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Athlete Expression at the Olympics: The Heraskevych Case and Article 10 ECHR

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This article is a summary based on a case study as part of a thesis project. Everything is based on thorough research and source material. If you require more information regarding sources or other question do not hesitate to contact us!

1. Introduction

The Olympic Games have long presented a difficult balance between sporting competition, political neutrality and athletes' fundamental rights. As athlete activism has become increasingly visible, the question of how far the International Olympic Committee (IOC) may restrict athletes' expression has become increasingly important. The exclusion of Ukrainian skeleton athlete Vladyslav Heraskevych from the 2026 Milano-Cortina Winter Olympics provides a particularly significant case study. His case raises a fundamental question: can Olympic regulations restricting athlete expression withstand scrutiny under Article 10 of the European Convention on Human Rights (ECHR), which protects freedom of expression?

The answer suggested by this analysis is largely negative. Although the IOC has taken important steps towards recognising human rights within the Olympic framework, the combination of Rule 40.2 of the Olympic Charter, the Guidelines on Athlete Expression and the sanction imposed on Heraskevych raises serious concerns concerning legal certainty, legitimate aims and proportionality. The case also demonstrates the growing importance of human-rights scrutiny of the Court of Arbitration for Sport (CAS).

2. Freedom of expression in sport

Article 10 ECHR protects the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Importantly, the protection extends beyond traditional verbal expression. Symbolic and non-verbal forms of

expression may also fall within its scope. At the same time, freedom of expression is not absolute. Under Article 10(2), restrictions may be justified where they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society.

This framework also applies to the sporting environment. Although sporting governing bodies are generally private organisations, states have positive obligations to ensure that fundamental rights are sufficiently protected within private relationships. This creates an important connection between sporting organisations, CAS and the ECHR. Professional athletes may also carry particular duties and responsibilities because of their public role as role models. Nevertheless, political expression and expression concerning matters of public interest receive particularly strong protection under Article 10.

The European Court of Human Rights (ECtHR) has gradually clarified how this protection operates in sport. Its case law concerning CAS is particularly relevant.

In *Mutu and Pechstein v. Switzerland*, the ECtHR established a basis for reviewing CAS proceedings through Switzerland's obligations under the Convention. In *Michel Platini v. Switzerland*, the Court adopted a relatively restrained approach and afforded Switzerland a broad margin of appreciation. The later *Semenya v. Switzerland* judgment, however, marked a significant development. The ECtHR identified a structural imbalance between athletes and powerful sports governing bodies and stressed the need for sufficiently strong safeguards when fundamental rights are at stake. It criticised the insufficiently rigorous review by the Swiss Federal Supreme Court and required stronger human-rights scrutiny.

This development is highly relevant to Heraskevych.

3. Rule 40.2 and the Olympic expression framework

The IOC has increasingly incorporated human rights into its regulatory framework. Since 2023, recognised human rights have been expressly acknowledged within the Olympic Charter, while Rule 40.2 states that competitors, team officials and other team personnel enjoy freedom of expression in accordance with Olympic values and the IOC's Guidelines.

The reform represents an important shift from the historically more restrictive approach associated with Rule 50. However, the current framework remains complicated. Rule 40.2 recognises freedom of expression, while Rule 50 continues to prohibit certain

political, religious and racial propaganda.

The relationship between these provisions is not entirely clear. Moreover, the IOC Executive Board retains significant discretion through the Guidelines on Athlete Expression.

The 2026 Guidelines distinguish between locations and circumstances in which athletes may express themselves and situations where expression is prohibited. Athletes may, for example, express themselves through media, social media and certain pre-competition settings. Expression is restricted during official ceremonies, during competition on the field of play and in the Olympic Village. The framework is intended to preserve neutrality, focus attention on sporting performance and prevent athletes from being pressured into taking positions on particular issues.

The introduction of Rule 40.2 can therefore be viewed as progress. Yet the coexistence of broad human-rights commitments with discretionary restrictions leaves important questions concerning legal certainty and enforcement unanswered.

4. The Heraskevych case

Against this background, the Heraskevych case became a defining test of the Olympic expression framework.

During the Milano-Cortina 2026 Winter Olympics, Ukrainian skeleton athlete Vladyslav Heraskevych wore a helmet displaying photographs of Ukrainian athletes who had been killed during Russia's invasion of Ukraine.

The helmet was intended both as a tribute to those athletes and as a way of drawing attention to the ongoing conflict. After Heraskevych wore the helmet during practice sessions, the IOC and International Bobsleigh and Skeleton Federation (IBSF) warned him that it violated the Guidelines and informed him that he could not wear it during competition.

Heraskevych nevertheless indicated that he intended to wear the helmet. The IOC Disciplinary Commission subsequently decided that his intention to breach Rule

40.2 and the Guidelines justified excluding him from the skeleton event. The IBSF implemented that decision by withdrawing him from the competition. Heraskevych challenged the decision before the CAS ad hoc division.

The CAS arbitrator recognised Heraskevych's right to freedom of expression under Article 10 ECHR but concluded that a fair balance existed between that right and the IOC's objectives

of maintaining the focus on sport and political neutrality. The arbitrator also considered that athletes had numerous alternative opportunities to express their

views and that the IOC and IBSF were entitled to take preventive measures where a breach was considered imminent. The exclusion was consequently considered proportionate and reasonable.

However, the decision raises significant concerns.

First, the exclusion was based not on an expression that had actually occurred during competition, but on Heraskevych's intention to express himself. The Guidelines and Rule 40.2 regulate expressions, making the use of the framework against an anticipated expression legally problematic. Second, the Guidelines applied to the field of play, while Heraskevych was prevented from entering the field of play in the first place. This creates a further question about the legal basis for the exclusion. Finally, neither the IOC Disciplinary Commission nor the IBSF provided sufficient transparency concerning the procedure through which the exclusion was reached.

5. Would the exclusion survive Article 10 scrutiny?

The most important question is whether the decision can satisfy the three-part Article 10 test.

a) Prescribed by law

A restriction on freedom of expression must be sufficiently clear, precise and predictable. I and others argue that Rule 40.2 and the Guidelines fall short of this standard. In particular, the meaning of "Olympic Values" is not clearly defined, while the Guidelines do not provide sufficient certainty regarding what constitutes a breach or how sanctions will be applied.

The problem is reinforced by inconsistent Olympic practice: the IOC suggested that Heraskevych could instead have worn a black armband, despite the IOC having previously sanctioned such a gesture at the 2014 Sochi Olympics.

This uncertainty creates room for discretionary decision-making—the very problem the "prescribed by law" requirement is intended to prevent.

b) Legitimate aim

The IOC's principal justification was the protection of Olympic neutrality and the preservation of attention on sporting performance. It can be questioned whether "neutrality of sport" itself constitutes a sufficiently legitimate aim under the narrow interpretation applied by the ECtHR. The Guidelines do, however, refer to legitimate aims recognised by Article 10(2), meaning that the broader framework may potentially satisfy this requirement even if neutrality alone would not.

The consistency of the IOC's approach is also questionable. If the justification is that personalisation or political expression is incompatible with Olympic neutrality, comparable forms of expression by other athletes may create difficulties in demonstrating consistent application of the rule.

c) Proportionality

The strongest argument against the exclusion concerns proportionality.

Heraskevych's expression was considered political by the CAS arbitrator. Political expression receives particularly strong protection under Article 10. Although athletes had alternative opportunities to express their views outside the field of play, the IOC chose the most severe possible sanction—exclusion from the Olympic event—before the expression had actually taken place.

Less restrictive measures were available, including a warning, financial penalty or post-event disqualification. The use of exclusion based on an intention to express an opinion therefore appears difficult to reconcile with the requirement that an interference be necessary and employ the least restrictive means available.

This issue becomes even more significant in light of Semenya. The ECtHR has indicated that when fundamental rights are at stake, CAS and the Swiss courts should conduct a rigorous review. The Heraskevych award, however, has been criticised for failing to engage sufficiently with that heightened standard.

6. A turning point for athlete rights?

The Heraskevych case illustrates a broader transformation in the relationship between sport and human rights. The IOC can legitimately seek to preserve the integrity and neutrality of Olympic competition. Athletes also operate within a specific sporting environment and may accept restrictions as part of participation. Yet such restrictions cannot automatically override fundamental rights.

The central difficulty is therefore not whether the IOC may regulate athlete expression, but how far it may go, under what rules and with what safeguards.

On the analysis presented, I think the exclusion of Heraskevych would probably not survive a rigorous Article 10 ECHR review. The regulatory framework raises doubts regarding legal certainty, the legitimacy of Olympic neutrality as a standalone aim, and, most importantly, the proportionality of excluding an athlete for an intended expression that had not yet occurred.

The case also places responsibility on more than the IOC. CAS plays a crucial role in protecting athletes' fundamental rights, particularly following the ECtHR's development in *Semenya*. A rigorous review by CAS and, if necessary, the Swiss Federal Supreme Court could prevent future disputes from reaching the ECtHR.