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The Protection of Esports Players against the Use of Doping Substances and Methods under the European Convention on Human Rights: The Swiss Example

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Abstract

Esports industry has rapidly developed with huge economic interests from the sponsoring companies. As a result, esports players attempt to use doping substances and methods to enhance their brain performance in order to win professional esports tournaments. Thus, the anti-doping regime in esports should be taken into account from a different perspective in the context of traditional sports and needs to be regulated in accordance with esports practices. On that basis, the purposes of this article are the following: (1) to clarify whether the anti-doping regime in esports is enough to ensure human rights of esports players guaranteed by the European Convention on Human Rights (ECHR); and (2) to consider how esports federations should take necessary measures to protect esports players under the ECHR through the analysis of the Swiss example. Finally, this article will refer to the author's personal opinions on this issue.

Keywords: Doping substances and methods, esports players, World Anti-Doping Code (WADC), Swiss Esports Federation (SESF), Esports Intergity Commission (ESIC), human rights protection, European Convention on Human Rights (ECHR), European Court of Human Rights (ECtHR)

Highlights

- Human rights' protection in esports activity has never been discussed until now, but the Swiss Esports Federation (SESF) recently declared to consider this issue to protect esports players undergoing Swiss esports activity.
- The anti-doping regime in esports should be considered as an insufficient system to protect esports players and maintain the integrity of esports as in the case of the anti-doping regime in sports established by the World Anti-Doping Agency (WADA).
- Due to lack of development of the anti-doping regime in esports, it would be difficult to analyse the anti-doping regime in esports from a human rights' perspective under the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR)'s judgments.
- This article would give the esports community an effective instruction to create a well-established anti-doping regime and dispute resolution bodies in order to protect esports

players against adverse effects caused by the use of doping substances and methods through esports activity.

Introduction

Esports activities (Abanazir 2019, pp. 103-105; Hallmann and Giel 2018, pp. 15-17; Funk et al. 2018, pp. 7-13; Parry 2019, pp. 3-18) have rapidly grown in developed countries, especially in Europe,¹ North Asia (SBurk 2013, pp. 1541-1544; Ozkurt, 2019), and the United States.² They have also generated huge economic interests through sponsoring companies at the professional level (Russ, 2019; Rosell Llorens 2017, pp. 464-465).³ In this situation, some international esports events have contributed to this rapid development. For instance, the International Esports Federation (IeSF) organises a huge esports event each year, so-called the “Esports World Championship” in Seoul, South Korea.⁴ The Intel Corporation also holds unofficial esports events, known as the Intel Extreme Masters (IEM), which is one of the most popular and longstanding global professional gaming tours in the world since 2006.⁵ Thanks to these tournaments, the esports industry has gradually become attractive to business enterprises as a new economic market (Ahn et al., 2020).

As a result, esports players attempt to use doping substances and methods for enhancing their brain performance to win professional esports tournaments (Wolf, 2019; Kamen, 2015a; Kamen, 2015b). Such prohibited doping substances and methods are different from those of traditional sports,⁶ such as anabolic steroids.⁷ The World Anti-Doping Agency (WADA) establishes the World Anti-Doping Code (WADC)⁸ and prohibits all athletes and their supporters from using, possessing, transferring and administering the prohibited substances and methods (Article 2 of the WADC). Almost all sporting federations decide to incorporate the WADC into their own regulations to harmonise doping-related rules.⁹ Furthermore, certain states enact special law which aims to punish the use or transfer of doping substances by athletes themselves or their supporters (Sumner 2017, pp. 217-227; Zaksaitė and Radke 2014, pp. 115-127).

In contrast to this, the prohibited substances in esports are listed on the *ESIC ESports Prohibited List 2016* established by the Esports Integrity Commission (ESIC).¹⁰ According to Article 14 of the SESF Standard, the Swiss Esports Federation (SESF) refers to that list to decide whether or not the esports players are contrary to the esports doping regulations.¹¹ If the players violate the anti-doping rules, they can claim the therapeutic use exemptions (TUEs) under Article 4 of the ESIC Anti-Doping Policy (or ESIC Anti-Doping Code) (Fitch, 2019).¹² In this sense, the esports community has already developed the original anti-doping framework in accordance with the esports practice. However, the IeSF agreed with the WADA to fight against doping in esports (Dudognon 2017, pp. 273-284; IeSF, 2013). Therefore, it is necessary to observe how the WADA will involve doping matters in the esports activity.

However, Article B(10)(a) of the IeSF Statutes stipulates that:

“IESF, including its Members and players, is bound by the relevant rules and guidelines prescribed by IOC, Sport Accord, WADA, and other relevant agencies or bodies set up to monitor drug use and doping by players affiliated with IESF Members”.¹³

According to this provision, it might be considered that the SESF would be bound by the WADA Code to fight against doping in sports because the SESF is a member of the IeSF. However, that provision should be interpreted that Article B(10)(a) of the IeSF Statutes may apply to a situation where the Swiss esports players participate in the IeSF competitions and, thus, it should not apply to the esports competitions organised in Switzerland (Burk 2013, pp. 1544-1569; Holden et al. 2017, pp. 240-242; Smith, 2016).¹⁴

In light of the foregoing, the purposes of this article are (1) to clarify whether the anti-doping regime in esports is enough to ensure human rights of esports players guaranteed by the European Convention on Human Rights (ECHR) and (2) to consider how the esports federations should take necessary measures to protect the esports players under the ECHR through the analysis of Swiss example. In doing so, it will be divided into the following sections: After this introduction, it will skim through the anti-doping regime in Swiss esports activity. Furthermore, it will consider human rights protection in the esports anti-doping regime in light of the ECHR. Finally, this article will refer to the author's personal opinions on this issue.

Anti-doping regime in Swiss esports activity

The first question that may arise is how the SESF should deal with, or sanction for, the use of doping substances and methods by esports players. To answer this question, this section will skim through the anti-doping regime in Swiss esports activity.

In this regard, Article 14 of the SESF Standard stipulates that:

“The list of the substances considered prohibited unless the player has obtained a therapeutic use exemption is the one present on the website of the [Esports Integrity Commission] (ESIC)”.

This provision means that the SESF refers to the ESIC Anti-Doping Prohibited List describing prohibited substances in esports and determines whether esports players violate the anti-doping rules in Swiss esports competitions. According to this provision, from my perspective, the esports players are entitled to claim the Therapeutic Use Exemptions (TUEs) under Article 4 of the ESIC Anti-Doping Policy. However, it should be noted that Article 14 of the SESF Standard does not express that the SESF will follow the ESIC Anti-Doping Policy itself¹⁵ established by the ESIC.¹⁶

According to the *ESIC ESports Prohibited List 2016*, there are seven prohibited substances “unless the player has obtained a Therapeutic Use Exemption in accordance with Article 4 of the ESIC Anti-Doping Policy”: amphetamine sulfate (Evekeo), dextroamphetamine (Adderall and Adderall XR), dexedrine (ProCentra, Zenzedi), dexamethylphenidate (Focalin and Focalin XR), lisdexamfetamine (Vyvanse), methylphenidate (Concerta, Daytrana, Metadate CD and Metadate ER, Methylin and Methylin ER, Ritalin, Ritalin SR, Ritalin LA, Quillivant XR), modafinil and armodafinil. These substances may cause health problems of the user's physical and mental conditions. Thus, if the esports players used one of these substances in esports competitions, it can be considered that they violate anti-doping rules under Article 3 of the ESIC Anti-Doping Policy.

When the esports players use the prohibited substances listed in the *ESIC ESports Prohibited List 2016*, they are entitled to justify the usage of prohibited substances under Article 4 of the ESIC Anti-Doping Policy. Article 4.1 of the ESIC Anti-Doping Policy provides that

“Players may obtain a TUE for the use of a Prohibited Substances where the Player fulfils the following criteria:

- (1) “The Player applies for a TUE in accordance with Article 4.3 below in good time and, in any event, in advance of participation in any Match or Event.” (Article 4.1.1)
- (2) “The Player would experience a significant impairment to health if the Prohibited Substance were to be withheld in the course of treating an acute or chronic medical condition.” (Article 4.1.2)
- (3) “The therapeutic use of the Prohibited Substance would produce no additional enhancement of performance other than that which might be anticipated by a return to a

state of normal health following the treatment of a legitimate medical condition.” (Article 4.1.3)

- (4) “There is no reasonable therapeutic alternative to the use of the otherwise Prohibited Substance.” (Article 4.1.4)
- (5) “The necessity for the use of the otherwise Prohibited Substance is not a consequence, wholly or in part, of a prior non-therapeutic use of any substance on the Prohibited List.” (Article 4.1.5)

It is important to note that the esports players must satisfy all criteria (cumulative criteria) to obtain the TUEs for the use of prohibited substances. If they obtain the TUEs, the use of prohibited substances is not recognised as an anti-doping rule violation (Article 4.2). However, the SESF does not specify the prohibited conduct and offense as well as the disciplinary sanctions and its doping procedure, when there is a violation of Article 14 of the SESF Standard. On that basis, this article will then necessarily skim through the ESIC Anti-Doping Policy under Article 14 of the SESF Standard.

First of all, Article 2 of the ESIC Anti-Doping Policy stipulates the following prohibited conducts and offences:

- (a) The presence of a prohibited substance or its metabolites or markers in a player’s sample (Article 2.1);
- (b) The use or attempted use by a player of a prohibited substance (Article 2.2);
- (c) Refusing or failing without compelling justification to submit to sample collection after notification or otherwise evading sample collection or to cooperate with any investigation carried out by ESIC (Article 2.3);
- (d) Tempering or attempting to tamper with any part of doping control or investigation (Article 2.4);
- (e) Possession by a participant of any prohibited substance (Article 2.5);
- (f) Trafficking in any prohibited substance (Article 2.6);
- (g) Administration or attempted administration to any player of any prohibited substance or assisting, encouraging, aiding, abetting, covering up or any other type of complicity (Article 2.7);
- (h) Admissions by a player of any of the conduct listed in Clauses 2 (1)-(7) (Article 2.8);
- (i) Complicity, assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity (Article 2.9); and
- (j) Prohibited association (Article 2.10).

Based on such prohibited conducts and offences, disciplinary sanctions will have to be imposed on the doping perpetrators in esports under Article 9.1 of the ESIC Anti-Doping Policy. To determine the sanctions, “the Integrity Commissioner or Panel must first consider whether the Participant has previously been found guilty of an offence under the Anti-Doping Policy”.¹⁷ Furthermore, Article 7.5 of the Anti-Doping Policy expresses the appropriate disciplinary sanctions as follows:

- (1) For the first offence, “[a] fine of up to 100% of Match and/or Event Prize money (or equivalent) and/or between 4 and 8 Suspension Points and/or a fixed term of suspension from the Game and/or Event/s of up to 24 months”;
- (2) For the second offence, “[t]he imposition of a suspension from the Game and/or Event/s and/or any Game/s and/or and Event/s and/or all Esports of between one (1) year and a lifetime”; and
- (3) For the third offence, “[u]p to a lifetime suspension from all Esports”.

Concerning the anti-doping procedure, the SESF does not create its original framework to deal with a violation of such an anti-doping regime in Switzerland nor refer to the disciplinary procedure under the ESIC Anti-Doping Policy. Therefore, there is no dispute resolution mechanism to solve doping issues in the Swiss esports community.¹⁸

In short, the anti-doping regime in esports is an urgent issue to safeguard the integrity of esports from the rapid expansion of business interests in the esports industry. The esports anti-doping system in Switzerland is based on the ESIC Anti-Doping Policy and Prohibited List in light of Article 14 of the SESF Standard. However, the SESF standard remains unclear because it does not prescribe that the SESF shall refer to the entire provisions of the ESIC Anti-Doping Policy and its procedure before the ESIC Panel. Furthermore, it does not mention who will impose a sanction and how to detect the doping substances in the system of esports players.¹⁹ Thus, it is necessary to observe how the SESF will set up the safeguard system of esports players in Switzerland against the use of doping substances and methods.

Human rights protection in the esports anti-doping regime in light of the European Convention on Human Rights

As had been seen above, doping problems and anti-doping regime exist in esports, but the latter would be recognised as insufficient. However, the esports players are still able to reach the doping substances and methods, which were prohibited on the ESIC Anti-Doping Policy and its Prohibited List.

In this situation, a question that may arise is how they may be protected from the use of prohibited doping substances and methods. In doing so, this section will consider whether the anti-doping regime in Swiss esports is enough to ensure human rights of esports players guaranteed by the ECHR²⁰ in light of the European Court of Human Rights (ECtHR)’s judgments.²¹ It is important to note that human rights law cannot directly impose any obligations on private actors, but on states (Crawford 2019, p. 105; Higgins 1994, pp. 48-55). In other words, the esports players cannot bring a case against the SESF before the ECtHR on the ground of a violation of the provisions of the ECHR (van der Sloot et al. 2020, p. 191). However, the private actors would be able to follow human rights instruments on a voluntary basis to safeguard individuals from any infringements of their rights.²² In this context, this section will focus on considering how the SESF *should* take necessary measures to protect the esports players in Switzerland in light of the ECHR.

However, this article focuses on how the esports community may start to engage in human rights protection in light of the ECtHR’s case-laws concerning sports-related disputes. In particular, the ECtHR has already held Articles 6 and 8 of the ECHR and, thus, this article will take both provisions into account in the context of esports in Switzerland.

The right to a fair and public hearing (Article 6 of the ECHR)

Firstly, Article 6(1) of the ECHR stipulates the following:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (...).”

This provision guarantees the right to fair hearing which has been considered as procedural rights in civil and criminal proceedings (Harris et al. 2018, pp. 399-460; See ECtHR 2020a; ECtHR 2020b). Generally speaking, the Court considered that the right to a fair hearing constitutes one of the fundamental principles in democratic society.²³ However, Article 6(1) of the ECHR “does not ... prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: ... holding proceedings, whether wholly or partly, in camera must be strictly required by the circumstances of the case”.²⁴

On the basis of the principles, the ECtHR considered in *Mutu and Pechstein v. Switzerland* that “the principles concerning public hearings in civil cases ... are valid not only for the ordinary courts but also for professional bodies ruling on disciplinary or ethical matters”.²⁵ It further noted that “neither the letter nor the spirit of Article 6 § 1 prevents an individual from waiving, of his own free will, either expressly or tacitly, the entitlement to have his case heard in public”.²⁶ In this case, the Court of Arbitration for Sport (CAS) held a hearing in camera and thus the applicant, Ms. Pechstein, argued a violation of her right to public hearing in the CAS proceedings.²⁷ In this regard, the Court observed that the CAS was a compulsory arbitration system on the disputed parties and the request for a public hearing was rejected without any justifications.²⁸ Furthermore, the Court cited the prior judgment of the Swiss Federal Tribunal (SFT) which stated that, “having regard to the importance of the CAS in the world of sport, such a hearing would have been “desirable””.²⁹ Accordingly, the ECtHR held that there was a violation of the right to a public hearing under Article 6 of the ECHR.³⁰

Concerning the independence and impartiality of the tribunal, the Court indicated the general principles of Article 6(1) of the ECHR.³¹ It clarified that the tribunal must be established by law that refers to “not only the legislation on the establishment and competence of judicial organs, but also any other provision of domestic law of which any breach would cause the participation of one or more judges in the examination of the case to be unlawful”.³² Furthermore, the Court observed “a tribunal need not be a court of law integrated within the standard judicial machinery. It may be set up to deal with specific subject matter which can be appropriately administered outside the ordinary court system”.³³ To establish whether the tribunal is impartial and independent, the Court must examine “the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence”.³⁴ On that basis, in *Ali Rıza and Others v. Turkey*, the applicants claimed that “the proceedings before the Arbitration Committee had not met the requirements of independence and impartiality under Article 6 § 1 of the Convention”³⁵ because the members of the Committee appointed by the TFF’s Board of Directors had decided on their cases with prejudice.³⁶ In this situation, the Court considered that the Arbitration Committee lacked its appearance of independence and impartiality from the football clubs on the ground that it had been appointed by the TFF Board of directors, predominantly composed of former members or executives of football clubs.³⁷ Accordingly, the Court held that there was a violation of Article 6(1) of the ECHR due to the lack of independence and impartiality of the Arbitration Committee appointed by the football clubs.³⁸

In light of these judgments, it is necessary to consider how to apply them to the esports’ context. As had been seen above, the SESF partially refers to the provisions of the ESIC Anti-Doping Policy for regulating doping conducts in Swiss esports activity. In a separate document, the ESIC establishes the ESIC Procedure describing how to appoint Panels and to appeal against the Panels’ decisions.³⁹ However, the SESF does not specify its position on the total reference to the

ESIC anti-doping regime. In this sense, at the present time, there is no dispute resolution system in the SESF.

Under this circumstance, how should the SESF impose disciplinary sanction on doping perpetrators who violate the ESIC Anti-Doping Policy? In this regard, the SESF still does not have an anti-doping regime in place, nor is it an official member of ESIC. Moreover, it is objectively unclear whether the SESF itself or the ESIC will handle disputes of doping issues in esports and which internal body is competent to hear such disputes in light of the SESF Standard and the ESIC anti-doping regime. Therefore, the SESF will need to tackle these points to ensure the right to a fair hearing guaranteed by Article 6(1) of the ECHR.

In conclusion, Article 6(1) of the ECHR should be taken into account for how to promote human rights protection in esports through internal dispute resolution mechanisms concerning the doping matters, or any other issues relating to esports activity, in the same manner as the sports society. In other words, the SESF should create a necessary dispute resolution mechanism, or any other methods, to ensure the right to a fair hearing under Article 6(1) of the ECHR as corporate social responsibility. Due to the undeveloped anti-doping regime in Swiss esports, it will be necessary to wait for the development of internal dispute settlement mechanisms in Swiss esports activity, or any other methods to objectively solve the doping problems in light of Article 6(1) of the ECHR.

The right to respect for private life (Article 8 of the ECHR)

Secondly, Article 8(1) of the ECHR prescribes that:

“Everyone has the right to respect for his private and family life, his home and his correspondence.”

This provision guarantees the right to respect for private life that ensures individuals to be protected from arbitrary interference by public or private actors. The contracting states to the ECHR must implement negative obligations to refrain them from interference with the individuals’ right to respect for private life (Harris et al. 2018, pp. 510-511) and positive obligations to prevent the infringement of that right due to the interference (Harris et al. 2018, pp. 511-513). In doing so, they must take legislative, administrative or any other measures to protect that right of individuals.

The right to respect for private life is subject to the restriction set forth Article 8(2) of the ECHR only when the interference “is in accordance with the law and is necessary in a democratic society” with a legitimate aim and by means of a proportionate manner to achieve that aim (van der Sloot et al. 2020, pp. 196-198). If satisfied the requirements, it would be considered that there is no interference with the right guaranteed by Article 8 of the ECHR.

In the context of sports, the relation between the right to private life and the whereabouts rule under the anti-doping regulation has been controversial in traditional sports. In *Fédération Nationale des Syndicats Sportifs (FNASS) and Others v. France*, the applicants argued that whereabouts rule established by the World Anti-Doping Agency (WADA) constituted interference with their rights because such a rule imposed on them to provide accurate information of their daily schedule, including the weekend and public holidays, and to be permanently monitored under the WADA regime.⁴⁰ In this situation, the ECtHR considered that the whereabouts rule established by the WADA was considered as interference with the rights guaranteed by Article 8 of the ECHR, but it had to decide if that interference was justified under Article 8(2) of the ECHR.⁴¹ In this regard, it observed that the whereabouts rule was in accordance with the law and was necessary in democratic society, in particular, in the world of sports, to reduce the dangers of doping to the applicants’ health and to maintain the sports

community.⁴² Accordingly, the ECtHR held that “respondent State struck a fair balance between the different interests at stake” and that there was no infringement of the rights to respect for private life guaranteed by Article 8 of the ECHR due to the WADA whereabouts rule.⁴³

For esports activity, the ESIC Anti-Doping Policy does not provide for the whereabouts rule and, thus, Article 8 of the ECHR will not be controversial in the context of esports activity. However, the anti-doping regime in esports will be developing and, as a result, there will be a possibility to create the whereabouts rule to maintain a fair esports competition and safeguard esports players' health. If so, it would be necessary to consider the relation between the right to private life and the whereabouts rule in esports activity to prevent the use of doping substances and methods.

To sum up, as in the case of Article 6(1) of the ECHR, there are no legal disputes concerning the right to respect for private life at this moment, but, if the anti-doping regime in esports will develop, or the esports community in Switzerland will fully adopt the WADA regime, it is easy to foresee that human rights issues relating to Article 8 of the ECHR will arise (See van der Sloot et al. 2020, pp. 198-207). Due to the lack of safeguard system against the doping conducts, according to corporate social responsibility, the SESF should establish a sufficient regime to protect esports players against the use of doping substances and methods in light of the protection of personal data under Article 8(1) of the ECHR. Therefore, the SESF would voluntarily follow the instruction from the ECtHR to establish a sufficient system for protecting human rights of esports players in Switzerland.

Conclusion

This article attempts to consider a complex question of whether the anti-doping regime in esports can be considered as a sufficient system to ensure esports players' rights under the ECHR and of how the esports federations should take necessary measures to protect the esports players in Switzerland.

In reality, the use of doping substances and methods exist in esports activity at both national and international levels and the SESF acknowledges the doping problems in Swiss esports activity. Thus, it refers to the ESIC Anti-Doping Policy and its Prohibited List that tackle doping matters in esports. However, it is unclear how to deal with these matters when they occurred because there is no dispute resolution mechanism in the esports federations in accordance with the ECtHR's instruction.

Under this circumstance, it would be easy to expect to be criticised by the allegation that human rights protection in esports is too early and inappropriate time to be discussed. However, from my perspective, this situation may suggest the necessity to build up a human rights protection regime to guarantee the esports players' rights in Swiss esports activity. Although no actual legal dispute concerning human rights is apparent, the question is how to establish a clean and transparent system within the SESF that voluntarily implements a duty to respect and protect human rights under the ECHR.⁴⁴ To this end, the SESF has currently established the Human Rights Clause in its Statute in order to declare its voluntary initiative to promote the human rights protection under international human rights instruments which entered into force in Switzerland (SESF 2021a; SESF 2021b).⁴⁵ This Clause means that the SESF will be never held responsible for compensating any pecuniary and non-pecuniary damages to the victims, but declare their *voluntary intention* to create a sufficient regime to safeguard human rights of esports players in Switzerland (SESF 2021c). Accordingly, this article will provide an anticipatory perspective on the necessity of human rights protection with regard to doping matters in esports and give some suggestions for future institutional development in the SESF in accordance with international human rights law.

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References

- Abanazir, C. (2019), "E-sport and the EU: the view from the English Bridge Union", *The International Sports Law Journal*, Vol. 18, Issue 3-4, June 2019, pp. 102-113. <https://doi.org/10.1007/s40318-018-0139-6>.
- Ahn, J. et al. (2020), "The one billion dollar myth: Methods for sizing the massively undervalued esports revenue landscape", *International Journal of Esports*, 1(1). <https://www.ijesports.org/article/15/html>.
- Burk, D. L. (2013), "Owning E-Sports : Proprietary Rights in Professional Computer Gaming", *University of Pennsylvania Law Review*, Vol. 161, No. 6 (May 2013), pp. 1535-1578. https://scholarship.law.upenn.edu/penn_law_review/vol161/iss6/3.
- Crawford J. (2019), *Brownlie's Principle Public International Law*, 9th edition, Oxford University Press, 2019.
- Dudognon, C. (2017), "Dopage et E-Sport : Quelques aspects stratégiques et repères méthodologiques". In: Gaylor Rabu et al. (eds) (2017), *Les Enjeux Juridiques de l'E-sport*, Presses Universitaires d'Aix-Marseille, 2017, pp. 273-284.
- ECtHR (2020a), *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb)*, updated on 31 December 2020. https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf
- ECtHR (2020b), *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb)*, updated on 31 December 2020. https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf.
- Fitch, A. (2019), "Esports Integrity Coalition rebrands to Esports Integrity Commission", *Esports Insider*, published on 19 September 2019, available at <https://esportsinsider.com/2019/09/esports-integrity-commission-rebrand/>.
- Funk, D. et al. (2018), "eSport management: Embracing eSport education and research opportunities", *Sport Management Review*, Vol. 21, Issue 1, February 2018, pp. 7-13. <https://doi.org/10.1016/j.smr.2017.07.008>.
- Goldstone, A. (2006), "Obstruction of Justice: The Arbitration Process for Anti-doping Violations during the Olympic Games", *Cardozo Journal of Dispute Resolution*, vol. 7 (2006), pp. 361-392.
- Hallmann, K. and Giel, T. (2018), "eSports – Competitive sports or recreational activity?", *Sport Management Review* 21 (2018), pp. 14-20. <https://doi.org/10.1016/j.smr.2017.07.011>.

- Harris, D. J. et al. (2018), *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights, 4th edition*, Oxford University Press, 2018.
- Higgins, R. (1994), *Problems and Process – International Law and How We Use It –*, Clarendon Press, 1994.
- Holden, J. T. et al. (2017), “Esports Corruption: Gambling, Doping, and Global Governance”, *Maryland Journal of International Law*, 32, 2017, pp. 236-273. <http://dx.doi.org/10.2139/ssrn.2831718>.
- IeSF (2017), “IESF Become an Official Signatory of WADA”, published on 2 June 2013, available at <https://ie-sf.org/news/3753>.
- Krell, J. (2019), “Is esports a sport? Researchers undecided”, *Global Sport Matters*, published on 18 September 2019. <https://globalsportmatters.com/culture/2019/09/18/is-esports-a-sport-researchers-undecided/>
- Jonasson, K. and Thiborg, J (2010), “Electronic sport and its impact on future sport”, *Sport in Society*, Vol. 13, No. 2, March 2010, pp. 287-299. <https://doi.org/10.1080/17430430903522996>.
- Kamen, M (2015a), “Pro-gamer Admits to Doping in eSports”, WIRED, published on 16 July 2015. <https://www.wired.co.uk/article/esports-doping-admission>.
- Kamen, M (2015b), “IeSF: Doping is 'definitely' a problem in eSports”, WIRED, published on 23 July 2015. <https://www.wired.co.uk/article/iesf-responds-doping-esports>.
- Ozkurt, E. (2019), “Esports in South Korea – a short overview of the legal ecosystem”, *LawInSport*, published on 10 April 2019. <https://www.lawinsport.com/topics/item/esports-in-south-korea-a-short-overview-of-the-legal-ecosystem>.
- Parry, J. (2019), “E-sports are Not Sports”, *Sport, Ethics and Philosophy*, Vol. 13, Issue 1, 2019, pp. 3-18. <https://doi.org/10.1080/17511321.2018.1489419>.
- Rosell Llorens, M. (2017), “eSport Gaming: The Rise of a New Sport Practice”, *Sport, Ethic and Philosophy*, Vol. 11, No. 4, 2017, pp. 464-476. <https://doi.org/10.1080/17511321.2017.1318947>.
- Ruggie, J. G. (2016), “*For the Game, For the World*”. *FIFA and Human Rights*, 2016, President and Fellows of Harvard College. https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crj/files/Ruggie_humanrightsFIFA_reportApril2016.pdf.
- Russ, H. (2019), “Global esports revenues to top \$1 billion in 2019: report”, Reuters, published on 12 February 2019, available at <https://www.reuters.com/article/us-videogames-outlook/global-esports-revenues-to-top-1-billion-in-2019-report-idUSKCN1Q11XY>.
- SESF (2021a), *The Project on Human Rights Protection for Gamers and Staffs in Swiss Esport Activity - A brief introduction -*, published on 15 June 2021, available at https://drive.google.com/file/d/1mca_BtnhL_xyMW32_UIUA_VnKiXjUa4J/view.
- SESF (2021b), *Project Statement*, published on 15 June 2021, available at <https://drive.google.com/file/d/1btoVVc1sty9CTJQxLO6knKVZVGci9Bu/view>.

- SESF (2021c), *Interpretation of Human Rights Clause and Non-Discrimination and Equality Clause*, published on 15 June 2021, available at https://drive.google.com/file/d/1JrLOmgT2zAx_ISGsHC28EVnXySvaFKEw/view.
- Smith, I. (2016), “The continued rise of eSport – Efforts to combat match fixing and improve integrity”, LawInSport, published on 2 September 2016. <https://www.lawinsport.com/topics/anti-corruption/item/the-continued-rise-of-esport-efforts-to-combat-match-fixing-and-improve-integrity>.
- Stivers, S. (2017), “The First Competitive Video Gaming Anti-Doping Policy and Its Deficiencies Under European Union Law”, *San Diego International Law Journal*, vol. 18, no. 2, 2017, pp. 263-294.
- Sumner, C. (2017), “The spirit of sport: the case for criminalisation of doping in the UK”, *The International Sports Law Journal*, vol. 16, issue 3-4, April 2017, pp. 217-227. <https://doi.org/10.1007/s40318-016-0103-2>.
- van der Sloot, B. et al. (2020), “Looking at the Anti-Doping Regime Through a Human Rights Lens”, In: van der Sloot B. et al. (2020), *Athletes’ human rights and the fight against doping : a study of the European legal framework*. T.M.C. Asser Press, Springer, 2020, pp. 189-243. <https://doi.org/10.1007/978-94-6265-351-1>.
- Wingfield, N. (2014), “In E-Sports, Video Gamers Draw Real Crowds and Big Money”, *The New York Times*, published on 30 August 2014, available at https://www.nytimes.com/2014/08/31/technology/esports-explosion-brings-opportunity-riches-for-video-gamers.html?_r=0.
- Wolf, C. (2019), “Virtuelles Spiel, echte Drogen”, *Spektrum*, published on 21 January 2019, available at <https://www.spektrum.de/news/virtuelles-spiel-echte-drogen/1608174>.
- Zaksaitė, S. and Radke, H. (2014), “The interaction of criminal and disciplinary law in doping-related cases”, *The International Sports Law Journal*, Vol. 14, Issue 1-2, June 2014, pp. 115-127. <https://doi.org/10.1007/s40318-014-0045-5>.

Endnote

¹ “Esports Europe – The European Esports Federation (EEF) was founded in February 2020 as the umbrella federation for twenty-three national esports organizations and three important stakeholders in the esports ecosystem and beyond”. See Esports Europe website, available at <https://esportseurope.org/> (accessed on 17 July 2021; hereinafter all online sources are accessed on the same date).

² In the United States, there are two organisations: the United States E-Sports Federations (<http://www.esportsfederation.org>) and the United States Esports Association (<https://www.esportsus.org>).

³ The business enterprises support the huge amount of prize money to the winners in esports professional competition. See Wingfield 2014.

⁴ 11th Esport World Championship was held in Seoul from 11 to 15 December 2019, available at <https://ie-sf.org/news/3480>.

⁵ See Intel Extreme Masters’ official website, “About”, available at <https://www.intelxtrememasters.com/about/>.

⁶ However, researchers still have undecided whether esports may qualify as “sport” or not. Thus, this article will consider that esports are different from traditional sports. See Krell 2019; Rosell Llorens argued that esports can be recognised as a sport. Rosell Llorens 2017, pp. 466-475; In contrast to this, Jonnasson and Thiborg considered that “sport” is not a stable meaning and constantly changed its definition. Jonasson and Jesper 2010, pp. 289-292.

⁷ All prohibited substances in traditional sport are listed on WADA Prohibited List. See WADA, *The 2020 Prohibited List* (effective 1 January 2020), available at <https://www.wada-ama.org/en/what-we-do/the-prohibited-list>.

⁸ WADA, *World Anti-Doping Code* (published on 1 January 2021): available at <https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code>.

⁹ For instance, Rule 43 of the Olympic Charter (2019): “Compliance with the World Anti-Doping Code and the Olympic Movement Code on the Prevention of Manipulation of Competitions is mandatory for the whole Olympic Movement.”; FIFA also concluded the cooperative agreement with the WADA 29 February 2004, see <https://www.fifa.com/news/cooperative-agreement-between-fifa-and-wada-presented-fifa-executive-c-90849>.

¹⁰ The Esports Integrity Commission (ESIC) publishes the Prohibited List: available at <https://esic.gg/codes/esic-prohibited-list/>.

¹¹ Article 14 of the SESF Standard (List of substances considered as illegal drug-taking): “The list of the substances considered prohibited unless the player has obtained a therapeutic use exemption is the one present on the website of the Esports Integrity Coalition (ESIC) [the Esports Integrity Commission].”

¹² The SESF adopts the Anti-Doping Code published by the ESIC: available at <https://esic.gg/codes/anti-doping-code/>; the former Esports Integrity Commission was the Esports Integrity Coalition.

¹³ IeSF Statutes (Version: Sunday, November 15, 2020), available at <https://ie-sf.org/wp-content/uploads/2021/01/IESF-Statutes-2021.pdf>.

¹⁴ It is further worth noting that doping abuse is not a main issue in esports. However, the issues of intellectual property (e.g., copyright and broadcasting rights) and anti-corruption (e.g. gambling and match-fixing) are controversial issues in esports activities.

¹⁵ The title of the anti-doping regulations created by the ESIC is the ESIC Anti-Doping Code, but in its text, it uses the term “The ESIC Anti-Doping Policy”. Therefore, this article will use the term “The ESIC Anti-Doping Policy” to explain the ESIC Anti-Doping Code.

¹⁶ The Esports Integrity Commission (ESIC) was established in 2016 “to take responsibility for disruption prevention investigation and prosecution of all forms of cheating in eSports, including, but not limited to, match manipulation and doping”. Furthermore, the mission of the ESIC is to “be the recognised guardian of the integrity of esports and to take responsibility for disruption, prevention, investigation and prosecution of all forms of cheating, including, but not limited to, match manipulation and doping”. See ESIC, “Who we are”, available at <https://esic.gg/about/>.

¹⁷ Article 9.2 of the Anti-Doping Policy.

¹⁸ In fact, the SESF indicated that the Referee Committee is competent to decide whether there is a violation of anti-doping regulations, but no dispute resolution body, such as the CAS Anti-Doping Division, exist in Swiss esports community. See SESF’s website,

<https://sesf.ch/regulations-and-referees/>; see also CAS Anti-Doping Division, <https://www.tas-cas.org/en/arbitration/cas-anti-doping-division.html>.

¹⁹ The SESF Referee Commission has *de facto* competence to sanction for the doping conducts in Swiss esports, but it does not have any means to detect by itself the use of doping substances conducted by esports players.

²⁰ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005>.

²¹ In addition, van der Sloot B et al. analysed the anti-doping regime in sports through human rights' perspective. In their research, they considered the applicability of Articles 6, 8 and 14 of the ECHR to the anti-doping regime. van der Sloot et al. 2020, pp. 189-243.

²² See OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, (New York et Genève ; United Nations, 2011); In the context of sport, the FIFA Ruggie Report was published in 2018 to explain how the FIFA should implement three duties to respect, protect, and fulfil human rights in the football-related activity. This instrument also serves to know how the private actors should implement the Corporate Social Responsibility (CSR) within the meaning of human rights' protection. See Ruggie 2016.

²³ *Mutu and Pechstein v. Switzerland*, nos. 40575/10 and 67474/10, Judgment of 2 October 2018, ECtHR, para. 175.

²⁴ *Ibid.*, para. 176.

²⁵ *Ibid.*, para. 179.

²⁶ *Ibid.*, para. 180.

²⁷ *Ibid.*, para. 169.

²⁸ *Ibid.*, para. 182.

²⁹ *Ibid.*, para. 178.

³⁰ *Ibid.*, para. 183; van der Sloot et al. 2020, pp. 223-224.

³¹ Concerning the independence and impartiality of the CAS, see *Mutu and Pechstein v. Switzerland*, paras. 138-168; van der Sloot et al. 2020, pp. 220-223.

³² *Ali Rıza and Others v. Turkey*, nos. 30226/10 and 4 others, Judgment of 28 January 2020, ECtHR, 194.

³³ *Ibid.*, para. 195.

³⁴ *Ibid.*, para. 196.

³⁵ *Ibid.*, para. 143.

³⁶ *Ibid.*, paras. 182-187.

³⁷ *Ibid.*, paras. 208-222.

³⁸ *Ibid.*, para. 223.

³⁹ ESIC Procedure, available at <https://esic.gg/codes/procedure/>.

⁴⁰ *Fédération Nationale des Syndicats Sportifs (FNASS) and Others v. France*, nos. 48151/11 and 77769/13, Judgment of 18 January 2018, ECtHR, paras. 114-128 and paras. 138-143.

⁴¹ *Fédération Nationale des Syndicats Sportifs (FNASS) and Others v. France*, para. 155-159.

⁴² *Ibid.*, paras. 160-191.

⁴³ *Ibid.*, para. 191.

⁴⁴ The issues of “fairness and esports” and “health and well-being in esports” will be relevant to anti-doping system, but this article focuses on describing a first step for the development of human rights protection in esports through the Swiss examples. Thus, these issues will be considered in future article.

⁴⁵ Article 1.6 of the SESF Statutes (Version 1.4, October 2020): “The SESF shall strive to promote the respect and protection of all human rights conventions which are ratified by Switzerland.”