

УДК 796:004.7]:061

DOI <https://doi.org/10.32782/lexsportiva/2023.1.4>**Camilleri Neil,**Journalist and founder at Unhidden Stories  
ORCID: <https://orcid.org/0009-0002-7221-9135>**Huk Iryna-Mariia Mykhailivna,**PhD student of Zaporizhzhia National University  
ORCID: <https://orcid.org/0000-0002-4407-3944>

## CAS FOR ESPORTS: REALITY OR UTOPIA?

*The authors examine the peculiarities of dispute resolution in esports and the current state of reforms. The author analyzes the factors influencing the choice of jurisdiction for consideration of disputes in the field of esports in the absence of clear rules for determining the jurisdiction and category of disputes in the field of esports.*

*Attention is drawn to the possible options for jurisdiction in the field of esports. The author notes the peculiarities of dispute resolution within the framework of litigation, commercial arbitration, sports arbitration court and special arbitration bodies or persons authorized to consider disputes and their legal regulation. The author describes the advantages and disadvantages of the existing arbitration bodies and focuses on the mechanisms that have the potential to improve dispute resolution in the esports industry. Given the practice of dispute resolution, it is summarized that arbitration and which institutions are currently the main places for dispute resolution in the field of esports.*

*It is concluded that due to the increasing inclusion of virtual sports (video games) in the category of sports, they should have the same protection regime, and therefore, the resolution of disputes related to them should fall under the jurisdiction of the Court of Arbitration for Sport. Therefore, the Court of Arbitration for Sport may potentially serve as the final court of appeal for any sports organization, if provided for in its regulations. At the same time, it is currently problematic that the Court of Arbitration for Sport has not yet recognised esports as a legitimate sport and has therefore not yet made any arbitral awards in cybersport disputes. This is the basis for the creation of a specialized court that would be able to consider a wide range of technical disputes related to video games. However, the author substantiates why the creation of a new institution is less effective than reforming the existing Court of Arbitration for Sport.*

**Key words:** e-sports, jurisdiction, arbitration, Court of Arbitration for Sport, video games, video game specialists, commercial arbitration.

### **Каміллері Н., Гук І.-М. М. КАС ДЛЯ КІБЕРСПОРТУ: РЕАЛЬНІСТЬ ЧИ УТОПІЯ?**

*У статті досліджено особливості вирішення спорів у кіберспорті та з'ясовано стан реформ у даній сфері. Проаналізовано фактори, що впливають на вибір юрисдикції для розгляду спорів у сфері кіберспорту в умовах відсутності чітких правил визначення юрисдикції та категорії спорів у сфері кіберспорту.*

*Звернено увагу на можливі варіанти юрисдикції у сфері кіберспорту. Зауважено особливості розгляду спорів в межах судового процесу, в комерційному арбітражі, у спортивному арбітражному суді та спеціальними арбітражними органами чи особами, що уповноважені на розгляд суперечок та їх правове регулювання. Розкрито переваги та недоліки існуючих арбітражних інстанцій та окрему увагу зосереджено на механізмах, що мають потенціал для покращення вирішення спорів у кіберспортивній індустрії. З огляду на практику розгляду спорів, підсумовано, що арбітраж та які інституції наразі є основними місцями для розгляду спорів у сфері кіберспорту.*

*Зроблено висновок, що завдяки включенню до категорії спорту віртуальних видів спорту (відеоігор), вони мають такий самий режим захисту, а отже, вирішення пов'язаних з ними спорів, повинне підпадати під юрисдикцію Спортивного арбітражного суду. Тому, спортивний арбітражний суд потенційно може слугувати остаточною апеляційною інстанцією для будь-якої спортивної організації, якщо це передбачено її регламентом. Водночас наразі проблематичним є те, що Спортивний арбітражний суд наголошує на широкому тлумаченні поняття "спорт" і це не виносив жодного арбітражного рішення щодо кіберспортивних спорів. Це слугує підставою для створення спеціалізованого інстанції, що змогла би розглядати широкий спектр технічних суперечок, пов'язаних з відео іграми. Однак, автором обгрунтовано, чому створення нової інституції є менш ефективним, ніж реформування вже діючого Спортивного арбітражного суду.*

**Ключові слова:** кіберспорт, юрисдикція, арбітраж, Міжнародний спортивний арбітраж, відеоігри, фахівці у сфері відеоігор, комерційний арбітраж.

## Introduction.

Esports, or electronic sports, is a form of competition using video games. This typically takes place as a form of organised competition between professional players who compete in a multiplayer arena. Despite the name, Esports are not limited to video games that simulate 'traditional' sports events. In fact, some of the most popular video games played have a combat or military nature.

In order to answer the question of whether esports should fall under the remit of the Court of Arbitration for Sport (CAS), one must first examine whether esports is actually recognised as a sport discipline. This question is a very controversial one.

**Purpose and objectives.** The purpose of the study is to analyze the peculiarities of dispute resolution in the esports industry and the place of the Court of Arbitration for Sport in this context. The objectives of the study are to find out the current state of dispute resolution in esports; analyze the problematic issues of the Court of Arbitration for Sport; consider ways to improve CAS as an international court for resolving disputes in the field of video games.

**Research methods.** The study used such methods as analysis and synthesis, comparison, systematization, and generalization. The analysis method was used to study certain characteristics of video game disputes and provide the main definitions of the concepts. The synthesis method, by combining the individual aspects of the phenomenon under study, helped to combine the properties of relations regarding dispute resolution in esports in its unity. The method of comparison made it possible to compare the effectiveness of different institutions and identify their common and distinctive features. The method of systematization helped to identify patterns in the regulation of relations in the field of esports, as well as to create a holistic picture of dispute resolution, including with the participation of video game companies or independent judicial authorities. The use of the generalization method made it possible to move from the individual to the general, from certain problematic issues of the Sports Arbitration Court to an understanding of the general situation in the field of esports dispute resolution, industry stakeholders, and their impact on regulatory mechanisms.

**Main text.** In reality, the esports sector is growing exponentially. The International Esports Federation of Esports (IESF) says esports is the "world's fastest growing sports", with the participation of millions of players and billions of fans.

Esport is recognised as a sport in many other countries across the globe and there are several international competitions held annually. The IESF boasts 130 mem-

ber countries, and the federation's main aim is to promote esports "as a true sport beyond barriers" [1].

This is a testament to the massive global support towards recognising esports as a sport. It is clear that esports is growing, and so is global support to recognise it as an official sport. However, there are some obstacles in the way.

The International Olympic Committee (IOC), while having made moves to recognise virtual gaming as a sport, limits itself to games that simulate actual sport, saying that video games that have a violent nature do not fall in line with its core values. It also has qualms with the lack of traditional physical skill found in esports [2; 3].

On 10th November 2022, the European Parliament adopted a resolution on esports and videogames. The resolution was widely welcomed by stakeholders, saying that, if implemented correctly, it will give the tools, support, recognition, and legitimacy which the esports sector has fought for for many years.

However, the resolution states that, due to differences in the economic nature of esports and sports, esports should be regulated separately from traditional sports. This aspect received criticism, including by the Malta Esports Association, which said that this 'dangerous' statement could make the situation worse., "Whether it's the criminalisation of match-fixing, the fiscal incentives for non-profit sports organisations and athletes, or the numerous schemes aimed at promoting sports amongst various sectors of society, are just a few reasons why esports should be dealt with as sports. Without this, esports remains in a legal and regulatory vacuum that is prejudicial to the growth of the sector in Europe" [4].

Despite this, the recognition of esports alongside traditional sports is growing. In turn, this creates the need for regulatory and arbitration bodies similar to those operating in the field of traditional sports. A number of esports governing bodies have been established to regulate the sector, chief among them the International Esports Federation. Based in South Korea, the federation's main goal is to have esports recognised as a legitimate sport. It describes esports as the "world's fastest growing sports", with the participation of millions of players and billions of fans. The federation says it is working on "creating disciplines and regulations alongside the stakeholders of the ecosystem for a fair and clean competitive space for Esports" [1].

But regulation and arbitration remains limited, with stakeholders, including game publishers and tournament organisers, often battling for the power to act as watchdogs and decide over disputes. And with

the sector experiencing an explosion in growth, so do the controversies that come along with it, including issues like doping, cheating and match-fixing. This situation has highlighted the need for a global sanctioning body.

Traditional sports have the Court of Arbitration for Sport, which acts like a court of final appeal. The world of esports has no such thing.

This leads to a situation where game publishers and tournament organisers often struggle for the power to hear and decide disputes. Because gaming companies often handle disputes internally, and according to their own policies, there is a splintered and inconsistent approach to global governance.

Stanisław Stokłosa, writing for Łukomski Niklewicz Adwokacka Spółka Partnerska, also argues that this situation often reveals conflicts of interest by stakeholders, as well as a lack of power to resolve issues of a commercial nature [5].

While there are some independent commissions in place, like the UK-based Esport Integrity Commission (ESIC), these do not enjoy full participation by industry participants, meaning that their authority is often incomplete and uncertain.

“ESIC is an opt-in decision-maker, meaning its decisions are only enforceable amongst its members” [6].

The lack of an independent, widely accepted sanctioning body has been cited by the IOC as a concern when considering esports for future Olympic Games [3].

Some experts argue that the CAS is the perfect dispute-resolution body for esports. The main argument for this is that the CAS already exists and has been established for several decades. It is often argued that the regulation for the esports sector is not all that different from traditional sports, which means that the infrastructure and framework already exist. According to Bird and Bird, arbitration is “particularly well-suited for esports, a nascent industry with a still-developing body of rules and regulations. Controversies are common, and formal methods of resolving those controversies aren’t yet set.”

Arbitration offers various benefits, including customised proceedings, privacy, cost-effectiveness and speed [6].

The benefit of the latter point has been highlighted, by Dr Robert Dingli, writing for Sportsdesk.com. “When sitting in its ad hoc capacity, CAS provides rapid responses to disputes that arise during such tournaments/championships. Such a rapid response is crucial for such tournaments/championships since they would seek to have as little as possible hindrance to their games” [7].

There are, however, a number of issues with regard to the CAS and esports. One such issue is the fact that CAS currently does not have any specialists in the field on their list of arbitrators. This means there is currently a lack of technical expertise on the matter. Another issue is the fact that no major esports stakeholders have so far subscribed to the idea of having the CAS act as a decision-making body [5].

Perhaps the most pertinent issue of them all is the fact that the CAS has not yet recognised esports as a sport under its remit.

### Results

The world of esports clearly yearns for a unified, widely supported global body for sanctioning and arbitration. As many experts have pointed out, the structure already exists, and the CAS can fulfil this role with some tweaking. Such a process is not easy, however, as the CAS does not yet recognise esports as a legitimate sport. This is undoubtedly the first challenge that needs to be tackled. The second is to ensure that CAS is equipped with all the resources it needs, namely qualified personnel, to be able to successfully undertake this task. Choosing the CAS to fulfil this role also overcomes the problem of fragmentation and non-participation, since CAS is already regarded as the only global player in this specific field. Putting esports under the remit of the CAS is more desirable than establishing a new, similar body, since the latter does not guarantee worldwide acceptance and membership.

### Conclusion

The explosion in esports experienced over the last decade has highlighted the need for an international legal body to deal with issues that are growing in parallel with this expansion. The growth in the sector has also come with many challenges, in various forms, including commercial disputes, doping and cheating. Currently, the system of settling disputes is highly fragmented, fraught with conflicts of interest and hampered by serious shortcomings. As the sector grows, so does the need for an overreaching dispute-resolution body. Some experts have suggested the creation of such a body to unify this field, but many others believe that the solution already exists, in the form of the Court of Arbitration for Sport (CAS). Currently, however, the CAS is unable to fulfil this role for three main reasons: it does not yet recognise esports as a legitimate sport, it does not have the required technical expertise and many stakeholders have not yet subscribed to the idea of having the CAS act as the decision-making body.

**REFERENCES:**

1. Esports is the fastest-growing sport in the world (2023) <https://iesf.org/about/what-we-do>
2. IOC to form 'two-speed' esports strategy (2019) Sport Business. <https://www.sportbusiness.com/news/ioc-to-form-two-speed-esports-strategy/>
3. Sumpiputtanadacha T., Murphy A. (2023) Esports and arbitration. Watson Farley & Williams. <https://www.wfw.com/articles/esports-and-arbitration/>
4. Schembri M. (2022) MESA's Reaction to the European Parliament Resolution on Esports and Video Games. Malta esports association. <https://esports.org.mt/mesas-reaction-to-the-european-parliament-resolution-on-esports-and-video-games/>
5. Łukomski J. (2020) Esports is in a dire need of arbitration court - here's why. Łukomski Niklewicz Adwokacka Spółka Partnerska. <https://lukomski-niklewicz.pl/esports-is-in-a-dire-need-of-arbitration-court-heres-why/>
6. ESports Disputes: Choosing your battleground (2018) Bird&Bird. <https://www.twobirds.com/insights/2018/global/esports-disputes-choosing-your-battleground>
7. Dingli R. (2022) Court of Arbitration for Sports. Sport desk. <https://sportsdesk.com.mt/2022/04/17/court-of-arbitration-for-sports/>