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ATHLETES' FREEDOM OF EXPRESSION AND THE PRINCIPLE OF OLYMPIC NEUTRALITY: THE CASE OF UKRAINIAN ATHLETE AND SYMBOL OF RESISTANCE VLADYSLAV HERASKEVYCH

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ABSTRACT

Background: *This paper examines the tension between athletes' freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) and the principle of political neutrality within the Olympic Movement. It focuses on the case of Ukrainian skeleton athlete Vladyslav Heraskevych at the Milano-Cortina 2026 Winter Olympic Games, where he was excluded from competition after insisting on wearing a helmet depicting Ukrainian athletes killed during Russia's invasion of Ukraine. The case raises broader questions concerning the extent to which symbolic and humanitarian expression by athletes may be restricted under the Olympic regulatory framework.*

Method: *The study adopts a qualitative doctrinal legal methodology based on systematic document analysis, comparative case-law review, and proportionality-based reasoning. It examines Rule 40.2 and Rule 50.2 of the Olympic*

Charter, the International Olympic Committee (IOC) Expression Guidelines, relevant decisions of the Court of Arbitration for Sport (CAS), and the jurisprudence of the European Court of Human Rights (ECtHR). The proportionality test developed under Article 10 ECHR—legality, suitability, necessity, and proportionality stricto sensu—is applied to assess the compatibility of the restriction imposed on Heraskevych with human-rights standards.

Results and Conclusions: *The analysis demonstrates that the existing IOC regulatory framework permits considerable discretion in determining when athlete expression constitutes prohibited political expression. The Heraskevych case illustrates how peaceful symbolic or humanitarian gestures may be classified as political depending on their context. The paper argues that the relationship between Rule 40.2, Rule 50.2, and the IOC Expression Guidelines creates concerns regarding foreseeability and legal certainty. It further questions whether the objective of preserving political neutrality can justify a particularly severe interference with freedom of expression concerning matters of significant public interest, including armed conflict, human loss, and human rights. The paper concludes that the current framework does not sufficiently satisfy the requirements of legal certainty and proportionality under Article 10 ECHR and advocates a clearer and more balanced distinction between harmful political propaganda and peaceful humanitarian expression by athletes.*

1 INTRODUCTION

> 'The Olympic Games are the only event that unites the entire world in peaceful competition. The universality and inclusiveness that define the Olympic Games require us at the International Olympic Committee (IOC) to be politically neutral. We cannot solve human rights issues which generations of politicians have been unable to solve. But for our actions on peace and human rights to be successful, we need the respect of politics for our mission,'

said Thomas Bach, then IOC President, before the UN Human Rights Council ahead of the Tokyo Olympic Games in 2021.[1]

This statement encapsulates a central tension within the Olympic Movement. While the IOC emphasizes political neutrality as a foundational principle, it simultaneously operates within a global environment in which sport and politics are closely intertwined. A prominent illustration of this tension is the case of Ukrainian skeleton athlete Vladyslav Heraskevych, who was barred from competition for wearing a helmet depicting Ukrainian

1 'The Unifying Power of the Olympic Games to Bring the World Together in Peaceful Competition' (*International Olympic Committee*, 7 July 2021) <https://www.olympics.com/ioc/news/the-unifying-power-of-the-olympic-games-to-bring-the-world-together-in-peaceful-competition> accessed 15 February 2026.

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athletes killed during Russia's invasion of Ukraine.[2] The dispute was subsequently brought before the Court of Arbitration for Sport (CAS), which upheld the decision on the basis that the athlete's conduct violated the IOC Expression Guidelines and Rule 40.2 of the Olympic Charter. These provisions regulate the conditions under which athletes may engage in expression within the Olympic context, including restrictions linked to Olympic values and the prohibition of certain forms of political demonstration or propaganda.[3]

The conduct of V. Heraskevych raises the following question: As sports fans, do we have the right to expect (political) neutrality from Olympians and their teams in accordance with Rule 40.2 and Rule 50.2 of the Olympic Charter, which state that 'no kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas'?[4] Or do athletes enjoy the same freedom of expression on political matters as any other individual?

This paper examines precisely this tension—primarily through the example of V. Heraskevych—between the autonomy and political neutrality of sports and the human right of athletes to freedom of expression, as protected under Article 10 of the European Convention on Human Rights (Convention).[5]

In the context of the Olympic Movement, these two competing interests should be balanced, a task that can be assessed through the proportionality test developed in the jurisprudence of the European Court of Human Rights (ECtHR).[6]

In connection with the proportionality test, a logical question arises: *Why do we apply the ECtHR's test to analyse Rule 40.2 and Rule 50.2 of the Olympic Charter when sport is global?*

The answer lies not in any claim of direct jurisdiction, but in the functional and normative influence of Convention standards within transnational sports law. First, although the ECtHR does not exercise global jurisdiction and cannot adjudicate disputes involving non-member states of the Council of Europe, its jurisprudence has acquired significant persuasive authority within the system of lex sportiva (note: lex sportiva refers to the autonomous legal order of sport, composed of rules created and applied by international sports organizations).[7] In particular, the CAS, while not formally bound by the Convention,

2 'IBSF Jury Decision on Skeleton pilot Vladyslav Heraskevych' (*International Bobsleigh & Skeleton Federation*, 12 February 2026) <https://www.ibsf.org/en/news/detail/ibsf-jury-decision-on-skeleton-pilot-vladyslav-heraskevych> accessed 15 February 2026.

3 CAS OG 26/09 *Vladyslav Heraskevych v International Bobsleigh & Skeleton Federation and International Olympic Committee* (Court of Arbitration for Sport (CAS), 13 February 2026).

4 International Olympic Committee, *Olympic Charter (in force from 3 February 2026)* (IOC 2026).

5 Council of Europe, *European Convention on Human Rights*: *As Amended by Protocols Nos 11, 14 and 15; supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2013).

6 *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) <https://hudoc.echr.coe.int/eng?i=001-57499> accessed 15 February 2026.

7 Ken Foster, '*Lex Sportiva and Lex Ludica:* The Court of Arbitration for Sport's Jurisprudence' (2005) 3(2) Entertainment and Sports Law Journal 2, doi:10.16997/eslj.112.

has repeatedly drawn upon ECtHR case law when interpreting fundamental rights issues, including freedom of expression, due process, and proportionality.[8] This practice reflects an effort to align sports adjudication with internationally recognized human rights standards and to enhance the legitimacy of arbitral decision-making.

Second, the institutional and legal anchoring of both the IOC and CAS in Switzerland further reinforces the relevance of ECtHR standards. As Switzerland is a Contracting State to the Convention, Swiss law—including the oversight of arbitral awards by the Swiss Federal Tribunal—operates within a legal environment shaped by the Convention. This indirect link was explicitly confirmed in the case of *Semenya v. Switzerland*, in which the ECtHR accepted its jurisdiction on the basis that Switzerland, through its judicial supervision of CAS awards, bears responsibility for ensuring Convention-compliant protection of fundamental rights. Importantly, this approach suggests that the applicability of Convention standards does not depend primarily on the nationality of the athlete, but rather on the existence of a sufficient jurisdictional link to a Contracting State, such as the seat of CAS. Consequently, ECtHR jurisprudence enters the regulatory framework of international sport indirectly, through the domestic legal order governing arbitration and the enforcement of CAS awards.[9]

Having established the relevance of this human-rights framework within the Olympic Movement, the discussion turns to the case of V. Heraskevych. The analysis first reconstructs the sequence of events and then examines how his actions were interpreted and assessed by the IOC and subsequently by the CAS. Building on this narrative, the analysis will then apply the ECtHR proportionality test to evaluate whether the restriction imposed on his expression can genuinely be regarded as justified in a democratic society.

Finally, the paper will look ahead and consider what this story could mean for the future: namely, what consequences a potential first successful athlete application before the ECtHR might have for the Olympic Movement and for the evolving regulation of political expression in sport.

8 Court of Arbitration for Sport, *Sport and Human Rights: Overview from a CAS Perspective* (*TAS / CAS*, 28 November 2023) <https://www.tas-cas.org/generated/assets/pages/index/CAS_Human_Rights_in_Sport__November_2023_.pdf> accessed 15 February 2026.

9 *Semenya v Switzerland* App no 10934/21 (ECtHR, 10 July 2025) <https://hudoc.echr.coe.int/eng?i=001-244348> accessed 15 February 2026.

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2 METHODOLOGY

This paper adopts a doctrinal legal research design to examine the tension between athletes' freedom of expression under Article 10 of the Convention and the principle of political neutrality within the Olympic Movement. The analysis is centered on the interpretation of Rule 40.2 and Rule 50.2 of the Olympic Charter, the IOC Expression Guidelines, and their compatibility with Article 10 of the European Convention on Human Rights. The study is primarily case-law driven, with particular emphasis on the CAS award in the Vladyslav Heraskevych dispute, complemented by relevant jurisprudence of the ECtHR concerning freedom of expression and proportionality assessment of restrictions on that right.

The methodological core of this paper is document-based doctrinal analysis. This includes a systematic examination of primary legal sources, namely the Olympic Charter, IOC regulatory instruments, CAS arbitral awards, and ECtHR judgments interpreting Article 10 of the Convention. The analysis focuses on identifying how legal standards such as legality, legitimacy, necessity, and proportionality are articulated and operationalized in sports arbitration and human-rights adjudication.

A comparative case-law method is also employed to situate the Heraskevych dispute within a broader constellation of sports-related expression cases. This includes CAS decisions involving political or symbolic expression by athletes in different contexts, as well as ECtHR jurisprudence on permissible restrictions of speech in matters of public interest. The comparative approach enables the identification of recurring interpretive patterns, particularly regarding the margin of discretion afforded to sports governing bodies, the treatment of symbolic speech, and the threshold for establishing necessity in restricting expression.

Finally, the study applies a structured proportionality analysis modelled on the ECtHR's jurisprudence, broken down into legality, suitability, necessity, and proportionality stricto sensu. The findings of the doctrinal and comparative analyses are synthesized to evaluate whether the current regulatory framework of the Olympic Movement meets Convention standards. The scope of the research is intentionally limited to supranational norms and adjudicatory bodies (IOC regulations, CAS jurisprudence, and ECtHR case law), as these constitute the primary sources of lex sportiva and human-rights standards relevant to Olympic disputes. Internal disciplinary practices of national federations and broader empirical governance processes are referenced only insofar as they assist in illustrating the practical application of the examined rules, but do not form the core dataset of the analysis.

3 BETWEEN SYMPATHY AND SANCTION: THE HERASKEVYCH CASE BEFORE CAS

Vladyslav Heraskevych is not an unknown name in the skeleton community. The 27-year-old Ukrainian athlete became widely known during the 2022 Winter Olympics in Beijing, where he displayed a banner reading 'No War in Ukraine'. His protest took place in February 2022, only a few days before the outbreak of the Russian invasion of Ukraine. Although such a statement could potentially have raised questions under Rule 50.2 of the Olympic Charter, which prohibits political expression at the Olympics, the IOC, in that specific geopolitical context, did not impose any disciplinary sanction on the athlete.[10]

Since the outbreak of the war in Ukraine, the athlete has repeatedly used his social media profiles to draw attention to the humanitarian consequences of the conflict and to support the Ukrainian sports community.

A few days before the start of the skeleton event at the Milano-Cortina Games, during official training sessions, V. Heraskevych used a helmet bearing portraits of Ukrainian athletes who had been killed as a result of the Russian invasion. The IOC subsequently informed the Ukrainian delegation that such personalized equipment is not compatible with the Olympic Charter and the Expression Guidelines, which regulate the permissible scope of athlete expression within Olympic settings. The IOC suggested an alternative form of commemoration, such as wearing a black armband without personalization.[11]

V. Heraskevych nevertheless publicly announced his intention to compete with that helmet. The IOC therefore decided that he would not be allowed to start if he insisted on using the helmet in question. The International Bobsleigh & Skeleton Federation (IBSF) implemented this decision by withdrawing the athlete from the starting list on race day. The athlete then filed an application with the CAS ad hoc division, seeking both provisional measures allowing him to start and the annulment of the decision excluding him.[12]

CAS held that although freedom of expression under Article 10 of the Convention is a fundamental right, it is not absolute. Wearing the helmet constituted an expression of views,

10 'Ukrainian Athlete Escapes Winter Olympics Censure After Anti-War Protest', *The Guardian* (London, 11 February 2022) <https://www.theguardian.com/sport/2022/feb/11/ukranian-athlete-vladyslav-heraskevych-risks-winter-olympics-rebuke-after-anti-war-protest> accessed 28 February 2026.

11 'Skeleton pilot Vladyslav Heraskevych not allowed to participate at Milano Cortina 2026 after refusing to adhere to the IOC athlete expression guidelines International Olympic Committee's Guidelines on Athlete Expression' (*International Olympic Committee*, 12 February 2026) <https://www.olympics.com/ioc/news/skeleton-pilot-vladylsav-heraskevych-not-allowed-to-participate-at-milano-cortina-2026-after-refusing-to-adhere-to-the-ioc-athlete-expression-guidelines> accessed 15 February 2026; International Olympic Committee, 'Guidelines on Athlete Expression – Olympic Winter Games Milano Cortina 2026' <https://img.olympics.com/images/image/private/w_auto/primary/hlhnqokktckbxgc3vbd7> accessed 15 February 2026.

12 Case CAS OG 26/09 (n 3).

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particularly since the athlete had publicly framed it as a political/societal message. The exclusion was considered proportionate, as the athlete could have competed with a different helmet and expressed his views outside the field of play.

Notably, the Sole Arbitrator did not base the assessment on Rule 50.2, which specifically addresses political demonstrations and propaganda, but instead relied primarily on Rule 40.2 and the Expression Guidelines as the applicable regulatory framework governing athlete expression during competitions.[13] CAS considered these rules compatible with Article 10 of the Convention, concluding that limiting expression on the field of play serves the legitimate aim of preserving neutrality and maintaining the focus on sporting performance.[14]

The Heraskevych decision has attracted academic criticism, particularly concerning the Sole Arbitrator's assessment of the requirements of Article 10 of the Convention. In this regard, R. Cairns argues that, although the Sole Arbitrator of the CAS acknowledged that athletes participating in the Olympic Games are subject to non-negotiable rules that should respect their fundamental rights, and recognized that freedom of expression may be restricted only under the conditions established by Article 10(2) of the Convention, the reasoning of the award fails to identify the specific legitimate aim underlying the interference. Rather, the Sole Arbitrator merely states that the IOC's objective is legitimate, without demonstrating how it falls within one of the permissible grounds enumerated in Article 10(2). Furthermore, while the award refers to the need to preserve an undisturbed sporting environment and to ensure that public attention remains focused on athletic performance, it does not sufficiently clarify whose rights were being protected or why such interests were capable of justifying an interference with Heraskevych's freedom of expression. These deficiencies raise broader concerns as to whether the award adequately applied the principles of legality, necessity and proportionality required under the ECtHR's jurisprudence.[15] Building on these concerns, the next step is to examine whether Rule 40.2 and Rule 50.2 of the Olympic Charter are compatible with Article 10 of the Convention and whether the restriction of V. Heraskevych's freedom of expression was proportionate.

13 ibid, para 100.

14 ibid, para 81.

15 Roddy Cairns, 'Winter Olympics: CAS decision in *Heraskevych v IBSF & IOC* raises questions as to athlete justice' (*Strathclyde Law Blog*, 27 February 2026) <https://www.strath.ac.uk/humanities/lawschool/blog/winterolympicscasdecisioninheraskevychvibsfiocraisesquestionsastoathletejustice/> accessed 26 July 2026.

4 SILENT STADIUMS? APPLYING THE PROPORTIONALITY TEST TO LEX OLYMPICA

4.1. Rule 40.2 and Rule 50.2 of the Olympic Charter and the Boundaries of Legal Certainty

As noted above, Rule 40.2 provides that Olympians enjoy freedom of expression in accordance with Olympic values and the Expression Guidelines determined by the IOC Executive Board. Although Rule 40.2 appears to affirm athletes' freedom of expression, Rule 50.2, which prohibits any form of political demonstrations or propaganda in Olympic venues, operates in a way that substantially limits and in practice, neutralizes it. To assess whether these rules satisfy the proportionality test under the Convention and ECtHR case law, we must first analyse whether the restriction fulfils the test of legality.

As F. Shahlaei has stated, any restriction of human rights must be established exclusively by law, and no form of 'traditional, religious, or other customary law' can justify limiting freedom of expression. The law should be as specific as possible and must provide clear guidance on the types of prohibited expression.[16]

The Olympic Charter, as binding Lex Sportiva, 'has the character of law—or even a constitution—in the world of sport', because it is a constitutive document of the IOC and it defines the rights and obligations of the members of the Olympic family.[17]

However, the Olympic Charter's quasi-constitutional status does not exempt it from general legal principles governing the adoption and application of binding norms. In this respect, CAS jurisprudence has clarified that the principle of legality requires that binding regulations be duly enacted, clearly define the elements of each disciplinary offence, and set out the applicable sanctions—either directly in the rule itself or by referring to another provision.[18] The ECtHR has confirmed the same standard, holding in *The Sunday Times v. the United Kingdom* that, for a binding rule to satisfy the legality test, it must be 'clear, accessible, and foreseeable'.[19]

The CAS decision in the case of V. Heraskevych raises questions regarding the foreseeability of the applicable rules. The IOC's communication to the athlete prior to the competition

16 Faraz Shahlaei, 'Athletes' Gestures Are Protected by International Human Rights Law' (*Play the Game*, 11 August 2020) <https://www.playthegame.org/news/athletes-gestures-are-protected-by-international-human-rights-law/> accessed 15 February 2026.

17 Antoine Duval, 'The Olympic Charter: A Transnational Constitution Without a State?' (2018) 45(s1) Journal of Law and Society S245, doi:10.1111/jols.12112.

18 CAS 2014/A/3832 & 3833 *Vanakorn v Fédération Internationale de Ski (FIS)* (Court of Arbitration for Sport (CAS), 19 June 2015) para 86.

19 *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) paras 49, 50 <https://hudoc.echr.coe.int/eng?i=001-57584> accessed 15 February 2026.

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did not specify which provision of the Olympic Charter had allegedly been violated, referring only to a general obligation to respect the Olympic Charter and the Expression Guidelines. This created uncertainty as to whether the alleged breach concerned Rule 50.2, which prohibits political, religious, or racial propaganda, or Rule 40.2, which regulates athletes' expression more broadly through the Expression Guidelines. The distinction is significant, as it is easier to classify conduct as an 'expression of views' than as 'political propaganda,' thereby lowering the threshold for finding a breach and raising doubts as to whether the dispute was assessed under the correct legal framework.[20]

In this regard, the author shares the view of A. Duval and M. James that the relationship between Rule 40.2 and Rule 50.2 remains unclear, particularly as it is uncertain whether the rules prohibit all forms of expression or only those with a specific political dimension. As they observe, if the former interpretation were correct, the IOC would effectively enshrine freedom of expression in the Olympic Charter while simultaneously emptying it of content through the Expression Guidelines on Athlete Expression at the most visible moments of the Olympic Games.[21]

Moreover, the CAS acknowledged that wearing a helmet bearing portraits of athletes killed in the war constituted an 'expression of a view' within the meaning of the Expression Guidelines. This conclusion was based primarily on the fact that V. Heraskevych himself connected the helmet to the broader political context of the war in Ukraine in his public media statements.[22] However, the CAS award does not contain a detailed analysis of whether the Expression Guidelines themselves satisfy the 'quality of law' requirement under Article 10 of the Convention.

This omission is particularly significant in light of the ECtHR's established case law, according to which restrictions on freedom of expression must not only have a basis in law but must also satisfy the qualitative requirements of accessibility, precision, and foreseeability to protect individuals against arbitrary interference.[23] Moreover, following the Grand Chamber judgment in *Semenya v. Switzerland*, CAS is expected to subject interferences with athletes' fundamental rights to particularly rigorous judicial scrutiny. In the present case, however, the award does not explain in sufficient detail whether the Expression Guidelines satisfy these requirements or why the interference with the athlete's freedom of expression meets the standard of review required under Article 10 of the Convention.

20 Cairns (n 15).

21 Antoine Duval and Mark James, 'Is the International Olympic Committee's Decision to Disqualify Vladyslav Heraskevych Legal?' (*Verfassungsblog*, 12 February 2026) <https://verfassungsblog.de/disqualify-vladyslav-heraskevych-legal-olympics-court-arbitration/> accessed 15 February 2026.

22 CAS OG 26/09 (n 3) para 97.

23 *Hashman and Harrup v United Kingdom* App no 25594/94 (ECtHR, 25 November 1999) para 31 <https://hudoc.echr.coe.int/eng?i=001-58365> accessed 15 February 2026.

The Expression Guidelines allow certain forms of expression (e.g., in mixed zones, press conferences, or before competitions) provided they are not discriminatory, targeted against people, countries, or organizations, or disruptive, and are consistent with the Fundamental Principles of Olympism. Their aim is to safeguard Olympic neutrality and maintain harmony among participants.[24]

However, these guidelines are not legally binding under the Olympic Charter, which limits their enforceability. Only the IOC Executive Board can issue binding guidance on Rule 40 and Rule 50, meaning that the Athletes' Commission's guidelines, despite being more detailed, cannot legally regulate athletes' freedom of expression.[25]

Third, for a legal norm to meet the requirement of legality, a norm must be formulated with sufficient precision so that an athlete can regulate their conduct and foresee, to a reasonable degree, the consequences of their actions.[26] As A. Duval and M. James mentioned 'it seems that banning expressions wholesale from certain parts of the Olympic Games is problematic from the point of view of legal certainty, as what constitutes an 'expression' under the Expression Guidelines remains entirely undefined.'[27]

The Expression Guidelines prohibit 'expressions of views' during competition without clarifying whether this refers only to political propaganda or also to humanitarian gestures, commemorative acts, or expressions of solidarity. Interpreted broadly, the rule could effectively ban any expressive conduct during competition, raising serious concerns regarding foreseeability under Article 10 of the Convention.[28]

For the aforementioned reasons we can state that due to the vague interpretation of Rules 40.2 and 50.2 of the IOC Charter, the IOC enjoys unfettered discretion in imposing sanctions in the case of athletes' expressions. The Expression Guidelines prohibit 'expressions of views' during competition—a notion broader than the 'political propaganda' banned by Rule 50.2—yet neither rule defines what constitutes such expression. In the Heraskevych case, the helmet displayed portraits of deceased athletes without slogans; its political meaning was inferred mainly from context and the athlete's prior media statements. This context-dependent assessment raises doubts as to whether athletes can reasonably foresee that a commemorative symbol without explicit political wording would fall within the prohibition of 'expressions of views' on the field of play.

The uncertainty is reinforced by the fact that previous Olympic practice appears to have tolerated several comparable forms of symbolic athlete expression (e.g. demonstrations relating to racial justice, armed conflicts or other issues of public concern) without

24 International Olympic Committee, 'Guidelines on Athlete Expression (n 11).
25 International Olympic Committee, *Olympic Charter* (n 4) Rule 19, para 3.10.
26 *Hashman and Harrup v United Kingdom* (n 23) para 31.
27 Duval and James (n 21).
28 ibid

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disciplinary sanctions.[29] Although each case depends on its own facts, inconsistent enforcement may affect athletes' legitimate expectations and further weaken the foreseeability of the applicable rules.[30] During the Beijing 2022 Winter Olympics V. Heraskevych displayed a 'No War in Ukraine' sign without facing sanctions, since the IOC described the message as a general call for peace rather than a political demonstration.[31] By contrast, at Milano-Cortina 2026 he was excluded for a helmet portraying deceased Ukrainian athletes—an act that could equally be interpreted as remembrance rather than political advocacy. This contrast suggests that the assessment of what constitutes impermissible expression may not be static, but sensitive to broader contextual and geopolitical developments.[32]

At the same time, it should be acknowledged that supporters of the current Olympic framework argue that a degree of regulatory flexibility is unavoidable in a global sporting event involving athletes from diverse political, cultural, and religious backgrounds. From this perspective, broad standards are regarded as necessary to preserve Olympic neutrality and prevent sporting competitions from becoming platforms for geopolitical confrontation.[33]

From the perspective of the legality test, the critical question is whether the norm restricting freedom of expression is sufficiently precise and structured to prevent arbitrary application.

The Heraskevych case illustrates the structural tension: the same symbolic act (displaying images related to a geopolitical conflict) could potentially be interpreted either as prohibited political expression or as permissible humanitarian remembrance, depending on the reputational considerations of the IOC. When the decisive criteria emerge primarily through ex post interpretation rather than from the wording of the rule itself, the requirement of legality becomes fragile.

Based on the above, it may be concluded that Rule 40.2 and Rule 50.2 of the Olympic Charter only partially satisfy the legality test. Although the Olympic Charter functions as a quasi-normative document within the Olympic Movement, the wording of the aforementioned rules suffers from several fundamental deficiencies: they lack a clear definition of the elements of a disciplinary offence, do not specify concrete sanctions, and

29 Cem Abanazir, 'The Court of Arbitration for Sport's Multifarious Views on Freedom of Expression' (*Verfassungsblog*, 23 February 2022) <https://verfassungsblog.de/the-court-of-arbitration-for-sports-multifarious-views-on-freedom-of-expression/> accessed 27 July 2026.

30 Mark James, 'The Re-Emergence of the Athlete Activist: Rule 50 and the Precarious Position of Free Speech under the IOC's Guidelines' (*Verfassungsblog*, 8 February 2022) <https://verfassungsblog.de/the-re-emergence-of-the-athlete-activist/> accessed 27 July 2026.

31 'Ukrainian Athlete Escapes Winter Olympics Censure (n 10).

32 Abanazir (n 29).

33 Chui Ling Goh, 'Rule 50 of the Olympic Charter and the Right to Freedom of Expression' [2022] The Regulatory Review <https://www.theregreview.org/2022/03/22/goh-rule-50-of-the-olympic-charter-and-freedom-of-expression/> accessed 27 July 2026.

fail to provide the level of legal foreseeability required by the principle of legal certainty. Nevertheless, this conclusion should not be interpreted as questioning the legitimacy of the IOC's objective of safeguarding political neutrality during the Olympic Games. Rather, it suggests that greater normative clarity, more consistent application of Rules 40.2 and 50.2, and more rigorous judicial review would strengthen both legal certainty and the protection of athletes' fundamental rights without undermining the legitimate regulatory autonomy of the Olympic Movement. Such an approach would also better reflect the standards of legality, proportionality and effective judicial scrutiny developed under Article 10 of the Convention.

4.2. Suitability and Necessity Test

According to the established case-law of the ECtHR, any restriction on freedom of expression must pursue a legitimate aim. The ECtHR considers factors such as public interest, the extent of the harm caused, and the injury to reputation or the rights of others.[34]

The suitability test examines whether the interference with a fundamental right serves an aim that is sufficiently important to justify such interference and whether a rational connection exists between the aim pursued by the legal norm and the restriction of the right. At this stage, only the purpose of the restriction is assessed, not its actual effects, which are examined later in the proportionality analysis.[35] The suitability test merely asks whether a constitutional right may be restricted to pursue a specific objective.

The necessity test requires an assessment of whether the restriction is indispensable to achieve the intended aim and whether less intrusive measures could achieve the same objective. In this context, it must be demonstrated that the restriction is necessary (not merely useful or desirable) to meet a 'pressing social need' and that a direct and immediate link exists between the expression and the alleged harm.[36]

The IOC argues that allowing athletes to express views related to politics would open the Olympic arena to numerous geopolitical disputes. However, the existence of multiple conflicts worldwide cannot in itself justify a blanket prohibition on all forms of expression. Article 10(2) of the Convention provides an exhaustive list of legitimate grounds for restricting freedom of expression, and the desire to avoid political controversy or maintain symbolic neutrality does not fall within these categories.[37]

34 *Steel and Morris v United Kingdom* App no 68416/01 (ECtHR, 15 February 2005) <https://hudoc.echr.coe.int/eng?i=001-68224> accessed 15 February 2026.

35 Daniela Švecová, 'Sloboda prejavu v judikatúre Európskeho súdu pre ľudské práva a Ústavného súdu Slovenskej Republiky z pohľadu dynamiky vývoja' in Ladislav Orosz, Sabina Grabowska and Tomáš Majerčák (eds), *Ústavné dni: Tretie funkčné obdobie Ústavného súdu Slovenskej Republiky, VII. ústavné dni* (Kancelária Ústavného súdu Slovenskej republiky 2019) 32.

36 *Gorzelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) paras 95, 96 <https://hudoc.echr.coe.int/eng?i=001-61637> accessed 15 February 2026.

37 Duval and James (n 21).

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In the case of V. Heraskevych the CAS confirmed that the helmet constituted an 'expression of a view' within the meaning of the Expression Guidelines and held that the field-of-play restriction was compatible with Article 10 of the Convention. From the perspective of the IOC and the CAS, the restriction pursues the legitimate objective of preserving the neutrality of the Olympic Games and ensuring that the field of play remains focused on athletic performance rather than political debate.[38] It may also be argued that uniform restrictions are intended to prevent inconsistent treatment of competing political causes and to minimize the risk of escalating geopolitical tensions among athletes representing different states. The critical question, however, is not whether these objectives are legitimate in the abstract, but whether the specific restriction imposed in the Heraskevych case was necessary and proportionate to achieve them, respectively whether it constitutes a 'pressing social need.'[39]

The CAS award accepts that safeguarding Olympic neutrality constitutes a legitimate objective, yet it devotes comparatively little attention to explaining why the exclusion of the athlete represented a necessary response in the particular circumstances of the case. Following the Grand Chamber judgment in *Semenya v. Switzerland*, sports arbitral tribunals are expected to undertake particularly rigorous scrutiny where disciplinary measures interfere with Convention rights.[40] From this perspective, a more detailed assessment of necessity and proportionality would have strengthened the reasoning of the award.

ECtHR's judgment in *Handyside v. the United Kingdom* emphasizes that no single European conception of morality exists among the Council of Europe member states. Moral requirements vary over time and across societies, and views on morality change rapidly. Because national authorities are in direct contact with the needs of their own societies, Article 10(2) of the Convention grants a margin of appreciation reserved for domestic legislators and authorities tasked with interpreting and applying the law.[41] The situation within the Olympic Movement is different. The IOC operates globally, and its rules must be applied uniformly across all member states. At the same time, because the IOC exercises regulatory authority in a monopolistic environment—where athletes must accept non-negotiable rules in order to compete at the Olympic Games—the margin of appreciation should be interpreted narrowly. This is particularly true where the expression concerns matters of public interest, such as armed conflict, human loss, or human rights violations.[42]

38 Thomas Bach, 'The Olympics Are about Unity and Diversity, Not Politics and Profit: Boycotts Don't Work', *The Guardian* (London, 24 October 2020) <https://www.theguardian.com/sport/2020/oct/24/the-olympics-are-about-diversity-and-unity-not-politics-and-profit-boycotts-dont-work-thomas-bach> accessed 28 July 2026.

39 CAS OG 26/09 (n 3) para 94.

40 *Gorzelik and Others v Poland* (n 36) paras 95, 96.

41 *Handyside v United Kingdom* (n 6) para 48.

42 *Morice v France* App no 29369/10 (ECtHR, 23 April 2015) para 125 <https://hudoc.echr.coe.int/fre?i=001-154265> accessed 15 February 2026.

In this context, Heraskevych's helmet, commemorating athletes killed in the war in Ukraine, constitutes speech on a matter of undeniable public interest and therefore requires strict scrutiny when assessing the necessity of restrictions.

The gesture of V. Heraskevych was a general, non-personalized political expression with a human-rights dimension. Under the ECtHR's case-law, such expressions may be regarded as speech on matters of public interest and therefore require a high level of protection.[43] By contrast, the conduct of Iranian judoka Fethi Nourine—who refused to compete against an Israeli opponent during the Tokyo Olympic Games for political reasons—represents a form of political expression that directly results in discrimination against another athlete and a specific nation.[44] Unlike Nourine's actions, Heraskevych's gesture did not target any competitor, did not incite hostility, and did not undermine the integrity of the competition. The CAS itself acknowledged that his message was consistent with the Fundamental Principles of Olympism, including peace and human dignity.[45] Consequently, the only relevant issue concerned the place and timing of the expression rather than its substance. This distinction is crucial for the necessity test: where an expression neither harms the rights of others nor disrupts the event, any restriction must be supported by particularly compelling reasons.

The IOC may nevertheless contend that differentiating between forms of political expression according to their substantive content would compromise the principle of political neutrality. Once sports governing bodies begin determining which political causes are sufficiently humanitarian or morally justified to merit protection, they inevitably assume the role of arbiters of political legitimacy. From this perspective, a generally applicable restriction based primarily on the place and timing of expression, rather than on the content of individual messages, may represent a more predictable and institutionally neutral regulatory approach. However, this argument does not fully resolve the proportionality analysis. Even content-neutral restrictions constitute interferences with freedom of expression and remain subject to the requirements of Article 10 of the Convention. Consequently, the IOC must demonstrate that the interference corresponded to a pressing social need and that the restriction was supported by sufficiently compelling reasons in the particular circumstances of the case.

At first sight, the difference between the expression of F. Nourine and V. Heraskevych is evident, not only from a moral but also from a legal perspective. Yet, both athletes were punished for violating the freedom of expression in their respective eras. Whether, in the case of V. Heraskevych, the interference with his fundamental right pursued an aim sufficiently important—and whether a rational connection existed between the aim of the legal rule and the restriction of the right—is highly disputable.

43 *Steel and Morris v United Kingdom* (n 34).

44 Decisions nos 2021-8 and 2021-9 (International Judo Federation Disciplinary Commission, 6 September 2021).

45 CAS OG 26/09 (n 3) para 98.

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According to T. Gábriš and P. Hrbek,

> 'At the Olympic Games, the focus must be on athletic performance and on the international unity and harmony that the Olympic Movement seeks to promote. (…) But this is possible only if everyone respects this diversity. The fundamental principle is that sport is neutral and must remain separate from political, religious, or other influences.'[46]

This position reflects one of the principal justifications underlying Rule 50.2 of the Olympic Charter. However, it is not the only possible understanding of the relationship between sports and politics. The ECtHR has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and protects not only information and ideas that are favorably received, but also those that offend, shock or disturb.[47] In the author's view, the proposition that the Olympic Movement can remain politically neutral is difficult to sustain in practice. As the supreme governing body of the Olympic Movement, the IOC cannot be regarded as an entirely apolitical organization. The adoption of the Olympic Truce by the UN General Assembly, the presence of active politicians on the IOC Executive Board,[48] and the IOC's 'sport-diplomatic interventions' in armed conflicts[49] all clearly demonstrate that maintaining political neutrality within the Olympic Games and the Olympic Movement is impossible. For precisely this reason, restrictions imposed in the name of neutrality must satisfy the strict requirements of Article 10 of the Convention. The ECtHR has repeatedly emphasized that political expression and expression concerning matters of public interest enjoy the highest level of protection, and that any interference therefore requires particularly weighty and convincing reasons. This principle is reflected in judgments such as *Vajnai v. Hungary*, *Murat Vural v. Türkiye* and *Animal Defenders International v. the United Kingdom*, in which the Court stressed that restrictions on political speech must be supported by compelling justifications.

Applied to the Heraskevych case, the decisive question is therefore not whether the IOC pursued a legitimate aim by seeking to preserve Olympic neutrality, but whether excluding the athlete from competition constituted a necessary and proportionate response to the particular expression displayed on his helmet. The CAS award largely accepted the IOC's position that any form of political expression on the field of play threatens Olympic neutrality. However, it devoted comparatively little attention to whether Heraskevych's

46 Tomáš Gábriš and Patrik Hrbek, 'Zmení hnutie Black Lives Matter podobu olympijských hier?' (*Slovenský olympijský a športový výbor*, 12 April 2021) <https://www.olympic.sk/clanok/zmeni-hnutie-black-lives-matter-podobu-olympijskych-hier> accessed 5 March 2026.

47 *Handyside v United Kingdom* (n 6) para 49.

48 'IOC Members' (*International Olympic Committee*, 2026) <https://www.olympics.com/ioc/members> accessed 22 February 2026.

49 Kamil Kołsut, 'IOC Under Fire: Pro-war Russian Athletes Allowed at Paris Olympics' (*Visegrad Insight*, 27 July 2024) <https://visegradinsight.eu/ioc-under-fire-pro-war-russian-athletes-allowed-at-paris-olympics/> accessed 5 March 2026.

specific gesture created a genuine risk of disrupting the competition or interfering with the rights and freedoms of other participants. Accepting the protection of Olympic neutrality—or, more broadly, the IOC's commercial interests—as sufficient justification for restricting freedom of expression without such an individualized assessment risks suppressing legitimate public debate on matters of significant public interest, including questions concerning the governance of international sports. A balance must therefore be found between safeguarding neutrality and respecting the right to freedom of expression.

In the Heraskevych case, no evidence was presented that wearing the helmet during competition created disorder, threatened safety, or impaired the rights of other athletes. The alleged 'threat' identified by the IOC was symbolic: a potential distraction from sporting performance of V. Heraskevych. Under ECtHR standards, however, abstract or speculative risks are insufficient. A restriction must respond to a concrete and pressing social need, which the CAS award failed to demonstrate.[50]

The absence of evidence demonstrating concrete harm is particularly relevant under the ECtHR's necessity test. The Court has repeatedly held that restrictions cannot be justified solely on the basis of speculative or hypothetical risks. In cases such as *Stoll v. Switzerland* and *Bédat v. Switzerland*, the Grand Chamber required a careful examination of the concrete harm allegedly resulting from the expression concerned.[51] Similarly, in the present case, the CAS award contains little analysis demonstrating how Heraskevych's helmet endangered sporting integrity, disrupted the event or interfered with the rights of other competitors. The alleged harm remained largely symbolic.

The necessity analysis becomes even more complex when considering the broader regulatory practice of the IOC during the same Olympic Games. In evaluating whether the restriction imposed on Heraskevych responded to a 'pressing social need,' it is relevant to examine whether comparable expressions were treated in the same way.

Reports indicate that several Russian athletes were allowed to compete at the Olympic Games despite their previous public expressions of support for the Russian invasion of Ukraine. These expressions arguably fall within the category of geopolitical or state-centric political speech.[52]

50 *Vajnai v Hungary* App no 33629/06 (ECtHR, 8 July 2008) para 55 <https://hudoc.echr.coe.int/eng?i=001-87404> accessed 15 February 2026.

51 *Stoll v Switzerland* App no 69698/01 (ECtHR, 10 December 2007) paras 153, 154 <https://hudoc.echr.coe.int/eng?i=001-83870> accessed 15 February 2026; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) <https://hudoc.echr.coe.int/eng?i=001-161898> accessed 15 February 2026.

52 Jeremy Pizzi, 'The IOC's Discriminatory Approach to Mr Heraskevych and Implications for Their International Legal Obligations' (*Global Rights Compliance*, 16 February 2026) <https://globalrightscompliance.org/the-iocs-discriminatory-approach-to-mr-heraskevych/> accessed 19 February 2026.

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Selective enforcement of rules may itself indicate that the restriction does not correspond to a genuine pressing social need but rather reflects discretionary or inconsistent regulatory practice. Although the ECtHR does not require absolute uniformity in administrative practice, inconsistent enforcement may undermine the proportionality of an interference. If comparable forms of expression are treated differently without objective and reasonable justification, doubts arise as to whether the restriction genuinely pursues the stated legitimate aim or instead reflects discretionary decision-making.[53] Consistency is therefore an important component of the proportionality assessment.

Such inconsistencies therefore reinforce the argument that less intrusive measures were available and that the sanction imposed on V. Heraskevych cannot easily satisfy the strict suitability test required under Article 10 of the Convention.

Even if restrictions on expression on the field of play are generally acceptable, the necessity test requires assessing whether the same legitimate aim could have been achieved through less intrusive measures. Although states and other regulatory authorities are not required to adopt the least restrictive measure in every case, they must demonstrate why less severe responses would have been insufficient.[54] In the case of V. Heraskevych, several less restrictive alternatives were available, such as allowing the helmet with a warning, permitting its use given the memorial context, or conducting a proportional post-competition review rather than immediate exclusion.

The IOC offered the possibility of wearing a black armband without personalization.[55] However, this alternative significantly diluted the expressive content of the message. Under ECtHR jurisprudence, authorities may not require speakers to replace a specific message with a more neutral one if the original expression is lawful and peaceful.[56] Compelling substitution may itself constitute a disproportionate interference.

To sum up, we can state that prohibiting expressions concerning inadequate protection of the rights of athletes or criticism of the IOC does not constitute an aim sufficiently important to justify interference with freedom of expression. It is acceptable that certain limitations may be justified in order to protect the rights of other competitors, ensure the orderly conduct of competitions and preserve the institutional autonomy of the Olympic Movement. On the other hand, no rational connection exists between the aim pursued by Rule 40.2 and Rule 50.2 of the Olympic Charter and the restriction of freedom of expression of V. Heraskevych, because political neutrality will not be achieved.

53 *Bédat v Switzerland* (n 51).

54 *Animal Defenders International v United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) paras 108–110 <https://hudoc.echr.coe.int/eng?i=001-119244> accessed 15 February 2026.

55 'Skeleton Pilot Vladyslav Heraskevych Not Allowed to Participate at Milano Cortina 2026 (n 11).

56 *Women On Waves and Others v Portugal* App no 31276/05 (ECtHR, 3 February 2009) para 42 <https://hudoc.echr.coe.int/eng?i=002-1667> accessed 15 February 2026.

4.3. Test of Proportionality stricto sensu

The current regulatory framework of the IOC creates a paradox. There is a conflict between two legitimate constitutional values. Neither freedom of expression nor Olympic neutrality enjoys absolute protection. The task of both the IOC and CAS is therefore not to maximize one value at the expense of the other, but to reconcile them through a careful proportionality analysis consistent with Article 10 of the Convention.

The case of V. Heraskevych demonstrates that it is impossible to fully maximize both interests without limiting one of them. It is therefore crucial to apply a balancing formula (test of proportionality stricto sensu). At this stage, we need to weigh the severity of the interference with a fundamental right against the importance of the legitimate aim pursued. Even if a measure is suitable and necessary, it will still be disproportionate if the burden imposed on the individual is excessive in relation to the benefits achieved for the public interest. In other words, the advantages gained by restricting the right must outweigh the harm caused to the right-holder; otherwise, the interference cannot be considered proportionate.[57] The ECtHR has consistently emphasized that the decisive issue is whether the authorities have advanced 'relevant and sufficient reasons' capable of justifying the interference and whether a fair balance has been struck between the competing interests.[58] This balancing exercise lies at the core of Article 10 jurisprudence and cannot be replaced by a simple finding that a regulatory rule has been formally violated. The IOC relied mainly on the abstract interest of preserving symbolic neutrality on the field of play, without demonstrating disruption of competition or harm to others. From the IOC's perspective, the field of play represents a unique environment in which uniform restrictions may be necessary to avoid transforming sporting competitions into platforms for geopolitical disputes. The organization could therefore reasonably argue that clear ex ante rules provide legal certainty, ensure equal treatment of athletes and avoid requiring sporting officials to evaluate the legitimacy of competing political messages on a case-by-case basis. The proportionality test therefore requires asking whether safeguarding an abstract conception of neutrality justifies the most severe form of exclusion from participation in the Olympic Games. For the restriction to be deemed proportionate, it must represent the least intrusive measure capable of effectively achieving the aim of Rules 40.2 and 50.2. Automatic and blanket prohibitions without considering these factors are impermissible, as they may lead to unjustified interference with fundamental rights.[59]

In the Heraskevych case, the interference reached its maximum intensity: the athlete was withdrawn from Olympic competition. Even if formally framed as a preventive eligibility

57 Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (CUP 2012) 340, doi:10.1017/CBO9781139035293.

58 *Animal Defenders International v United Kingdom* (n 54) para 110.

59 Antonio Di Marco, 'Athletes' Freedom of Expression: The Relative Political Neutrality of Sport' (2021) 21(3) Human Rights Law Review 620, doi:10.1093/hrlr/ngab009

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measure rather than a disciplinary sanction, its practical impact was equivalent to exclusion from the Games. From a proportionality perspective, such interference affects not only the expressive dimension of the right but also the athlete's professional career, competitive opportunity, and four-year Olympic cycle. The 'cost' of the interference was therefore extraordinarily high. The ECtHR has repeatedly recognized that the severity of the sanction constitutes an important element of proportionality analysis. Even where the underlying restriction pursues a legitimate objective, particularly severe consequences require correspondingly weighty justifications.[60] This principle is reflected throughout the ECtHR's Article 10 jurisprudence and has acquired particular significance following the Grand Chamber judgment in *Semenya v. Switzerland*, which requires especially rigorous judicial scrutiny where sports-regulatory measures substantially interfere with Convention rights.

The reasoning of CAS illustrates the difficulty of the balancing exercise. The Sole Arbitrator emphasized rule consistency and the need to prevent announced non-compliance. Yet proportionality stricto sensu requires more than confirming the formal validity of the rule; it requires demonstrating that, in the concrete circumstances, the systemic interest outweighs the severe personal and expressive loss suffered by the athlete. Where the expression is peaceful, non-discriminatory, and aligned with human dignity, the threshold for overriding it should be correspondingly high.

If the restriction does not achieve an appropriate balance between public interest and the interference with the fundamental right, it cannot be considered constitutionally compliant and must be deemed disproportionate and unlawful.

In line with the above, we can agree with M. James and G. Osborn, who argue that political expressions should be permitted within the Olympic Movement except in the situations explicitly defined in Article 10(2) of the Convention.[61] In their view, the default assumption should not be that expressions are prohibited unless exceptionally authorized by the IOC; rather, they should be allowed unless the IOC can demonstrate that restriction is necessary. Moreover, no convincing or concrete reasons have been presented thus far that would justify broad restrictions—beyond the general insistence on maintaining political neutrality. This approach reflects the general methodology adopted by the ECtHR. Freedom of expression constitutes the starting point, while restrictions require convincing justification. Accordingly, the existence of institutional interests does not reverse the burden of demonstrating necessity.

60 *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) paras 111–116 <https://hudoc.echr.coe.int/eng?i=001-67816> accessed 15 February 2026.

61 Mark James and Guy Osborn, 'Athlete Activism at the Olympics: Challenging the Legality of Rule 50 as a Restriction on Freedom of Expression' in Véronique Boillet, Sophie Weerts and Andreas R Ziegler (eds), *Sports and Human Rights* (Springer 2024) 187, doi:10.1007/978-3-031-56452-9_8.

The IOC maintains that Rule 50.2 and Guidelines issued under Rule 40.2 are necessary to achieve the neutrality of sport, but it cannot be said that prohibiting freedom of expression represents the least restrictive measure. While it is true that allowing political speech carries the risk of opening controversial and socially sensitive issues that may be perceived very differently across countries, Rule 50.2 and Expression Guidelines issued under Rule 40.2 of the Olympic Charter impose a general ban, which is not the mildest means of protecting Olympic values. However, the existence of such risks does not automatically justify the broadest possible restriction. The ECtHR has consistently distinguished between concrete risks capable of justifying interference and speculative concerns unsupported by evidence. A general possibility that political expression may prove controversial cannot, without further analysis, demonstrate the existence of a pressing social need.[62] On the other hand, if athletes engage in hate speech or incite hostility against particular groups or nations, such conduct may indeed harm the IOC's reputation or threaten the public interest; in these cases, the IOC proportionately restricts expression. However, a blanket prohibition of any expression does not meet a pressing social need.[63]

A more narrowly tailored regulatory framework—for example one prohibiting only expression that threatens the rights of others, incites violence or seriously disrupts sporting competition—might achieve the same institutional objective while interfering less extensively with athletes' Convention rights. Whether such alternatives would prove equally effective is ultimately an empirical question, however, Article 10 requires decision-makers to explain why less restrictive measures would be insufficient.

As John Stuart Mill famously argued, 'opinions that may have been rejected in the past may become unquestionable axioms in the future—but only through freedom of expression.[64]' Silencing athletes cannot be viewed merely as individual harm but as the systematic impoverishment of public discourse by excluding voices that could shape collective values and contribute to uncovering truth through pluralism and open dialogue.[65] Prohibiting expressions that challenge the interests of the IOC and its powerful actors—who often benefit from the absence of public scrutiny in the international arena—appears untenable.

From an Article 10 perspective, the concern extends beyond the applicant. The ECtHR has frequently recognized the 'chilling effect' that overly broad restrictions may produce, discouraging others from engaging in lawful expression because of uncertainty or fear of

62 *Stankov and the United Macedonian Organization Ilinden v Bulgaria* Apps nos 29221/95 and 29225/95 (ECtHR, 2 October 2001) paras 86–97 <https://hudoc.echr.coe.int/eng?i=001-59689> accessed 15 February 2026.

63 Trusha Modi, 'To What Extent Is Rule 50 of the Olympic Charter Valid? Balancing Athletes Freedom of Expression and the Mythical Political Neutrality of Sport' (2023) 23(3) International Sports Law Journal 377, doi:10.1007/s40318-023-00249-2.

64 John Stuart Mill, *On Liberty* (JW Parker and Son 1859) 187.

65 Melina Constantine Bell, 'John Stuart Mill's Harm Principle and Free Speech: Expanding the Notion of Harm' (2010) 33(2) Utilitas 174, doi:10.1017/S0953820820000229.

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sanctions. Within the Olympic context, an excessively broad interpretation of Rule 50.2 may similarly discourage athletes from engaging in legitimate human-rights advocacy even where such expression would ultimately deserve Convention protection.

For these reasons, Rule 50.2 and Expression Guidelines cannot be regarded as a proportionate restriction on freedom of expression, as a less intrusive measure could more effectively achieve the intended aim—such as prohibiting only expressions that incite violence, hatred, or war propaganda. From this perspective, a categorical ban on political or ideological expression in sport is disproportionate and violates Article 10 of the Convention. Moreover, such a ban risks creating a 'chilling effect', meaning that athletes may refrain from expressing their political or ideological views out of fear of punishment—even when such expression is protected under Article 10 of the Convention.[66]

5 CONCLUSION: SILENCE IS NOT NEUTRALITY: REVISITING THE LEX OLYMPICA THROUGH A HUMAN-RIGHTS LENS

The historical development of the Olympic Movement clearly demonstrates the impossibility of fully eliminating political expression from the Olympic sphere. Numerous historical events—from Nazi propaganda in 1936 to the Black Power protest in Mexico City in 1968, and more recent athlete-led human-rights initiatives—confirm that the Olympic Games have always served as a platform for social and political messaging. At the same time, these historical examples also illustrate why the IOC has consistently sought to regulate political expression. Each episode generated controversy extending well beyond sport and raised legitimate concerns regarding the ability of the Olympic Movement to maintain its universal and inclusive character. The existence of athlete activism therefore does not, in itself, demonstrate that all forms of political expression should be permitted during Olympic competition.

However, the current legal formulation of Rule 40.2 and Rule 50.2 of the Olympic Charter and Expression Guidelines exhibits several shortcomings. The aforementioned Lex Olympica in its existing form is legally ambiguous and enables highly subjective decision-making. Although the IOC has recently allowed athletes to express their views in certain pre-designated spaces and moments (for example, in mixed zones or via social media), a coherent, proportionate, and legally consistent approach aligned with international human-rights standards remains absent. Clear criteria should therefore distinguish permissible expression from conduct incompatible with Olympic values, particularly hate speech or incitement to violence. The Heraskevych case illustrates these broader

66 *Sürek v Turkey* (no 3) App no 24735/94 (ECtHR, 8 July 1999) para 37 <https://hudoc.echr.coe.int/eng?i=001-58281> accessed 15 February 2026.

concerns. It demonstrates the difficulty of applying a general prohibition to expressions that are simultaneously political, humanitarian and commemorative. Whether the applicant's helmet should ultimately have been permitted is open to legitimate disagreement. Reasonable arguments exist on both sides. On the one hand, the IOC may legitimately argue that maintaining a content-neutral rule applicable to all athletes represents the only realistic means of preventing Olympic Games from becoming an arena for competing political campaigns. From this perspective, introducing exceptions based on the perceived legitimacy of individual causes would inevitably require sporting authorities to make political judgments that fall outside their institutional expertise. On the other hand, the present case concerned a peaceful commemorative gesture that neither discriminated against other competitors nor disrupted the competition. The CAS itself acknowledged that the values underlying the expression were compatible with the Fundamental Principles of Olympism. These particular circumstances strengthen the argument that a more individualized proportionality assessment may have been required under Article 10 ECHR.

From a human-rights perspective, neutrality should not operate as a mechanism for suppressing humanitarian or memorial speeches, especially when that speech concerns issues of armed conflict, loss of life, and human dignity. On the contrary, the consistent protection of such expressions may strengthen, rather than weaken, the moral legitimacy of the Olympic Movement. Accordingly, the crucial legal issue is not whether the IOC may pursue neutrality as a legitimate objective—it undoubtedly may—but whether the specific restriction imposed on the athlete represented a proportionate response supported by relevant and sufficient reasons.

To address these concerns, the IOC should ensure a transparent, consistent, and non-discriminatory procedure for assessing athlete expression. Establishing an independent review mechanism involving athlete representatives and experts in sports and human-rights law, together with systematic consideration of ECtHR jurisprudence, would significantly strengthen the legitimacy of the Olympic regulatory framework. Equally important is an inclusive dialogue within the Olympic Movement on redefining political neutrality in a manner that respects fundamental rights while preserving the values of sport.

The Olympic Games are among the most viewed and influential events worldwide. They bring together athletes from around the globe not only to compete but also to represent values of humanity, equality, respect, and unity. If the Olympic Movement truly rests on these principles, athletes' freedom of expression cannot be suppressed in such symbolic public spaces.

The concept of political neutrality must therefore be understood carefully. Institutional neutrality does not equate to silencing individuals. While the IOC may remain politically neutral as an organization, athletes should retain the right to express peaceful, non-violent, and non-discriminatory views.

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In conclusion, the Olympic Games should be a space where freedom and unity coexist, yet protected from misuse for political or ideological purposes. A balanced regulatory framework that distinguishes between different forms of expression while leaving room for dignified and peaceful communication offers a realistic solution to this complex issue. In this way, the Olympic Movement can evolve in accordance with democratic values without compromising its neutrality and universal character.

Ultimately, the Heraskevych case concerns more than the interpretation of a helmet design or a specific Olympic rule. It reflects a broader structural tension within the Olympic Movement: while athletes constitute the central protagonists of the Games, their ability to express personal convictions on matters of global concern remains tightly constrained. When the Olympic platform is used extensively for commercial visibility and institutional messaging, denying athletes the possibility of peaceful and respectful expression may appear increasingly difficult to justify.

The Heraskevych decision therefore revives a long-standing debate about the institutional relationship between CAS and the IOC. Although important reforms were introduced following the Gundel case[67] to strengthen the independence of CAS, critics continue to argue that the tribunal sometimes shows excessive deference to sports governing bodies.[68] In the case of Heraskevych, the Sole Arbitrator largely accepted the IOC's interpretation of the applicable rules without undertaking a deeper examination of the relationship between Rule 40.2, Rule 50.2 and the Expression Guidelines. Such an approach may reinforce the perception that CAS functions less as a strict judicial reviewer and more as a body that legitimizes regulatory choices made by the IOC.

Hopefully, Heraskevych—as a pioneer who has dared to raise questions that many athletes feel but rarely express—will not abandon his struggle prematurely. By challenging the CAS decision before the Swiss Federal Tribunal, and if necessary, bringing the case before the ECtHR, he could carry this debate to the institutions capable of giving it a definitive legal answer. The ECtHR is uniquely positioned to clarify the boundary between the IOC's claim of political neutrality and the fundamental human rights of athletes. A judgment in favor of the athlete could become a turning point, compelling the IOC to rethink and revise its rules in light of human rights standards. Such a decision would not only matter for one athlete or one Olympic cycle; its significance could reach far beyond Europe, shaping the global conversation about dignity, voice, and justice in sport.

67 CAS 92/A/63 *Elmar Gundel v Fédération Équestre Internationale (FEI)* (Court of Arbitration for Sport (CAS), 1 February 1992; BGE 119 II 271 *Gundel v Fédération Équestre Internationale (FEI)* (Swiss Federal Tribunal, 15 March 1993).

68 Grit Hartmann, 'Tipping the Scales of Justice – The Sport and Its 'Supreme Court' (*Play the Game*, November 2021) <https://www.playthegame.org/publications/tipping-the-scales-of-justice-the-sport-and-its-supreme-court/> accessed 25 July 2026.

The Olympic Games are not only about sporting performance and global celebration; they are also about rules, authority, and the institutions that interpret and enforce them. In this sense, the Heraskevych case reminds us that the Olympic arena is not only a field of play but also a space where questions of justice, rights, and power inevitably arise. These often-overlooked dimensions of the Olympic Movement deserve as much attention as the competitions themselves.[69]

This article has argued that Rule 50.2 of the Olympic Charter is not, in itself, necessarily incompatible with Article 10 ECHR. However, its application in the Heraskevych case raises serious doubts as to whether the interference with the athlete's freedom of expression satisfied the requirements of legality, necessity and proportionality developed in the ECtHR's case-law.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

СВОБОДА ВИРАЖЕННЯ ПОГЛЯДІВ СПОРТСМЕНІВ ТА ПРИНЦИП ОЛІМПІЙСЬКОГО НЕЙТРАЛІТЕТУ: СПРАВА УКРАЇНСЬКОГО СПОРТСМЕНА І СИМВОЛУ ОПОРУ ВЛАДИСЛАВА ГЕРАСКЕВИЧА

Чілла Смолаїова

АНОТАЦІЯ

Передумови. *У цій статті досліджується співвідношення між свободою вираження поглядів спортсменів відповідно до статті 10 Європейської конвенції з прав людини (ЄКПЛ) та принципом політичної нейтральності в межах Олімпійського руху. Основну увагу приділено справі українського скелетоніста Владислава Гераскевича на зимових Олімпійських іграх 2026 року в Мілані–Кортіні, де його було відсторонено від участі у змаганнях після того, як він наполягав на використанні шолома із зображеннями українських спортсменів, загиблих унаслідок російського вторгнення в Україну. Ця справа порушує ширше питання щодо того, якою мірою символічне та гуманітарне вираження позиції спортсменів може бути обмежене відповідно до нормативної бази Олімпійського руху.*

Методи. *Дослідження ґрунтується на якісній доктринальній юридичній методології, що охоплює системний аналіз документів, порівняльний аналіз судової та арбітражної практики, а також оцінювання на основі принципу пропорційності. У статті проаналізовано Правила 40.2 та 50.2 Олімпійської хартії, Керівні принципи Міжнародного олімпійського комітету (МОК) щодо свободи вираження поглядів, відповідні рішення Спортивного арбітражного суду, а також практика Європейського суду з прав людини (ЄСПЛ). Для оцінки відповідності обмеження, застосованого до Гераскевича, стандартам у сфері прав людини застосовується тест на пропорційність, сформований у практиці ЄСПЛ щодо застосування статті 10 ЄКПЛ, який охоплює критерії законності, придатності, необхідності та пропорційності у вузькому розумінні.*

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Результати та висновки. *Проведений аналіз свідчить про те, що чинна нормативна база МОК залишає значний простір для розсуду під час визначення того, коли висловлювання спортсмена становить заборонене політичне вираження поглядів. Справа Гераскевича демонструє, що мирні символічні або гуманітарні жести залежно від контексту можуть бути кваліфіковані як політичні. У статті обґрунтовується, що взаємозв'язок між Правилами 40.2 і 50.2 Олімпійської хартії та Керівними принципами МОК стосовно свободи вираження поглядів породжує питання щодо передбачуваності застосування відповідних норм та дотримання вимог правової визначеності. Крім того, ставиться під сумнів, чи може мета збереження політичної нейтральності виправдати істотне втручання у свободу вираження поглядів щодо питань, які становлять значний суспільний інтерес, зокрема збройного конфлікту, людських втрат та прав людини. У статті зроблено висновок, що чинна нормативна база недостатньою мірою відповідає вимогам правової визначеності та пропорційності відповідно до статті 10 ЄКПЛ. Також обґрунтовується необхідність більш чіткого і збалансованого розмежування між шкідливою політичною пропагандою та мирним гуманітарним вираженням поглядів спортсменів.*

Ключові слова. *Свобода вираження поглядів, Lex Olympica, тест на пропорційність, Владислав Гераскевич, Європейська конвенція з прав людини, Правило 50.2 Олімпійської хартії.*

ABSTRAKT V SLOVENSKOM JAZYKU

Vedecký článok

SLOBODA PREJAVU ŠPORTOVCOV A PRINCÍP OLYMPIJSKEJ NEUTRALITY: PRÍPAD UKRAJINSKÉHO ŠPORTOVCA A SYMBOLU ODPORU VLADYSLAVA HERASKEVYCHA

Csilla Szomolaiová

ABSTRAKT

Úvod: *Článok sa zaoberá napätím medzi slobodou prejavu športovcov chránenou článkom 10 Európskeho dohovoru o ľudských právach (EDĽP) a princípom politickej neutrality uplatňovaným v rámci olympijského hnutia. Ťažiskom analýzy je prípad ukrajinského skeletonistu Vladyslava Heraskevycha na Zimných olympijských hrách Miláno – Cortina 2026. Heraskevych bol vylúčený zo súťaže po tom, ako trval na tom, že bude používať prilbu so zobrazením ukrajinských športovcov, ktorí zahynuli v dôsledku ruskej invázie na Ukrajinu. Tento prípad zároveň otvára širšiu otázku, do akej miery možno v rámci olympijských pravidiel obmedzovať symbolické a humanitárne prejavy športovcov.*

Metódy: *Výskum vychádza z kvalitatívnej doktrinálnej právnej metodológie a kombinuje systematickú analýzu relevantných dokumentov, komparatívne skúmanie súdnej a arbitrážnej judikatúry a posúdenie založené na princípe proporcionality. Predmetom analýzy sú najmä pravidlá 40.2 a 50.2 Olympijskej charty, Usmernenia MOV týkajúce sa slobody prejavu, relevantné rozhodnutia Športového arbitrážneho súdu, ako aj judikatúra Európskeho súdu pre ľudské práva (ESĽP). Súlad obmedzenia uloženého Heraskevychovi so štandardmi ochrany ľudských práv sa posudzuje prostredníctvom testu proporcionality vyvinutého v rámci judikatúry k článku 10 EDĽP, ktorý zahŕňa posúdenie zákonnosti, vhodnosti, nevyhnutnosti a proporcionality v užšom zmysle.*

Výsledky a závery: *Analýza poukazuje na to, že súčasný regulačný rámec MOV poskytuje značný priestor na uváženie pri posudzovaní toho, kedy možno prejav športovca považovať za zakázaný politický prejav. Prípad Heraskevycha ukazuje, že aj pokojné symbolické alebo humanitárne gestá môžu byť v závislosti od konkrétneho kontextu označené za politické. Článok poukazuje na problematický vzťah medzi pravidlami 40.2 a 50.2 Olympijskej charty a Usmerneniami MOV týkajúcimi sa prejavu, ktorý vyvoláva otázky z hľadiska predvídateľnosti právnej úpravy a právnej istoty. Zároveň skúma, či môže cieľ zachovania politickej neutrality odôvodniť taký závažný zásah do slobody prejavu, pokiaľ sa tento prejav týka otázok významného verejného záujmu, akými sú ozbrojený konflikt, straty na ľudských životoch či ochrana ľudských práv. Článok dospieva k záveru, že súčasný regulačný rámec nespĺňa v dostatočnej miere požiadavky právnej istoty a proporcionality vyplývajúce z článku 10 EDĽP. Z tohto dôvodu poukazuje na potrebu jasnejšieho a vyváženejšieho rozlišovania medzi škodlivou politickou propagandou na jednej strane a pokojným humanitárnym prejavom športovcov na strane druhej.*

Kľúčové slová: *Sloboda prejavu, Lex Olympica, test proporcionality, Vladyslav Heraskevych, Európsky dohovor o ľudských právach, Pravidlo 50.2 Olympijskej charty.*

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