worldwide the landscape of the football industry. One of the most important results of its activity is represented by the circular no. 1171 emanated by the FIFA on 24th November 2008.

This circular is the result of the dedication of the FIFA Executive Committee and regards the “Professional football player contract minimum requirements” – called only Minimum

²⁰³ Ivi, p.36-54

Requirements from now on –. Even though the document is non-binding, it reflects the necessity, evidenced by the FIFA, to have minimum standards worldwide for what concerns the conditions regulating the employment relationship between professional footballers and professional football clubs.

In this sense, the provisions contained in the document provide a sort of guideline that the FIFA Executive Committee invites football associations and the parties involved to follow. The aim here is to cover those that are considered as the most important duties and rights of the contractual parties.

Given the non-binding nature, the dispositions have to be considered as perfectible, reading them in the light of the social dialogue carried out by the FIFA during the years with all the parties involved – in this sense has to be read the reference of the FIFA to “the valuable cooperation” –.

Despite the explicit reference to the nature of guidelines of these dispositions, the FIFA specifies further the legislative sources that have to be taken into account during the process of “finalisation of the contract” between the parties; these sources are: the national legislations, the Collective bargaining agreements and the “Football regulations” of the FIFA itself.

Analysing the structure of the document, it results to be composed by thirteen sections named as follows: The agreement and parties, Definitions, Relationship, Club’s obligations, Player’s obligations, Image rights, Loan, Player discipline and grievance, Anti-doping, Dispute resolution, Football regulations, Collective bargaining agreement and Final provisions. Now, we will proceed indicating the most significant dispositions of the document.²⁰⁴

²⁰⁴ The articles 2 and 13 will not be treated, given the fact that their content is not relevant for our dissertation.

The first section regards the formalities that the agreement between the parties must comply with. As requested also in the standard contract of the L.N.P.A., the Minimum Requirements of the FIFA envisage the duty of the writing form of the contracts, the necessity to provide a copy of it for both the parties and for the Football association representative and the duty to fulfil the documents with the mandatory information that allow the precise identification of the parties, comprehending also further people involved in the negotiation – address, name, surname, legal name of the club and so on –.

Moreover, the agreement has to define a starting date as an ending date, specifying also the faculty of the parties to extend or terminate the contract, before its natural expiration date, providing that the unilateral termination has to be sustained by a motivated cause.

The third article specifies further the object of the agreement between the parties that should be exclusively the employment relationship, adding that the national legislation of the country has the prevalent application, if not agreed differently, and that the relationship between the parties cannot be covered by an additional contract. In addition to this, the section specifies also how the contract “must contain all rights and duties between the signatory parties”, the content of which is explicated in the two following sections.

The first of these above-mentioned two sections is dedicated to the club’s obligations towards the footballers. According to the dispositions, the agreement between the parties has to explicit the financial obligations of the club – salary, other financial and non-financial benefits, medical insurance, pension fund, reimbursements –, in addition to the mandatory references with regard to the modality of payment of the taxes, that has to be agree between the parties with respect of the legislation, and the paid leave.

Bearing in mind the values that characterize the activity of the FIFA, the Executive Committee has also envisaged in the document the reference to the necessity to include in

the agreements the clauses regarding the safeguard of the footballers' health – mandatory provision of an insurance coverage and explicit explanation of the health and safety policy of the club –, the right of the footballers to continue their education – mandatory school or not – and also references to the safeguard of basilar human rights as the liberty of expression.

The obligations of the clubs are partially counterbalanced by the obligations imposed to the counterpart, the footballers, as explained in the fifth section. According to the disposition of the FIFA's document, as also foreseen by other legislative sources treated previously, the agreement should list the most important duties of the footballers towards their clubs, such as, among the others, "play to the best of his ability, participate to the trainings, obey club rules, maintain a healthy lifestyle".

Very often, the violation of these obligations entails the administering of sanctions and penalties that the footballers experience given the presence of them in the "internal disciplinary rules", established by the club and signed by the players, if present in their agreements, as recommended by the eighth section of the Minimum Requirements.

Instead, the sections six and seven regard the image rights, the exploitation of which has to be agreed by the parties, and the loans, that require the acceptance of both the parties in order to be carried on – these sections are particularly relevant considering the diffused practice of the loans in the last years and the increased economic importance of the image rights –.

Moreover, the document adds that the footballers and the clubs have to comply with: the anti-doping regulations implemented by the football bodies, the football regulations established by the FIFA, the member associations, the confederations and the leagues, and finally with the collective bargaining agreements, if present – sections 9, 11 and 12 of the FIFA's document of Minimum Requirements–.

The last section that is opportune to indicate is the tenth, suggesting that the agreements between the footballers and the clubs should contain dispositions with regard to the dispute resolution, indicating, for specific manners, the CAS as the final institution for the appeals.²⁰⁵

As we said before, even if non-binding, this document has been important considering the fact that its dispositions have been implemented by several member associations, especially in the UEFA confederation, as we have seen in the Italian legislative system on the matter. In this sense, it is desirable that the role of mentor maintained by the FIFA during these years could help the dialogue with the federations that do not have a legislation in compliance with the FIFA's minimum requirements.

The regulatory intervention of FIFA on this matter is not an isolated case of the normative activity of this institution, another important example is represented by the dispositions of the Federation with regard to the status and transfer of the footballers.

3.1.4 Regulations on the Status and Transfer of Players.

Differently from the Minimum Requirements of the above-mentioned document, the regulations on the status and transfer of players are binding rules which are applicable worldwide. These rules, as indicated in the section 'Scope', concern "the status of the players, their eligibility to participate in organised football and their transfer between clubs between different associations" – the transfer of players within the same association is regulated by rules of the association itself that have to be in compliance with the FIFA regulations on the matter –.

Moreover, the binding nature is further specified in the first article in which the Federation lists the provisions that have to be mandatorily in the national legislations and

²⁰⁵ FIFA, *Professional football player contract minimum requirements*, Circular no. 1171, 2008, p. 1-6.

“included without modifications in the associations’ regulations” – the document refers to the dispositions of the articles 2-8, 10, 11, 12 bis, 18, 18 bis, 19 and 19 bis –.

Contrary to, for example, the Italian law n.91/1981, the dispositions of the FIFA’s document are addressed to both amateur and professional players, identifying these last subjects as those that are paid for their footballing activity more than the expenses they incur. All the players, independently of their status, “must be registered to an association” in order to play organised football – the FIFA specifies widely all the procedures and the rules that have to be followed in order to complete the registration –.

With regard to the transfers of the players, the FIFA imposes the emission of the International Transfer Certificate, in case of transfer from an association to another, and the registration of the information about the transfer on the transfer matching system (TMS). This system is designed in order to ensure the transparency of the transactions, protecting at the same time the minors – the international transfer of players is not permitted until the age of 18, with few motivated exceptions – and trying to avoid illicit practices as the third-party ownership (TPO).

The transfers and the status of the players are also the arguments on which the FIFA is entitled of juridical powers, being able to impose sanctions, within the limits of its jurisdiction, in case of violation of its legislation – the organisms in charge of this responsibility are the Players’ Status Committee and the Dispute Resolution Chamber –.

Among the objectives that the FIFA has imposed to itself, there is also “the maintenance of contractual stability between professionals and clubs”, regulated with the references on the contract of the footballers made from the article 13 to 18 of the document – respect of the contract, termination with just cause and with sporting cause, the imposition of a

maximum duration of five years of the contracts and restrictions on the termination are some of the topics treated in the document –.

Within the dispositions of the document, there is also the creation of a “training compensation and solidarity mechanism”, indirectly discussed previously in relation with the Bosman ruling. This system aims to maintain the distribution of resources through the transfers that characterized the period before the sentence of the ECJ on Bosman – many studies have demonstrated how at the contrary the Bosman ruling have not affected the redistribution of the financial resources –.

According to the dispositions of the FIFA, the training compensation is due to the training clubs in two cases – first contract and transfer of players under the age of 23 –, while the solidarity mechanism acts in all the cases that imply a transfer before the expiration date, redistributing 5% of the amount to all the clubs that have contributed to the juvenile formation of the player.

Finally, one of the most important tasks of the FIFA is the organisation of the international match calendar and for this reason a part of the document is dedicated to the provisions regarding the employment of the footballers in the matches of the respective national team.²⁰⁶

These dispositions as a whole aim to regulate internationally complex matters as the transfer of the player, trying to standardize the legislations present in the different States, favouring the equity among the different actors involved and making the competition as much universal as possible.

²⁰⁶ FIFA, *Regulations on the Status and Transfer of Players*, 2015, p. 7-65.

3.1.5 The positioning of the FIFA within the international regulatory system.

The fact that the legislative activity on the matters above-mentioned is carried on by an international institution, the FIFA, that is not formed by the representatives of the States, but at the contrary by the football associations, which are private subjects, represents a peculiarity of sport. In fact, the framing of the FIFA within the regulatory system at an international level takes into account the specificity of sport, as happens at a national and European level.

The position that FIFA has earned during the years does not have similar cases. The international power of this institution is probably nowadays even greater, at a sporting level, than the one of the OIC.

This dominant position has deep roots, that began with the foundation of the FIFA itself. Thanks to its role, the FIFA has been able to pose itself within the vacuum led by the national governments with regard to football²⁰⁷, in a period of great tension and scarce dialogue between the different States. Thanks to the activity of the President Jules Rimet, in the first years of the XX century, the FIFA ‘cemented’ the network of relationships and its structure that last, stronger than that years, still nowadays.

The reasons for the power of the FIFA can also be found in the popularity of the sport, that is the most practiced and followed worldwide, and also in the so-called “politicization of the sport”, given by the fact that sport is used by the governments as a tool to promote cohesion and sometimes exclusion.

However, the path to reach its dominant position has not been completely linear and without obstacles. In fact, especially in the last years, the FIFA has had to face internal problems, the corruption of its representatives, but also disputes with other institutions such

²⁰⁷ GARCIA B., MEIER H., *Protecting private transnational authority against public intervention: FIFA's power over national governments*, Loughborough University Institutional Repository, 2015, p.7.

as the EU, the case Bosman for example, and the national governments that have tried to gain a dominant position at the expense of the FIFA.

In these case, the FIFA behaved in two different ways, reaching two different results. In the Bosman case, it has preferred the way of the dialogue with the EU and the UEFA, after having tried to reinstitute a limit on the participation of the foreigners with the '6+5' rule. The compromise, as we have seen, was found in the '4+4' rule, but it is evident how in this case the FIFA has had to step back in front of the role of the EU and also of its own recognized confederation, the UEFA. This last found itself in the middle of two factions, but was able to leverage on its role within the FIFA – the European championship are the most important and relevant from an economic point of view –, exploiting the fact that the question posed by Bosman regarded fundamental rights, and underlying, with the EU, the relevance of football in the European sporting landscape.

If in this case the FIFA was obliged to cede, in its relationship with the single national governments, it has shown during the years its non-legally recognized predominance on them. The tool used in these trials of strength is the threat of expulsion, or at least suspension, from the FIFA, that is recognized according to the article 17 of the Statute of the FIFA, which is signed by all the football association within the Federation.

The majority of times the use of this tool is justified by the FIFA as a necessary provision in case of interference of the national governments on the autonomous management of football of the single football associations. In reality, the exclusion of a football association has never happened, because in all the cases the FIFA has reached that the national government stepped back.²⁰⁸

²⁰⁸ RADA A. N. E., RUIZ ORTIZ F. J., *Autonomía jurisdiccional en el régimen regulatorio transnacional de la FIFA*, Redes, 2016, p.101-103.

This happened for example in relation with Greece, Poland and Spain, as illustrated by Garcia. In the case of Greece, the national government tried to respond to the scandals of match fixing that involved the Greek football in the 90s. Being threatened of suspension and exclusion from the 1994 World Cup, the Government was obliged to avoid its legislative intervention – the Greek government tried two times more to intervene on the football industry, but the result was the same of the first time –.

The Spanish government experienced the same treatment when it tried to modify the election mechanisms of the institutions governing professional football. In this case, the mechanism of suspension was not even activated and the Spanish Football Association (SFF) regained its position, thanks only to the political intervention of the FIFA's President Joseph Blatter and the 'diplomatic pact' between the SFF president and a representative of the government.

Instead in the Poland case, the Polish government suspended the board of the Poland football association and nominated a supervisor, receiving the threat of suspension from the UEFA and the FIFA. After months of tension, the Polish government removed the supervisor and the election of a new board was held.²⁰⁹

As these cases show, the power of the FIFA is evident, considering the fact, as we said before, that the exclusion of a football association has never been reached. At the contrary of the national governments which strength is based on the legislative power of the hard law, the FIFA has been able to build system basing it on the soft law instruments that can work in

²⁰⁹ GARCIA B., MEIER H., *Protecting private transnational authority against public intervention: FIFA's power over national governments*, p.11-15.

the same effective way of the ones of the hard law, producing the exclusion from the regime created by the FIFA on sport.²¹⁰

Among the tools used by the Federation in its legislative system, there is also the Code of Ethics, exploited for example as an instrument to justify the ban of the President Joseph Blatter. The use of similar tools in the football landscape, as also the utilization of the codes of conduct, will be the object of the next paragraph.

3.2 The use of codes of conduct and codes of ethics in football.

The use of the codes of conduct and ethics in football has to be inserted in the more general debate regarding the Corporate social responsibility (CSR). This phenomenon, vastly debated in the last years, is nowadays spread across all the typologies of sectors and industries, and football makes no difference.

The codes of conduct and ethics belong to the plethora of the soft law tools, which are part of the new legislative tools that originate from the private sources of the law, as the firms, and not codifiable as the traditional ones.

These tools end our dissertation for a specific reason: they are used to 'close' the legislative vacuums led by the national, European and international sources of the law with regard to football.

The importance of these instruments is even bigger considering the social relevance of football all over the world. In the recent years, the institutions composing this landscape have become more and more aware of their social role and this has been translated in CSR initiatives and the proliferation of the above-mentioned tools.

²¹⁰ RADA A. N. E., RUIZ ORTIZ F. J., *Autonomía jurisdiccional en el régimen regulatorio transnacional de la FIFA*, p.108.

For instance, the social role and the importance of the FIFA initiatives on social matters is evident taking into consideration the efforts of the Federation to promote football worldwide, contrasting every type of discrimination and enforcing the football as a way to increase the social inclusion. Emblematic is also the fact that the FIFA, as we have underlined before, has envisaged the creation of a code of ethics, that demonstrates how the proliferation of these soft law tools has reached even the highest levels of the hierarchical pyramid of football.

However, the motivations for the use of CSR tools and strategies are not only related to the social aims of the clubs, hiding also purely economic purposes: with regard to FIFA for example, it is evident that its Code of Ethics has also been used as a way to strengthen the power of the Federation, trying with this instrument to avoid the intervention of hard law regulations that could mine the position of the FIFA itself; instead, in relation with the professional clubs it is important to evidence that nowadays the success of football clubs is more and more based on their economic capacity, and clubs cannot forget the importance to have a strong globally diffused brand, which is built also through CSR practices and tools.

With this, it does not mean that the CSR is implemented only with an economic vision, however, as many scholars have underlined, the CSR in many cases would not exist if not considering its economic implications – for example the CSR initiatives of some brands are the result of strategies that aims to protect the image of the brand itself –. From this point of view, nowadays it is spreading, among the firms, the certainty that a passage from a logic centred on a shareholder view to a stakeholder view is necessary, trying to frame the firm in a CSR

perspective²¹¹ – we will analyse this passage considering the case of the Juventus Football Club –.

Football is not subtracted from this passage, even though the shareholder vision has never been largely diffused in this industry, considering the fact that rarely clubs were able to produce value for the shareholders – this trend is changing thanks to the increased economic relevance of football –.

Considering the creation of the codes of conduct and ethics of many professional clubs, it is opportune to reflect on one of the most debated questions when considering these tools, the effectivity and the binding character of them.

Being “acts of private nature”, the ‘realization’ of the provisions contained in these tools is not easily analysable, basing the effectivity of the codes, according to the professor Perulli, on three conditions: first of all the degree of “publicity of the norms”, meaning with it the possibility of access and knowledge of the code; second, “the control of the application of the norms of the codes” – distinction between exogenous, endogenous and mixed control –; third, “the existence of an apparatus of sanctions” or a juridical system capable to repress the behaviours that are contrary to the norms of the code.

The dissertation about this debate is certainly outside the boundaries of this thesis, however it is important to remember that, in the majority of the cases, the codes of ethics and conduct consist of “acts of private autonomy of patrimonial content, sources of obligations”, as evidenced by the professor Senigaglia.

Given the fact that these tools represent sources of obligations, it is necessary that the entities that adopt them proceed in parallel with the creation of systems and organisms – the

²¹¹ The considerations written until this point are the result of the elaboration of the content of: PERULLI A., *La responsabilità sociale dell'impresa: idee e prassi*, Il Mulino, 2013, p.7-72.

presence of these organisms increases the effectivity of the codes – that control the respect of the content of the codes, eventually imposing sanctions in case of violations.

Instead, with the regard of the binding character of the codes, in many cases this is explicitly contained in the codes themselves, which define the obligations framing them in the scheme of the contract, or it can be also referred to a specific sanctions' regime²¹² – in Italy for example the reference to articles of the Civil Code –.

All these considerations on the codes provide a general frame of the questions that involve the codes themselves and are a necessary introduction to the next passage of the thesis, a brief overview of some cases of codes of conduct and ethics in the world of football – given their diffusion worldwide, this overview will proceed from the top level of the football pyramid, analysing the Code of Ethics of the FIFA, to the lowest level, represented by the clubs, with the code of ethics of the Juventus Football Club –.

3.2.1 The FIFA Code of Ethics.

In order to consider the content of the FIFA Code of Ethics, it is important remember how this document is not the first one of the Federation on ethical matters. In fact, few years before its promulgation, the FIFA have decided to develop and adopt a code of conduct.

In this document, the Federation enunciated the “sporting, moral and ethical” principles that guide its activity. These were contained in ten ‘gold’ rules that are: “play to win, play fair, observe the Laws of the Game, respect opponents, teammates, referees, officials and spectators, accept defeat with dignity, promote the interests of football, reject corruption, drugs, racism, violence and other dangers to our sport football's huge popularity sometimes makes it vulnerable to negative outside interests, help others to resist corrupting pressures,

²¹² PERULLI A., *La responsabilità sociale dell'impresa: idee e prassi*, p.73-117.

denounce those who attempt to discredit our sport, and honour those who defend football's good reputation".²¹³

Few years later, the content of the Code of Conduct was implemented through the emanation of one of the most important documents that compose the regulatory system of the FIFA, the Code of Ethics.

With this document the FIFA embraces its social role, providing to the world of football provisions that aim to protect the image of this sport, sanctioning behaviours and practices that are immoral, illegal or unethical.

With regard to the three conditions identified by professor Perulli that grant effectivity to the codes, the Code of Ethics of the FIFA widely satisfies them. The publicity of the code is insured by the fact that the Code is available online on the website of the most important football institution in the world and also by the fact that the values inserted in it are underlined and promoted in every initiative of the Federation.

The control of the respect of the norm is granted by the presence of the Ethics Committee of the FIFA, which is responsible for this duty, and that, as we have seen before, is one of the three judicial bodies of the Federation and responsible for the application of sanctions in case of violation of the norms of the Code.

For what concern the third condition, the presence of a sanction system, this is satisfied by the presence of sanctions, that are foreseen directly by the Code, which are: warning, reprimand, fine, return of awards, match suspension, ban from dressing rooms and/or substitutes' bench, ban on entering a stadium, ban on taking part in any football-related activity and social work.

²¹³ <http://www.fifa.com/about-fifa/news/y=2002/m=4/news=code-conduct-for-football-81746.html>, last access: 18th February 2018.

Therefore, the effectivity of the Code of Ethics of the FIFA, as designed following the 'three-conditions' scheme, seems to be widely verified in this document and can also be identified as one of the most important reasons that justify the central role that the Code as within the FIFA regulatory system.

Returning to analysis of the document, the Code, as envisaged by the article 2, can be applied to officials, players, match and players' agents. For all these subjects, the document prescribes a series of rules of conduct that they have to follow as: the duty to respect all the applicable laws and regulations, the duty to maintain an ethical attitude, the obligation to not abuse of the respective position, the duty of disclosure and report of breaches and others.

Particularly important result also the provisions regarding the so-called 'undue advantage', which aim to avoid situations of conflict of interest, bribery and corruption. In fact, these provisions were clearly violated by the FIFA's president Joseph Blatter and by the UEFA's president Michel Platini that were banned by the Ethic Committee, as we have already discussed.

As it is possible to see, the majority of the norms present in this document refer to conducts that "have little or no connection with action on the field of play".²¹⁴ This is due to the fact that with the Code of Ethics the FIFA intended to cover primarily the conduct of the people involved in FIFA's activities, specifying also the procedures and rules that the Ethics Committee and the other organisms involved have to follow, and transferring to other documents the regulation of questions related to the field of play.

The Code of Ethics of the FIFA thanks to the role of the Federation within the football industry has inspired confederations, leagues and clubs worldwide. Among the confederation,

²¹⁴ FIFA, *Code of Ethics*, 2012, p. 6-21.

the UEFA is certainly and interesting case, now we will proceed analysing the UEFA Code of Conduct.

3.2.2 The UEFA Code of Conduct.

Inserted in a wider CSR strategy, the Code of Conduct of the UEFA is the result of the cooperation between FIFPro (the international federation of professional footballers), UEFA, EPFL (European Professional Football Leagues) and ECA (European Club Association).

The code speaks to “players, referees, clubs and other officials”, providing guiding principles that aim to protect the integrity of football, promoting the “the highest standards of conduct”.²¹⁵

Even though it presents values that are similar, the UEFA Code of Conduct is very different in its degree of effectivity and content from the FIFA Code of Ethics. First of all, it lacks two of the three conditions that grant its effectivity. In fact, even the publicity of the norms within the Code seems to be realized, the system of sanctions and the organisms responsible for the control of the respect of the code’s norms are almost absent – these two conditions are indirectly satisfied if considering the dispositions of the ‘UEFA Disciplinary Regulations’ which contains the sanctions and references to the UEFA Ethics Committee–.

With regard to the content, the UEFA Code of Conduct is primarily focus on matters related to match-fixing and corruption, with five rules that warn the subjects, to which the code is addressed²¹⁶, about these phenomena that are diffused in football, as also the calcio-scommesse in Italy and the FIFA corruption scandals have revealed. In order, the five rules are: be clean – never fix an event –, be open – tell someone if you are approached –, be careful

²¹⁵ <http://www.uefa.com/insideuefa/stakeholders/professional-football-strategy-council/news/newsid=2149775.html#/>, last access: 18th February 2018.

²¹⁶ https://www.uefa.com/MultimediaFiles/Download/uefaorg/Clubs/02/14/97/66/2149766_DOWNLOAD.pdf, last access: 18th February 2018.

– never share sensitive information –, be smart – know the rules –, be safe – never bet on your sport – ²¹⁷.

It is evident that the Code of Conduct of the UEFA reveals a scarcity of dispositions in relation to the FIFA's one. However, this point of weakness of the Code is also a direct consequence of the dispositions present in the FIFA Code of Ethics and the relative regulatory system. In fact, the position of the FIFA, hierarchically superior to the one of the UEFA, allows to cover widely the questions related to the social responsibility of the football organisms, leaving to the UEFA less necessity of interventions on this field. Moreover, the provisions of the FIFA's Code of Ethics are entirely adopted by the UEFA in the document 'UEFA Disciplinary Regulations' in which are also contained references to the UEFA Ethics Committee.

Therefore, it is possible to conclude that the UEFA Code of Conduct is certainly less important and binding than the FIFA's one, however it represents a useful tool and guideline for the entire football landscape in Europe.

3.2.3 The use of codes of conduct and ethics in the Italian football: the cases of the F.I.G.C. and the Juventus F.C..

The adoption of codes of conduct and ethics, being a worldwide trend, has also involved Italy, spreading all over the different sectors that compose the Italian economy, and football makes no difference, starting from the maximum Italian institution with regard to this sport, the F.I.G.C..

Given the relevance of this organism for the football landscape, we cannot avoid a reference on the Code of Ethics of the F.I.G.C., even though its content is not directly related to the theme of our dissertation²¹⁸, being it referred to the activities of the subjects working

²¹⁷ These rules are more widely explained in the Code of Conduct, however the content is not relevant for our dissertation.

²¹⁸ For this reason the Code of Ethics of the F.I.G.C. will not be treated widely.

for the Federation, and not on those of the footballers – in this sense Code of the F.I.G.C. results to be different from the one of the FIFA and the Code of the UEFA –.

Following the three-conditions ‘scheme’ to evaluate the effectivity, it is possible to notice that the Code of Ethics of the F.I.G.C. satisfies widely all the three. The publicity of the norms is granted by the Federation that is “occupied in the diffusion of the Code”, the control on the application of the norms is transferred to the Supervisory Body of the Federation and finally the third conditions is satisfied by the presence of a system of sanctions.

With regard to the content, the Code contains provisions which aim to direct the activities of the Federation towards “criteria of respect of the law, correctness, loyalty and efficiency”, with a particular focus on the relationships with the stakeholders.

However, the aim of the Code is also to provide principles and guidelines that the Federation, and also clubs, should follow to be in line with the dispositions of the legislative decree 8 giugno 2001, n.231 on the “discipline of the administrative responsibility of the legal entities, societies and associations, even without juridical personality [...]”.²¹⁹

This decree, even though it has been promulgated more than 15 years ago, represents still nowadays a ‘hurdle’ for the football societies, that only recently are becoming more structured from an organisational point of view – the adoption of a proper organisational structure is one of the necessary proofs that the societies have to demonstrate to avoid its responsibility in an illicit behaviour, committed to its advantage or interest –.

This decree assumes relevance considering the fact that many of the illicit behaviours for which the societies can be declared responsible have been demonstrated to be conducted

²¹⁹ F.I.G.C., *Codice etico*, 2015, p.4-5.

in many cases even by sport societies, from the corruption to the money laundry²²⁰ – recent is the arrest of the owner of the club Foggia Calcio, Fedele Sannella, for money –.

For these reasons, the F.I.G.C. with its Code of Ethics, as we said before, aims to provide guidelines in order to be in compliance with the legislative decree n.231/2001. The content of the Code reflects these intentions, being focus on “the rights, the duties and responsibilities of the Federation” in relation with all the stakeholders. As in the case of the FIFA’s one, the Federation Code explicitly prohibits corruption, dishonest behaviours and favouritism, promoting instead the respect of the person, the environmental sustainability, the equity, the legality, the transparency and other values.²²¹

Therefore, the Code of Ethics of the F.I.G.C. is an important milestone of the path that will bring the Italian football to consider more and more the codes of conduct and ethics as useful tool for all the professional, and non-professional clubs.

Certainly, one of the first clubs that have understood the importance of these instruments is the Juventus Football Club (F.C.), which is an interesting case considering its relevance in the Italian and European football landscape, not only from a sporting, but even from a managerial and business point of view.

This club, despite having always been a trailblazer in the football industry, has recently accelerated its process of growth, thanks to the positive sporting results and the successes on the economic field. These last are the result of a process of structuring of the club that has been carried on since the 2006, year of the Calciopoli scandal, – this scandal consisted in the ‘purchase’ of favours of the referees in order to influence the results of the matches and the

²²⁰ PREVITALI P., BOF F., *Codice etico, modelli organizzativi e responsabilità amministrativa: l'applicazione del d.lgs 231/2001 alle società di calcio professionistiche*, Vol. 4, Rivista di diritto ed economia dello sport, 2008, p. 89-96.

²²¹ F.I.G.C., *Codice etico*, p.5-22.

championships – that has provoked the relegation of the club to the Serie B and the resetting of the top management – the so-called ‘cupola’ formed by Giraud, Bettega and Moggi –.

After the first years of adjustment, the Juventus F.C. has started a virtuous path of growth, inserting personnel highly specialized in every department that composes the structure of the society. Part of this success is also due to the CSR strategy that the club has implemented recently, that comprehends the configuration and the adoption of a Code of Ethics too.

This Code, as declared by the Juventus, represents a “binding principle of the Model of Organisation, Management and Control adopted by the club in compliance with the legislative decree n.231/2001” but, beyond this scope, it represents also a useful tool to: spread the social values that the club recognize, prevent violations of the law and improve the relationships with all the stakeholders.

As it is structured, the Code of Ethics seems to satisfy widely the ‘three-conditions’ of effectivity, being accessible to all the stakeholders and presenting a clear system of control – the responsibility of the control is assigned to the Supervisory Body – and sanctions, that grant the respect of the norms by all the subjects involved.

With regard to the content, it does not present significant differences in relation to the Codes examined before. In fact, it contains provisions that promote the impartiality, the respect of the law and every type of regulation related to the world of football, the transparency, the social responsibility, the respect and the environmental sustainability among other. Particularly important are also the provisions that aim to regulate the relationship of the club, as a whole, with the clients, the suppliers, the collaborators and all the stakeholders that enter in contact with the Juventus Football Club.²²²

²²² JUVENTUS, *Codice Etico*, 2015, p.2-16.

Certainly, the Code of Ethics of the Juventus is not an isolated case among the professional clubs in Italy, however it is more relevant than the other given its compliance with the legislative decree n.231/2001 and the roles that the Juventus covers from a sporting to an economic and political point of view – it is important to remember the fact that the President of the Juventus F.C., Andrea Agnelli, has been recently nominated President of the ECA –.

This topic concludes our multi-level analysis that has brought us through the different levels that compose the regulatory system of football, starting from the national one, the Italian in this case, passing through the European level, reaching at the end the international one, characterized by the ‘cumbersome’ presence of the FIFA.

Conclusions

The topic approached by this thesis was the contractual relationship between the professional footballers and football clubs. In order to examine this topic, a multi-level approach of analysis has been followed, starting from the national level and arriving to the international one, with an intermediate step about the European legislation on sport and football. Through this analysis, three interesting profiles can be identified: the plurality of the sources regulating the matter, the legislative timing of the actors involved in the regulatory system of the world of football and the sore points of the Italian legislation on the contractual relationship object of this thesis.

With regard to the first of this three profiles, as it is possible to understand by the analysis of the three above-mentioned levels, the contractual relationship between professional footballers and societies is regulated by a plurality of legislative sources, operating, as it has been said, on different levels from the international to the national, that in many cases seem to provoke confusion, collision and overlapping between the different regulatory systems.

In fact, starting from the national legislation on the matter, studying the Italian case, what emerges is a regulatory system based on the milestone represented by the law n.91/1981, which is framed in a context in which intervene many actors such as the F.I.G.C., its leagues and the CONI, among others. The legislative production of these institutions, composed for example by the N.O.I.F. and the Collective bargaining agreement between L.N.P.A., A.I.C. and F.I.G.C., which contains the standard contract of the professional footballers of the Serie A's clubs, allows to define the typology and the characteristics of the

contractual relationship between professional footballers and clubs, even though some points that should be clarified by the legislator remain.

Despite the complexity, it must be recognized that this regulatory system seems to have a proper functioning, allowing the almost complete safeguard of the interests of the clubs and the footballers, even though in some rare cases it provokes confusion and distortions. It has to be considered, for example, the disposition of the article 4 of the law n.91/1981, which causes a limitation of the contractual freedom of the parties involved in the contractual relationship analysed in this thesis, the footballers and the clubs. The fact that these parties have to constitute their relationship on the basis of a standard contract, the content of which is almost totally defined by other actors, such as the L.N.P.A., the F.I.G.C. and the A.I.C., represents an unicum, even if it can be argued that these three institutions are composed by representatives of the two categories involved, the footballers and the clubs.

The situation seems to be even more complicated, considering the fact that legislative sources on the matter are not limited to the national level, but have to take into consideration also the interventions of the sources operating at the European and the international level. In fact, starting from the first of these two levels, the precision that characterizes the Italian legislation leaves space here to the scarcity of interventions, partially counterbalanced by the activity of the UEFA, of the EU's institutions, which had, until the Bosman case, left the responsibility to intervene, on sport related questions, almost exclusively to the European Court of Justice.

However, with regard to the EU's institutions, this scarcity does not seem to be translated into simplicity and clearness, on the contrary it contributes to increasing the confusion and the collision between different legislative systems. In fact, with the exception of the above-mentioned interventions of the ECJ with regard to issues related to sport and

football, but treated basing the judgements on the legislative provisions on other fields, the dispositions on the matter expressed by the EU are almost totally absent, with the exception of the reference of the Treaty of Lisbon, that however is nowadays lacking effects.

This lack of legislative references has provoked several problems during the years, such as the ones evidenced with the Bosman judgement, that had an incredible impact on the football system, and beyond it, despite being based on the references to the article 48 of the TEEC regarding the freedom of movement for the workers, a fact that opened a great debate on the question if the judgment went beyond the competency boundaries of the EU.

On the other side, the path of collaboration started by the EU institutions with the UEFA can be recognized as a positive fact. However, I think that it would be more effective if the EU had more legislative competence with regard to sport and football matters. As it was said before, the UEFA has intervened on football questions, counterbalancing the absence of the EU.

In fact, during the years, this last organism has significantly contributed to the regulation of football in Europe. Among the interventions, a few examples have been analysed: the role of the '3+2' rule and of the Home-grown player rule, with regard to the quota system; the Financial Fair Play and its influence on European football; the role of the document named "the Agreement regarding the minimum requirements for standard player contracts in the professional football in the EU and the rest of the UEFA territory". The first two will be approached later in the section, while the third one will be taken into consideration immediately.

This document represents a milestone of the above-mentioned path of collaboration between UEFA and EU, having been developed under the supervision of the European Commission. Born by the necessity, underlined also by the EU's institutions, to uniform the

normative present in the different European States with regard to the contractual relationship between footballers and clubs, it has become a sort of guideline establishing some standards that the national governments and the other legislators should follow.

Unfortunately, this document lacks a system to implement these dispositions mandatorily. In fact, the document clearly establishes that it is subordinated to the national legislations. In this sense, the UEFA should increase the above-mentioned cooperation, from the national governments to the footballers and the EU's institutions, in order to improve the effectivity of this document and, in general, of its legislative activity.

The plurality of the sources and the actors intervening in the world of football is not limited to the previously considered institutions and legislations, but it is also extended to the international level, with the activity of the FIFA. Talking about this institution, it is important to underline the fact that the FIFA holds an hegemonic position in the football sector globally, being it the most important institution of this sport.

The fact that the FIFA has been able to acquire this position is due to the lack of interventions and initiatives of the single governments and legislators – the Italian legislator is not blameless considering the fact that until the promulgation of the law n.91/1981, the legislation on the matter was almost absent –, which have left a legislative and political vacuum filled by the FIFA itself. In this sense, the FIFA has acted through a series of documents that aim to legislate aspects related to the category of the footballers, contributing to increasing even more the complexity of the regulatory system on the matter, such as the transfer of footballers and also the contractual relationship between footballers and clubs.

In this direction go the “Regulations on the Status and Transfer of Players” and “the Professional football player contract minimum requirements”. The first of these two documents is composed by several binding rules – articles 2-8, 10, 11, 12 bis, 18, 18 bis, 19

and 19 bis –, applicable worldwide, which the Federation imposes to be “binding at national level” and mandatorily present “in the football associations’ regulations”. These rules, regarding for example the status of the footballers – professional or amateur –, the registration of the players to an association and the loan of professional, among others, aim to harmonize the different legislations and regulations of the single governments and football associations.

In this sense, the document named ‘the Professional football player contract minimum requirements’ has the same objective. Even if composed by non-binding rules, it represents a sort of guideline that governments and football associations should follow in order to satisfy the necessity, evidenced by the FIFA, to have minimum standards worldwide for what concerns the players’ contracts. In contrast with the previous document, however, in this case the FIFA seems to take a step back in relation with the actors to which the document is referred.

In fact, it explicitly states the non-binding nature of the rules present, and the subordination of the FIFA to the national legislations and the Collective bargaining agreements on this matter. In this sense, deciding to maintain the position of subordination on this matter, the FIFA should, from my point of view, start a new path of cooperation with the other actors involved, favouring the adoption of the dispositions of the document and aiming to harmonize as much as possible the contractual situation of the footballers in the different countries. The same path should also be implemented in the fields in which the FIFA has decided instead to maintain a position of predominance in relation to the other actors involved in the world of football.

In my opinion, the maintenance of this position is not necessarily a negative factor. Although a reference figure is necessary in the world of football, the FIFA should avoid

behaviours and positions held in some cases in relation with the activity of national football associations and governments –the mechanism of the threat of the exclusion by the FIFA used in some cases of interference of national governments in the activities of the football associations –.

The situation depicted here clearly designs a regulatory system in which the actors involved, with few recent exceptions, seem to work in a disconnected way, in many cases also because of the disputes made to maintain the positions acquired or to favour some actors rather than others. If on the one hand the plurality of sources is a necessity given the complexity of the football system, on the other hand this can cause, as evidenced before, a situation of confusion and lack of incisive interventions.

In this sense, looking towards the future, given this complexity of the international regulatory system, the auspice is that the institutions operating in the world of football, FIFA and UEFA above all, could be able to operate in collaboration and cooperation with the national governments and the other actors involved in order to harmonize the entire football system, starting especially from the matter of the contractual relationship between footballers and clubs that is partially affected by the current situation.

A second point of interest that could be identified, thanks to the analysis conducted in the thesis, regards the legislative timing on different matters such as, considering the Italian legislation, the definition of the professional footballers as autonomous or subordinate workers and the necessity of a law regulating the contractual relationship between footballers and clubs, or, at the European level, the growth of the salaries of the footballers and of the clubs' revenues.

With regard to the Italian case, as emerged by the discussion carried out in the first chapter of this thesis, the legislator has acted late in relation with the necessity, evidenced by

many other subjects, to have a legislative reference that could regulate the above-mentioned contractual relationship. Only with the law n.91/1981 the legislator has responded to this request. Moreover, it must be remembered how the promulgation of this law was provoked by the intervention of the jurisprudence with the magistrate's order promulgated by the Milan's district court on 7th July 1978.

The slowness of the legislator is even more accentuated considering the activity of the legislators at the European level. In fact, the rapidity, but also the effectivity, of the interventions seems to be a sore point for the EU's institutions, with regard to football and sport in general. Only with the Treaty of Lisbon, promulgated in 2009, the EU has decided to open a new era for what concerns the legislation of the EU in the sporting field, even if nine years have passed since its approval and nothing seems to be changed.

In reality, the dispositions of the Treaty do not leave a lot of space for deeper interventions, but it was the opinion of many people that the Treaty was only the first step of a legislative path. In this sense, the Treaty of Lisbon should be modified, allowing the EU to intervene in order to level out, where possible, national legislations on sport and football related questions, as for example with regard to the theme of the disparity of the salaries taxation in the EU's football – the case of the AS Monaco that exploited the different taxation of the Principality of Monaco to gain an advantage, even participating to the Ligue 1, is only one case, solved by the French institutions, but partially relevant also at the European level – . Certainly, this is a topic that goes beyond sport and football, but that shows how these institutions are not able to intervene effectively, even more in the sport industry, which is almost completely outside the legislative boundaries of the EU.

The case of the FFP is another example of the fact that the slowness of the legislative intervention is not limited to the EU's institutions at the European level, but involves also the

UEFA. The predisposition of the FFP is an attempt of the maximum football organism in Europe to respond to the evolutionary dynamics that have involved football in the recent years, from the Bosman judgement to the growth of the revenues of the clubs, trying to control the financial situation of the clubs in Europe.

Starting from the Bosman ruling, it was explained in the second chapter of the thesis that, basing the final decisions on the dispositions of the article 48 of the EEC, the Court provoked the abolition of: first of all, the '3+2' rule imposed by the UEFA to its Federations and secondly the transfer, training and development fees in case of transfer of footballers with an expired contract.

The impact of this ruling, as it was explained previously, has revolutionized the world of football, creating positive effects such as the increased mobility of footballers, but also some negative ones. In fact, the abolition of the fees in case of expired contract has, at the highest level of football, increased, probably too much, the contractual power of the footballers. This has provoked an 'explosion' of the salaries of the footballers, being them, since the Bosman ruling, able to leverage the fact that the clubs were able to save the money due, for the fees, in the cases of transfer of footballers with an expired contract.

The answer of the football institutions to the Bosman judgement was extremely slow, thinking for example to the fact that the Home-grown player rule of the UEFA, which tried to reintroduce the quota system of the '3+2' rule, only intervened in 2005, 10 years after Bosman, or even worse with the case of the FFP, approved in 2009, which has partially helped to solve the difficult financial situation of many clubs, intervening too late in relation to a situation that had been critical for many years before Bosman.

Going back to the growth of the salaries in the recent years, it has to be underlined that this cannot be reconducted only to the consequences of the Bosman ruling, but it has also to

be considered in light of the general context of economic growth that has characterized football in the last few years.

Unfortunately, these favourable economic situations are not being translated in positive economic conditions for all the footballers. In fact, behind the 'sparkling' living conditions of the footballers involved in the top 5 leagues in Europe, and few other cases, there is a plethora of athletes that earn low salaries, as those paid in many other industries, with the significant difference that footballers have a limited career in terms of years and find many difficulties to reinvent themselves in other sectors once concluded their experience in the world of football. This does not mean that we have to consider the category of footballers as a needy category, however it should be recommendable to see beyond the surface of this sport.

With regard to the salaries, some limits could be posed, as many scholars have suggested, by applying measures as a luxury tax on the highest amounts or the salary cap system adopted in other leagues and sports – the NBA case for example, and partially by the football league Serie B in Italy –. I think that these solutions could have some beneficial effects. However, the legislators should act rapidly in order to prevent the spreading of innovative solutions used to bypass the impositions of the regulatory systems, as happened other times, thinking for example to the cases of the use of inflated sponsorships in relation with the rules of the FFP or the utilization of 'ghost' football clubs to circumvent the norms on the TPO – the cases of footballers as Tevez and Mascherano, acquired by the West Ham, or the one of the footballer Calleri, acquired for 11 million euros by a club of the Second Division in Uruguay –.

Such an idea does not mean that the institutions should not change the rules. However, as evidenced before, they should act with more rapid legislative actions able to respond quickly to the evolutionary changes that involve the world of football.

As it was said before, the law n.91/1981 represents a clear example of slowness of the legislator's legislative timing. However, it is also an example of an effective legislative intervention regulating the contractual relationship between professional footballers and clubs. In fact, as it was explained in the course of the first chapter, this law, in both its original form and in its modifications caused by successive laws, has positively changed the employment situation of professional athletes. However, despite its recognized importance and goodness, this law presents some sore points.

For example, it has not totally clarified the situation of those that are not considered as professionals, leaving doubts also concerning the definition of these ones as it was underlined considering the article 2 and 3, and this is probably the widest vacuum left by this law. As also many scholars have underlined, the employment relationship between societies and amateur athletes has to be clarified, considering the fact that in many cases the working performance is equal, when not superior to the one of the professional. This consideration is also peculiar of the world of football, keeping in mind especially the sporting leagues as the Serie D or the Serie A (women's football), that are non-professional only from a bureaucratic point of view.

In the case of women footballers an aside is necessary, from my point of view. I believe that a change of status from amateur to professional of the women footballers, or in alternative an extension of the plethora of subjects safeguarded by the law n.91/1981, would represent a relevant signal from the part of the legislator and the football institutions. Considering the disparity of treatment that exists in our country in every type of job between men and women, the echo that football would provide, as an important part of our culture, could largely contribute to sensitize the public opinion on the matter.

Moving back to the considerations with regard to the law n.91/1981, the article 4 results to be one of the most important, given the fact that it aims to discipline the content of

contracts signed by professional athletes, which emerges to be widely peculiar given the provisions of the above-mentioned article. In fact, it is possible to mention, among others: the written form of the contract – under condition of nullity in case of different form –, the duty of athletes to respect the technical instructions, the presence of an arbitration clause and many others.

In this sense, it is evident that the autonomy of the parties is largely compressed here, as it has been previously recognized talking about the article 4, having the contract the obligation to comprehend many elements established by the law and by the standard contract. This last one is developed by the single federations in conjunction with the representatives of the categories involved, as foreseen by the article 4, and limits even more the autonomy of the contractors.

With regard to the standard contract, as we have underlined before, the peculiarity, in the world of football, born also by the presence of a unique union of the footballers, even there is not a direct impediment for the creation of other unions. In this sense, in case of subjects that are not represented by the A.I.C., the validity of the collective bargaining agreement, and of the standard contract as a consequence, is imposed by the law n.91/1981.

Among the changes that have involved this law, one is certainly the abolition of the so-called *vincolo sportivo*, that was the players' commitment to the clubs, and happened in 1996. This innovation increased the freedom of movement of the footballers, tied, until then, almost indefinitely to the societies. However, the importance of the abolition of the *vincolo* cannot be fully understood if not framed in the European context. In fact, this disposition was partially the result of the judgement of the ECJ with regard to the Bosman case that it has been considered previously.

The presence of the *vincolo* established a sort of slavery of the footballers, that e not free to change society without the permission of their clubs. In reality, this permission is still requested, but given the limited temporal duration of the contract – maximum 5 years – and the increased patrimonial importance of the asset represented by the footballer, this sort of bond is reduced. Even underlying the positive impact of these provisions, a consideration has to be made about this topic. From my point of view, as it was said about the subjects covered by the dispositions of the law n.91/1981, too many categories are still nowadays tied by the limits brought by the *vincolo sportivo* – that remains present for the amateur athletes –.

In conclusion, trying to maintain a balancing between the liberty of the athletes and the patrimonial safeguard of the societies, the legislator should, in conjunction with the institutions responsible about the definition of the categories, intervene to solve this question.

Bibliography

AMATO P., SARTORI S., *Gli effetti del Nuovo accordo collettivo sul rapporto di lavoro del calciatore professionista. Primi commenti e principali innovazioni rispetto al testo 1989/1992*, volume 2, 2006.

BASTIANON S., *La sentenza Bosman vent'anni dopo*, G. Giappichelli editore, 2015.

CANAPELE, *Appunti sul rapporto giurico tra società sportive e calciatori*, Riv. Dir. sport., 1950 in DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*.

CARETTI P., DE SIERVO U., *Diritto costituzionale e pubblico*, Giappichelli editore, 2012.

C.O.N.I., *Statuto*, 2014.

DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*, ed. Egida, 1993.

DALZIEL M., DOWNWARD P., PARRISH R., PEARSON G., SEMENS A., *Study on the Assessment of UEFA's 'Home Grown Player Rule'*, 2013.

DI NELLA L., *Il fenomeno sportivo nell'ordinamento giuridico*, Pubblicazioni della Scuola di specializzazione in diritto civile dell'Università di Camerino, 1999

DURANTI D., *L'attività sportiva come prestazione di lavoro*, Riv. Dir. lav., 1983 in MAIETTA A., *Lineamenti di diritto dello sport*.

DUVAL A., VAN ROMPUY B., *The legacy of Bosman, Revisiting the relationship between EU law and Sport*, Springer, 2016.

ECA, *Study on the transfer system in Europe*, 2012.

EUROPEAN COMMISSION, *The Helsinki Report on Sport*, 1999.

EUROPEAN PARLIAMENT, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European communities and certain related acts*, 1997, p.136.

EUROPEAN PARLIAMENT, *The Lisbon Treaty and EU sports policy*, 2010.

FANFANI P., *La causa del contratto di collaborazione sportiva. Spunti per una ricerca*, Riv. Giustiziasportiva.it, 2007.

FIFA, *Code of Ethics*, 2012.

FIFA, *FIFA Statutes*, 2016.

FIFA, *Professional football player contract minimum requirements*, Circular no. 1171, 2008.

FIFA, *Regulations on the Status and Transfer of Players*, 2015.

F.I.G.C., *Codice etico*, 2015.

F.I.G.C., *Statuto*.

FREEBURN L., *European football's home-grown players rules and nationality discrimination under the European Community Treaty*, Marquette Sports Law Review, Vol. 20, 2009.

GALGANO F., *Diritto privato*, XV edizione, ed. CEDAM, 2012

GARCIA B., MEIER H., *Protecting private transnational authority against public intervention: FIFA's power over national governments*, Loughborough University Institutional Repository, 2015.

GARCIA B., *UEFA and the European Union: From Confrontation to Co-operation?*, JCER, Vol.3.

GARDINER S., WELCH R., *Bosman – There and Back Again: The legitimacy of Playing Quotas under European Union Sports Policy*, European Law Journal, Vol. 17, Number 6, 2011.

GIANNINI M.S., *Prime osservazioni sugli ordinamenti giuridici*, Riv. Dir. Sport, 1949 (cited by Dalla Costa).

JUVENTUS, *Codice Etico*, 2015.

KRANZ A. O., *The Bosman case: the relationship between European Union law and the transfer system in European Football*, Columbia Journal of European Law, 1999.

LIOTTA G., SANTORO L., *Lezioni di diritto sportivo*, Giuffrè editore, 2016.

MAIETTA A., *Lineamenti di diritto dello sport*, Giappichelli Editore, 2016.

MENNEA P.P., OLIVIERI M., *Diritto e ordinamento istituzionale sportivo*, Società stampa sportiva, 1996, in VERRINI M., *Il rapporto di lavoro sportivo*, 2005.

NASCIMBENE B., BASTIANON S., *Diritto europeo dello sport*, Ed. Giappichelli, 2011.

NUZZOLO M., TURCATO E., *Stranieri. Cosa tolgono e cosa danno davvero allo sport italiano*, Lit Edizioni, 2015.

PAGLIARA F., *La libertà contrattuale dell'atleta*, in Riv. dir. sport., 1990 in VERRINI M., *Il rapporto di lavoro sportivo*.

PARRISH R., *Sports law and policy in the European Union*, Manchester University Press, 2003.

PERULLI A., *La responsabilità sociale dell'impresa: idee e prassi*, Il Mulino, 2013.

PREVITALI P., BOF F., *Codice etico, modelli organizzativi e responsabilità amministrativa: l'applicazione del d.lgs 231/2001 alle società di calcio professionistiche*, Vol. 4, Rivista di diritto ed economia dello sport, 2008.

RADA A. N. E., RUIZ ORTIZ F. J., *Autonomía jurisdiccional en el régimen regulatorio transnacional de la FIFA*, Redes, 2016.

SANINO M., VERDE F., *Il diritto sportivo*, ed. CEDAM, 2015.

SMURAGLIA C., *Il vincolo tra atleti e società*, in Riv. dir. sport., 1966 in VERRINI M., *Il rapporto di lavoro sportivo*, 2005.

SPERDUTI M., *Il nuovo accordo collettivo per la Serie A di calcio*, volume 7, 2011 in Rivista di diritto ed economia dello sport.

STEWART S., *The development of Sports Law in the European Union, its globalisation, and the Competition Law aspects of European sport broadcasting rights*, Sports Lawyers Journal, Volume 16, 2009

STINCARDINI R., *La cessione del contratto: dalla disciplina codicistica alle peculiari ipotesi d'applicazione in ambito calcistico*, volume 4, 2008, in *Rivista di diritto ed economia dello sport*.

TOGNON J., *Diritto comunitario dello sport*, ed. Giappichelli, 2009.

TOSI P., *Sport e diritto del lavoro*, Argomenti di diritto del lavoro, Volume 3, 2006.

UEFA, *Vision Europe: "the direction and development of European football over the next decade"*, 2005.

UEFA, *UEFA's position on Article 165 of the Lisbon Treaty*, 2010.

UEFA, *Agreement regarding the minimum requirements for standard player contracts in the professional football in the EU and the rest of the UEFA territory*, 2011.

VALORI G., *Il diritto nello sport*, Giappichelli Editore, 2016.

VAN DEN BOGAERT S., *Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman*, Kluwer law international, 2005.

VESPIGNANI L., *Il rapporto tra il giocatore e le società sportive*, Riv. Dir. sport., 1960 in DALLA COSTA P., *La disciplina giuridica del lavoro sportivo*.

WEATHERILL S., *EU Sports Law: The Effect of the Lisbon Treaty*, in Oxford Legal Studies Research Paper No. 3/2011.

WEATHERILL S., *EU Sports Law. Collected papers*, Asser press, 2007.

Sitography

CIES, *Club-trained players: the European league rankings*, consulted on: <http://www.football-observatory.com/IMG/sites/b5wp/2016/164/en/>

FIGC, *Report Calcio 2016* consulted on:

<http://www.figc.it/other/ReportCalcio2016/ReportCalcio%202016.pdf>.

FRATTAROLO V., *Il rapporto di lavoro sportivo*, 2017, consulted on:

http://www.ilnuovodirittosportivo.it/wp-content/uploads/2016/04/Frattarolo_Lavoro_Sportivo.pdf

MCARDLE D., *One Hundred Years of Servitude: Contractual Conflict in English Professional Football before Bosman.*, Web Journal of Current Legal Issues, 2000, consulted on:

<http://archive.is/9RfY#selection-87.20-87.55>.

VERRINI M., *Il rapporto di lavoro sportivo*, 2005 consulted on:

<http://www.studiolegaleverrini.it/pdf/Il%20Rapporto%20di%20Lavoro%20sportivo.pdf>

<http://www.csddl.it/csddl/atleti-professionisti-e-dilettanti/i-doveri-dello-sportivo-professionista.html>, last access: 18th February 2018.

<http://www.figc.it/it/93/3817/Norme.shtml>, last access: 18th February 2018.

Bosman, dalla gloria all'inferno "Alcol e depressione i miei nemici", 2011, accessed on:
[http://www.repubblica.it/sport/calcio/calciomercato/2011/03/21/news/bosman dalla fam
a all inferno alcol e depressione i miei nemici-13913032/](http://www.repubblica.it/sport/calcio/calciomercato/2011/03/21/news/bosman_dalla_fam_a_all_inferno_alcol_e_depressione_i_miei_nemici-13913032/)

[http://pluriscedam.utetgiuridica.it/main.html#mask=main,ds_name=REP,pos=2,opera=44,id
=44MA0000095772,mode=search,stack_pos=0,sel_tab=REP,menu=home,highlight=siviero,
npid=761398883, m=bd](http://pluriscedam.utetgiuridica.it/main.html#mask=main,ds_name=REP,pos=2,opera=44,id=44MA0000095772,mode=search,stack_pos=0,sel_tab=REP,menu=home,highlight=siviero, npid=761398883, m=bd), last access: 18th February 2018.

<https://www.wikilabour.it/Lavoro%20sportivo.ashx>, last access: 18th February 2018.

[http://www.ilnuovodirittosportivo.it/rassegna-di-giurisprudenza-sulla-legge-n-91-del-1981-
e-sul-rapporto-di-lavoro-sportivo/](http://www.ilnuovodirittosportivo.it/rassegna-di-giurisprudenza-sulla-legge-n-91-del-1981-e-sul-rapporto-di-lavoro-sportivo/), last access: 18th February 2018.

[http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dat
aPubblicazioneGazzetta=1996-09-
21&atto.codiceRedazionale=096G0513&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1996-09-21&atto.codiceRedazionale=096G0513&elenco30giorni=false), last access on: 18th February
2018.

[http://ricerca.repubblica.it/repubblica/archivio/repubblica/1995/12/16/un-favore-ai-piu-
ricchi.html](http://ricerca.repubblica.it/repubblica/archivio/repubblica/1995/12/16/un-favore-ai-piu-ricchi.html), last access: 18th February 2018.

<http://www.gazzettaufficiale.it/eli/id/1996/11/20/096G0616/sg>, last access: 18th February
2018.

<https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/sports-business-group/deloitte-uk-annual-review-of-football-finance-2016.pdf>, last access: 18th February 2018.

http://www.keanet.eu/docs/full_study_transferofplayers.pdf, last access: 18th February 2018.

<https://www.uefa.com/insideuefa/about-uefa/index.html>, last access: 18th February 2018.

http://ec.europa.eu/competition/sectors/sports/joint_statement_en.pdf, last access: 18th February 2018.

<http://ec.europa.eu/social/main.jsp?catId=480&intPageId=1848&langId=en>, last access: 18th February 2018.

<http://www.fifa.com/about-fifa/who-we-are/history>, last access: 18th February 2018.

<http://www.fifa.com/about-fifa/news/y=2002/m=4/news=code-conduct-for-football-81746.html>, last access: 18th February 2018.

https://www.uefa.com/MultimediaFiles/Download/uefaorg/Clubs/02/14/97/66/2149766_DOWNLOAD.pdf, last access: 18th February 2018.

<http://www.uefa.com/insideuefa/stakeholders/professional-football-strategy-council/news/newsid=2149775.html#/>, last access: 18th February 2018.