

The Soccer-Betting Case 2023

Independent paper

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1. The facts.

On 1st August 2023, an investigation was carried out by the Public Prosecutor's Office at the Court of Turin on the ground of allegations of money laundering by illegal betting agencies operating in Italy through illicit platforms.

In the interceptions acquired in the files, the interlocutors have named three professional football players who would have bet (for large amounts) on the illegal circuit.

Without prejudice to the presumption of innocence and with all the reservations of the case, as the investigation is still in its early stages, two football players, Nicolò Fagioli and Sandro Tonali, are allegedly under investigation by the Turin Public Prosecutor's Office (for the charges of the crime, referred to in Article 4, Law of 13 December 1989, 'Unauthorised gambling or betting activities', that as paragraph 3 states, expressly sanctions the participation in such illegal games or bets), while a third, Nicolò Zaniolo, is not under investigation.

The affair caused a huge stir, both because of the notoriety of the players involved and the fact that two of them, at the time of the news, were in training with the national football team and that, as a result of these facts, they had to leave the training camp immediately, not participating in the important official international competitions scheduled for the following days.

From what has emerged so far, according to open sources, and with the reservations outlined above, the three players implicated are alleged to have engaged in three different types of conduct, namely

- Nicolò Zaniolo: allegedly used illegal platforms to gamble through card games and unrelated to the field of sport, moreover, he denies to be aware of the unlawfulness of the platforms;
- Nicolò Fagioli: allegedly bet on illegal platforms on non-football sporting events and on football matches not of his own teams;
- Sandro Tonali: allegedly betting on football matches, also concerning his own teams, but only betting on victory.

Following the ordinary criminal investigation (which remains ongoing), the sports prosecutor's office acted extremely rapidly (in the opinion of some commentators,

excessive) on the separate and complementary disciplinary front, immediately dealing with the Fagioli case (betting on non-football sporting events), imposing, following an agreement ('plea bargain') with the footballer, seven months of disqualification, a further five months of alternative penalties and a fine of EUR 12,000.00.

As mentioned above, part of the main sanction of disqualification is commuted into the alternative penalties, which consist of measures preventing the acknowledged gambling addiction, with the player's commitment and, in particular, a therapeutic plan lasting a minimum of six months; a cycle of at least 10 public meetings, to be held over a period of five months, at amateur sports associations, territorial federal centres, centres for the recovery from gambling addiction.

Tonali's position, which would appear - according to press reports - to be more serious, as the footballer would have admitted to having bet on his own teams' football matches, albeit betting on their victory, would also have been resolved, from a disciplinary point of view, with a plea bargain, with the main penalty being a ten-month disqualification, partially compensated by alternative penalties consisting of an eight-month period during which the player must undergo a therapeutic plan to fight gambling addiction, as well as an undertaking to participate in sixteen meetings organised by the Italian Football Federation at amateur sports associations, federal centres and centres for recovery from gambling addiction, in order to illustrate his experience and warn against the risks of gambling.

As for Zaniolo's case, as we shall see, it may not constitute conduct relevant from a disciplinary point of view, without prejudice to possible ordinary criminal liability for having gambled through illegal platforms.

2. The regulatory frame of reference.

2.1. Ordinary criminal legislation.

As we have mentioned, in Italy it is a crime (albeit only of a contravention nature) to bet and gamble through illegal platforms as they are not authorised by the State.

The reference standard is Article 4, Law of 13 December 1989, 'Unauthorised exercise of gambling or betting activities', paragraph 3, which states:

"Art. 4

Unlawful gaming or betting activities

1. *Anyone who unlawfully organises lottery games or betting or betting contests which the law reserves to the State or to another concessionary body shall be punished by imprisonment from three to six years and a fine ranging from 20,000 to 50,000 Euros. The same punishment applies to anyone who organises bets or betting contests on sporting activities managed by the Italian National Olympic Committee (CONI), by organisations dependent on it, or by the Italian Union for the Increase of Horse Breeds (UNIRE). Anyone who unlawfully organises public betting on other competitions of persons or animals and games of skill shall be punished by arrest from three months to one year and a fine of not less than Euro 516 (one million lire). The same sanctions shall apply to any person who sells on the national territory, without authorisation from the Customs and Monopolies Agency, tickets of lotteries or similar games of chance of foreign States, as well as to any person who participates in such operations by collecting bets and crediting the relevant winnings and by promoting and advertising them by any means of dissemination. A term of imprisonment ranging from three to six years and a fine ranging from EUR 20,000 to EUR 50,000 shall also be imposed on anyone who organises, operates and remotely collects, without the prescribed licence, any game established or regulated by the Customs and Monopolies Agency. Anyone who, even though holder of the prescribed concession, organises, exercises and remotely collects any game established or regulated by the Customs and Monopolies Agency using methods and techniques other than those provided for by the law shall be punished by imprisonment from three months to one year or a fine ranging from 500 to 5,000 euro.*

2. *In the case of contests, games or bets operated in the manner set forth in paragraph 1, and outside the cases of complicity in one of the offences set forth therein, any person who in any way advertises their operation shall be punished by terms of imprisonment of up to three months and a fine ranging from euro 51 to euro 516. The same sanction shall apply to anyone who, in any manner whatsoever, advertises in Italy games, bets and lotteries, accepted by anyone abroad.*

3. *Anyone who participates in contests, games, bets managed in the manner set forth in paragraph 1, other than in cases of complicity in one of the offences referred to therein, shall be punished by terms of imprisonment of up to three months or with a fine ranging from euro 51 to euro 516.*

4. *The provisions set forth in paragraphs 1 and 2 shall also apply to games of chance exercised by means of the devices prohibited by Article 110 of Royal Decree no. 773 of 18 June 1931, as amended by Law no. 507 of 20 May 1965, and as last amended by Article 1 of Law no. 904 of 17 December 1986.10*

4-bis. The sanctions referred to in this Article shall be applied to any person who, lacking the concession, authorisation or licence pursuant to Article 88 of the Consolidated Law on Public Security, approved by Royal Decree No 773 of 18 June 1931, as subsequently amended, carries out in Italy any activity organised for the purpose of accepting or collecting or in any way facilitating the acceptance or in any way the collection, including by telephone or telematic means, of bets of any kind by any person in Italy or abroad.

4-ter. Without prejudice to the powers attributed to the Ministry of Finance by Article 11 of decree-law no. 557 of 30 December 1993, converted, with amendments, by law no. 133 of 26 February 1994, and in application of Article 3, paragraph 228 of law no. 549 of 28 December 1995, and in application of Article 3, paragraph 228 of law no. 549 of 28 December 1995, the sanctions referred to in Article 11, paragraph 228 of law no. 549 of 28 December 1995, shall be applied to the Ministry of Finance. 549 of 28 December 1995, no. 549, the sanctions referred to in this Article shall apply to any person who collects or books lotto bets, lotteries or betting transactions by telephone or telematic means, where such person does not hold a specific authorisation from the Ministry of Economy and Finance - Customs and Monopolies Agency to use such means for the aforesaid collection or booking.

4-quater. The Customs and Monopolies Agency is required to implement, in collaboration with the Guardia di Finanza and the other police forces, an extraordinary plan to control and combat the illegal activity referred to in the preceding paragraphs with the aim of determining the emergence of the collection of illegal gaming".

It should be noted, with regard to the facts described, that the offences in question against professional footballers (with the disciplinary implications we are dealing with) emerged in the context of an investigation into money laundering hypotheses, thus demonstrating, on the one hand, the connection between the illegal conduct linked to betting and a broader criminal context in which betting takes place and, on the other, the importance of a complex regulatory apparatus aimed, as a whole, at preventing and repressing criminal offences of various kinds.

In this regard, it must be emphasised that the approach favoured by legal multilateralism to corruption in sport espouses a holistic reconstruction of the phenomenon, which translates into conduct that is also not strictly ascribable to corrupt conduct in the strict and proper sense.

In the multilateral resolutions and dialogues of the last annual global exercises, in the G7, G20 at OECD and UN level, betting and match fixing are also considered aspects of corruption in sport.

2.2. The disciplinary regulations.

Article 24 of the Sports Justice Code of the Federazione Italiana Giuoco Calcio provides verbatim:

“Art. 24 Prohibition of betting and obligation to report

1. Subjects of the federal system, managers, members and card-carrying members of clubs belonging to the professional sector are prohibited from making or accepting bets, directly or indirectly, even from persons authorised to receive them, concerning the results of official matches organised within the framework of the FIGC, FIFA and UEFA.

2. Subjects of the federal system, managers, members and registered members of clubs belonging to the amateur and youth sectors are prohibited from taking or accepting bets, directly or indirectly, from persons who are not authorised to receive them, on results relating to official matches organised within the framework of the FIGC, FIFA and UEFA. They are also prohibited from placing or accepting bets, directly or indirectly, from persons authorised to receive such bets relating to matches in competitions in which their teams participate.

3. Infringement of the prohibition referred to in paragraphs 1 and 2 shall result in a sanction of inhibition or disqualification of no less than three years and a fine of no less than Euro 25,000.00 for the subjects of the federal system, managers, members and directors of clubs.

4. If, for the violation of the prohibition referred to in paragraphs 1 and 2, the direct liability of the company is ascertained in accordance with Article 6, paragraph 1, the fact shall be punished with the application, also jointly depending on the circumstances and gravity of the fact, of the sanctions referred to in Article 8, paragraph 1, letters g), h), i), l).

5. *The persons referred to in Article 2 who have become aware in any way that companies or persons have carried out or are about to carry out any of the acts indicated in paragraphs 1 and 2 are obliged to inform the Federal Prosecutor's Office without delay. Failure to fulfil this obligation shall result in the persons referred to in Article 2 being liable to a sanction of inhibition or disqualification of not less than six months and a fine of not less than Euro 15,000.00*".

Article 13 of the F.I.G.C. Code of Sporting Justice establishes, among the extenuating circumstances, "*having admitted responsibility or having actively cooperated in the discovery or investigation of disciplinary offences*" (Art. 13, 1st paragraph, lett. e). In addition, '*the sports justice bodies may take into consideration, with adequate justification, further circumstances which they deem suitable to justify a reduction of the sanction*' (Art. 13, Para. II).

In relation to the cases in question, the mitigating circumstance provided for in Art. 13(1)(c) concerning having taken steps to avoid or mitigate the harmful or dangerous consequences of the offence before the judgment could also be relevant.

With regard to procedural profiles, on the subject of the so-called "plea bargaining", reference is made to Article 126 ("*Application of sanctions on request before referral*") which allows for an agreement between the Federal Prosecutor's Office and the accused, concerning a reduced penalty and the latter's willingness to undertake commitments aimed at remedying the effects of the alleged offences.

In the event of the agreement being finalised and the relative sub-case being successfully concluded, the disciplinary action relating to the facts that are the subject of the proceedings becomes absolutely inadmissible, unless the agreement is subsequently fulfilled by the accused.

The so-called plea bargaining cannot be applied, among other cases, "*(...) for facts aimed at altering the course or the result of a competition or a contest or at ensuring anyone an advantage in the rankings, qualified as a sports offence by the federal system*" (Art. 126, VII Paragraph).

A similar procedure, but with a lesser reduction in penalty, may also be pursued after referral under Art. 127 ("*Application of sanctions on request after referral*").

3. Assessments of the current Italian regulatory system and considerations for the future.

3.1. The specific response of the Italian legal system to the spread of illegal gambling. Further considerations regarding recent episodes.

As we have seen, the Italian legal system's response to the emergence of gambling episodes by FIGC members moves

- a) on the level of ordinary criminal justice, as for all citizens, aimed at sanctioning the use of gaming platforms that are illegal as they are not authorised by the State
- b) on the level of disciplinary liability, obviously aimed only at the Federcalcio's members;

The events described above, of great impact in the media, have stimulated an interesting debate on the appropriateness of the legal system's response, as well as, of a general nature, on the phenomenon of the spread of gambling and gambling addiction in sporting circles in Italy (and not only in Italy).

In particular, many commentators have seen the events involving top players, selected by the Italian national football team, as the most obvious symptom of the enormous spread of gambling addiction.

According to a research performed by the Luiss University (First Research Report on the Gaming Sector in Italy) the 60 per cent of soccer players within five years after retiring from competitive activity live in a state of destitution due to many factors including gambling addiction.

In this regard, it is noteworthy that in all three cases in question, the conduct did not involve unlawful influence on sports results and that the federal prosecution agreed with the defences, following the presentation of appropriate medical certificates, that the players were suffering from pathological gambling addiction.

As already mentioned, the lightning speed with which two out of three cases were dealt with and resolved (through plea bargaining) was seen as suspicious (the third case, concerning the player Zaniolo, would not present profiles of disciplinary relevance). Apart from journalistic speculation, it is emphasised that, from the examination of further elements (whatsapp chats, extracted from the mobile phones of the accused, currently subject to seizure by the Turin Public Prosecutor's Office), the awareness of the facts could emerge in the heads of numerous registered members who could be blamed, at least, for violation of the obligation to report under Art. 24, Paragraph V of the F.I.G.C. Sports Justice Code (vds. Zara F., *Calcioscommesse*:

quello che abbiamo capito finora e cosa succede adesso, 24.10.2023, in <https://www.vanityfair.it/article/calcioscommesse-e-ora-che-succede>).

3.2. Further 'protection' measures currently in force

It should be noted, as mentioned on the multilateral level, that the phenomenon of the spread of gambling addiction and the use of unauthorised and, therefore, illegal platforms, intuitively arises in direct connection with the issue of combating corruption and money laundering.

Therefore, systemic measures to combat money laundering, usury and corruption are also relevant in the area of gambling in sport.

In this sense, the recent 'extension' to professional football (but not only) of the 'imposition' of compliance with the requirements of Legislative Decree No. 231/2001 on the so-called administrative liability of entities dependent on crime should be assessed.

As is well known, the legislation in question, in order to avoid the liability of the entity (in our case the sports clubs) in the event of the commission of certain offences by persons connected to it, requires the adoption of organisational models that are suitable for combating the related unlawful conduct.

In recent years, the F.I.G.C. has embarked on a path aimed at implementing the regulation in question within the federal system.

As early as 22 January 2007, the F.I.G.C. Extraordinary Meeting had already resolved on fundamental changes in this sense to the Federal Statute and, in particular, introduced Article 7, Paragraph V as follows:

"The Federal Council, having consulted the Leagues concerned, shall issue the necessary regulations and ensure that clubs taking part in national championships adopt models of organisation, management and control suitable for preventing the commission of acts contrary to the principles of fairness, correctness and probity in all relations. The aforementioned models, taking into account the size of the company and the competitive level at which it operates, must provide for a) appropriate measures to ensure that sporting activities are carried out in compliance with the law and the sports regulations, and to promptly detect risk situations; b) the adoption of a code of ethics, of specific procedures for both administrative and technical-sports decision-making phases, and of adequate control mechanisms c) the adoption of an incisive internal disciplinary system capable of sanctioning non-compliance with the

measures indicated in the model; d) the appointment of a guarantee body, composed of persons of the highest independence and professionalism and endowed with autonomous powers of initiative and control, in charge of supervising the operation of and compliance with the models and of ensuring that they are updated. "

The F.I.G.C. Code of Justice was also amended with the insertion in Article 13 of a specific exemption for conduct by its supporters, according to which 'The club shall not be liable for conduct by its supporters in violation of Article 12 if three of the following circumstances occur jointly: a) the club has adopted and effectively implemented, before the event, organisational and management models of the company suitable for preventing conduct of the kind that occurred, having employed financial and human resources adequate for the purpose; (...)'.

Subsequently, the Extraordinary Meeting of the F.I.G.C. resolved that the adoption of the organisational model pursuant to Legislative Decree no. 231/2001 was mandatory for the purposes of registration for the A and B series championships as of the 2013/2014 football season, while the third professional league, the "Lega Pro" (C series), with the amendment of its Code of Self-Regulation, also took a similar decision as of the 2017/2018 season.

Finally, it should be noted that amateur clubs do not appear to be exempt tout court from the obligation to adopt an organisational model pursuant to Legislative Decree no. 231/2001, given that the aforementioned new text of Article 7, Paragraph 5 of the F.I.G.C. Federal Statute expressly provides for this obligation for participation in national championships, and this is also the amateur Serie D championship, managed by the National Amateur League, which, in the near future, will have to adapt, making registration conditional on this requirement.

3.3. Suggestions for the adoption of further regulatory instruments.

In the aftermath of the emergence of the cases described above, the Minister of Sport, Andrea Abodi addressed the issue, putting forward a proposal concerning the future obligation of each professional player to sign, at the same time as his contract with the sports club, a so-called 'Charter of Values' committing him to four basic obligations

- (a) not to take drugs;
- b) not to gamble;
- c) not to receive undeclared payments;

d) not to watch matches on illegal platforms;

This 'Charter of Values' could be assimilated to the Code of Ethics that professional sports clubs are already required to adopt as part of the organisational model pursuant to Legislative Decree no. 231/2001, which clubs must have in order to register for the A, B and C series (as well as D, in the future), as provided for by Art. 7, Para. 5 of the FIGC Statute.

The Code of Ethics correlated to the organisational model, as we know, is therefore aimed at clubs that undertake to adopt and comply with specific procedures, envisaged precisely by the Code of Ethics, *for both administrative and technical-sports decision-making phases, as well as adequate control mechanisms.*

Undoubtedly, the provision of a specific subscription obligation on the part of the individual player, could play a useful function in terms of responsibility and awareness of the individual player.

Furthermore, the inclusion of such an operational modality within the organisational model pursuant to Legislative Decree no. 231/2001, would require the club, not only to require the player to sign the document, but also to organise training courses for its own personnel specifically focused on the issues under consideration herein, which would be suitable to give further awareness of the issues covered by this so-called Charter of Values.

The focusing of the Code of Ethics (already provided for by the Federcalcio Statute) on the issues in question indicated by the so-called Charter of Values advocated by Minister Abodi, could, therefore, represent a further consolidation of the preventive apparatus deriving from the adoption of the organisational model ex D. Legislative Decree no. 231/2001, given that the Code of Ethics would definitively assume a role comparable to a "Constitutional Charter" of the entity, indicating the values that the company pursues and that must be applied in all the activities carried out by the entity and the subjects connected to it, at every level.

3.4. Final considerations. The importance of a holistic approach.

In conclusion, we can draw some considerations on the matter and on the reaction of the Italian legal system to the deviances that emerged, on the basis of a holistic approach that does not take into consideration the mere regulatory aspect on the following points:

a) the effectiveness of the alternative measures consisting of the commitment required of the player to tell his experience and his dependence to other members on the occasion of public meetings organized ad hoc would need to be carefully

evaluated. The reasoning that led the federal prosecutor to impose this measure is clear: the notoriety of the members involved would constitute a warning and a positive example for the generality of members, combined with a concrete act of repentance and awareness of the error on the part of the accused.

However, some commentators have raised doubts about the actual usefulness of the membership towards the public (who would not be able to grasp, with these methods, the full negative value of the conduct, with the risk of having the opposite effect, or see the initiative as a mere and empty expiatory rite), as well as in relation to the responsible member, there is the risk (perceivable by the public) that the player concerned sees in these alternative penalties only a way of reducing the much heavier main penalty of disqualification, moreover at a time in which, as soon as recovery therapy has begun, full recovery from the pathology does not yet appear to be possible with certainty; in this sense, it could be useful to reflect, also from a legal point of view, on the alternative paths to disqualification to which members suffering from gambling addiction should undergo, evaluating methods of commitment that allow them to get closer to the social reality in which they will have to then live, once your professional career has ceased; in this sense, guided meeting programs with peers or para-volunteering services could be envisaged.

b) we should think, in a future perspective, including a regulatory one, about the extremely worrying data revealed by the aforementioned Luiss University study, according to which five years after ceasing competitive activity, 60% of footballers experience a state of poverty due to many factors, including gambling addiction.

It is clear that the growth and educational model of future professional players contributes to generating this deplorable situation.

We are referring, in fact, to a professional category made up of kids who, at 12/13 years of age (and often even younger), are used to five training sessions a week, as well as leading a very different life from their peers. Of these, very few reach professionalism and, even in this case, the life that is lived appears completely different from the normal model followed by young people of the same age, with the addition of the element given by the (often temporary) celebrity and availability of money in large quantities at an early and immature age.

It should also be taken into consideration that the great impact of professional sport on society, in terms of following, interest and profit, involves the introduction of an ever-increasing number of sporting competitions and events with clear repercussions on professional players.

The state of isolation and material and psychological subjection of professional athletes has also been the subject of recent awareness-raising initiatives within professional tennis.

Addressing the issue of betting in football and, in any case, the bad habits that hypothetically emerge from the conduct of some members, cannot ignore addressing these profiles, even normatively, in order to make the professional activity of the members themselves more liveable and to guarantee them, children of adolescent age and, therefore, in training as citizens, more fragile and susceptible to negative influences, a socio-economic environment that is increasingly legally oriented and that is aware of its own limits.

In this sense, a risk assessment and a needs analysis of the system as a whole would be essential, to seize the opportunity from the crisis to improve and strengthen the safeguards of legality and protection of the values of sport, also in consideration of the an example that from similar facts reaches millions of young people, too often exposed to the media representation of non-virtuous behaviour, with further repercussions on the level of collective education.