

# PERMISSION FOR MUNICIPALITIES TO ESTABLISH AND FINANCE PRIZES AND AWARDS FOR ATHLETES IN ELECTRONIC SPORTS

PRZEMYSŁAW KUCZKOWSKI\*

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## ABSTRACT

The article, original in nature, was devoted to the issue of awards and prizes for e-sports players. The motivational financial instruments in question are regulated in the Sports Law, specifically in Article 31. The author has attempted to solve the legal problem of finding an answer to the question of the legal possibility for municipalities to establish and finance prizes and awards for e-sports players under Article 31 of the Sports Law. Due to the singular and causal works in the field of e-sports funding, which do not address the issue of establishing and funding prizes and awards for e-sports players under Article 31 of the Sports Act, the elaboration of this issue within the framework of the article will, in the author's opinion, undoubtedly enrich the current literature on the subject.

The introductory considerations focus on presenting the essence of the definition of sport and attempt to qualify e-sports as a sport under the Sports Act, which is significant for the possibility of local authorities establishing prizes and awards. The key views of the literature, judicial decisions, and the state of the law in this area were presented. Investigations in this area have led to the conclusion that, with a few reservations, it is possible to qualify e-sport as a sport. Subsequently, the focus was on the legal aspects concerning the possibility for municipalities to establish and finance prizes and awards for e-sports players. The problem concerning the understanding of competition under the Sports Act was resolved, and it was pointed out that e-sports players, despite the lack of a Polish e-sports association, can participate in sports competitions under the Sports Act. In addition, the problematic premise concerning the importance of a given sport for a local authority has been clarified. The final considerations in this area have allowed *de lege ferenda* postulates to be formulated.

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\* LL.M., attorney at law, assistant at the Department of Administrative Law, Faculty of Law and Economics, Kazimierz Wielki University in Bydgoszcz (Poland), e-mail: pk@ukw.edu.pl, ORCID: 0000-0003-4808-8577



The analysis is based on legal norms and statements of doctrine and jurisprudence. The article contains considerations concerning the normative and dogmatic sphere as well as the sphere of law application by administrative courts. The research has a national character. In this article, the dogmatic-legal method has been applied, consisting of the analysis of legal regulations on the establishment and financing of awards and prizes for players of electronic sports.

The subject matter discussed is divided into several main editorial units. The different parts correspond to the main outline of the problem and its relation to important scientific and practical issues.

Keywords: e-sports, sports awards and prizes, sports performance, sports competition, e-sports player

## INTRODUCTION

Electronic sport, also referred to as 'e-sport', is undoubtedly a phenomenon of our times, particularly popular among young people. Practically every year, in every major city in Poland, more or less professional tournaments in this field involve players and, above all, fans from local communities. In Poland, the most famous rivalry occurs in Katowice, under the name of Intel Extreme Masters, where the sum of prizes in recent years has exceeded USD 1 million per year.<sup>1</sup> It is worth mentioning that, in 2022, it was estimated that, globally, the e-sports industry generated between USD 1.8 billion and USD 3.2 billion in profit,<sup>2</sup> some of which went to professional players and coaches.

The growing public interest in e-sports has led to the planned inclusion of e-sports games in the Summer Olympics, scheduled to be held in Paris in 2024.<sup>3</sup>

Despite the fact that e-sport has become an important part of social life nowadays, it has not yet been comprehensively regulated or even legally defined in Polish law (unlike in South Korea<sup>4</sup> or France<sup>5</sup>). This state of affairs implies a number of legal problems, particularly regarding the permissibility of financing e-sports from public funds, including those at the disposal of local government units.

The only regulation relating to the subject matter of this article is the Sports Act of 25 June 2010<sup>6</sup> (hereinafter also referred to as 'the Sports Act'), particularly as amended following entry into force of the Act of 20 July 2017 amending the Sports

<sup>1</sup> <https://intelextrememasters.com> [accessed on 5 December 2022].

<sup>2</sup> <https://www.pb.pl/ile-jest-wart-obecnie-polski-rynek-esportu-1104979> [accessed on 5 December 2022].

<sup>3</sup> <https://conowego.pl/testy-i-recenzje/na-igrzyskach-olimpijskich-moze-zobaczmy-e-sport-ale-bez-brutalnych-gier-23802> [accessed on 7 January 2023]; <https://www.polsatsport.pl/wiadomosc/2017-08-09/paryz-chce-esportu-na-igrzyskach-olimpijskich-w-2024-roku/> [accessed on 7 January 2023].

<sup>4</sup> More on this topic, see Sosnowski, W., 'Prawne i organizacyjne uwarunkowania rozwoju e-sportu w Republice Korei (Korei Południowej)', in: Klimczyk, Ł., Leciak, M. (eds), *E-sport. Aspekty prawne*, Warszawa, 2020, pp. 15–30; Grzybczyk, K., 'E-sport w Korei Południowej', in: Grzybczyk, K. (ed.), *E-sport. Prawne aspekty*, Warszawa, 2021, pp. 296–320.

<sup>5</sup> Kunc-Urbańczyk, K., 'Analiza prawna regulacji e-sportowych we Francji', in: Grzybczyk, K. (ed.), *E-sport. Prawne aspekty*, Warszawa, 2021, p. 321 et seq.

<sup>6</sup> That is Journal of Laws of 2022, item 1599, as amended.

Act and the Act on the disclosure of information on documents of state security organs from 1944–1990 and the content of such documents.<sup>7</sup> As a result of this amendment, the following paragraph 1a was added to Article 2: ‘1a. Competition based on intellectual activity, aimed at achieving a sporting result, shall also be regarded as sport’, which became the basis for legal considerations about the possibility of qualifying e-sport as a sport under this Act, and consequently, about the possibility of funding e-sport from public funds.

## LEGAL CLASSIFICATION OF E-SPORTS AS A SPORT WITHIN THE MEANING OF ART. 2(1A) OF THE SPORTS ACT

As we begin our discussion of sport, it should be mentioned that the etymology of the word ‘sport’ derives from the Latin word ‘disporto’, which can be translated as ‘outside the gate’ (‘porta’ – ‘gate’, ‘dis’ – ‘outside’), used to describe games organised for city dwellers outside the walls.<sup>8</sup> In Poland, the word ‘sport’ was first documented in 1856 by the Polish prose writer, poet and publicist Konstanty Gaszyński in the one-act comedy ‘Horse Racing in Warsaw’.<sup>9</sup> The literature indicates that sport is a conscious human activity consisting of the following elements<sup>10</sup>:

- (1) individual or team competition (sometimes with the participation of animals) in overcoming time, space, natural or artificial obstacles and an opponent (these elements may occur together or separately);
- (2) improvement of physical qualities as well as mental strength;
- (3) voluntary participation;
- (4) subordination of participants to the rules of the game;
- (5) no direct non-sporting objectives.

Sport as a legal term has seen a definition, which can be found in Article 2(1) of the Sports Act, where it is defined that sport is any form of physical activity which, through *ad hoc* or organised participation, influences the development or improvement of physical and mental fitness, the development of social relations or the achievement of sporting results at any level. Competition based on intellectual activity with the aim of achieving a sporting result is also regarded as sport (Article 2(1a) of the Sports Act). Furthermore, sport, together with physical education and physical rehabilitation, makes up physical culture. The above legal definition, as seen from the explanatory memorandum to the draft Sports Act of 28 August 2009,<sup>11</sup> takes as its starting point the definition of sport established by the Council of Europe and used by the European Commission in formulating the European Union’s policy in this area in the White Book on Sport, according to which

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<sup>7</sup> Journal of Laws item. 1600.

<sup>8</sup> Fundowicz, S., *Prawo sportowe*, Warszawa, 2013, p. 15.

<sup>9</sup> Kazimierzak, A., *Zarys pedagogiki sportu. Podręcznik dla studentów nauk o wychowaniu*, Łódź, 2019, p. 10.

<sup>10</sup> Lipoński, W., *Humanistyczna encyklopedia sportu*, Warszawa, 1987, p. 312.

<sup>11</sup> <https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/2313> [accessed on 7 January 2023].

'Sport means any form of physical activity which, through casual or organised participation, influences the development or improvement of physical and mental fitness, the development of social relations or the achievement of sporting results at any level.'<sup>12</sup>

It should be noted that until the amendment of the Sports Act of 20 July 2017, only physical activity was considered as sport, while mental activity was omitted. This approach was problematic, especially when one considers that a number of hitherto recognised intellectual sports had their own sports associations (e.g., the Polish Chess Federation or the Polish Association of Sports Bridge). Thus, the above-mentioned narrow treatment of sport was inadequate and should be assessed as erroneous; therefore, this amendment was essential to include intellectual competition within the framework of sport.

When considering the *ratio legis* of this amendment, it should be emphasised that the explanatory memorandum to the Act of 20 July 2017<sup>13</sup> indicates that

'the bill amending the Sports Act (...) expands the definition of sport to include intellectual activity. The current regulation focuses exclusively on physical activity. The inclusion of sports such as chess, checkers or sports bridge in this category may have been questionable until now.<sup>14</sup> The proposed amendment will clarify this issue. In addition, the extension of the definition of sport to include intellectual activity will allow the highly popular category of electronic sports (e-sports) to be included in the regulation.'<sup>15</sup>

With the above in mind, the legal possibility of e-sports qualifying as a sport may be fundamental to the admissibility of municipal funding for, among other things, awards and prizes for e-sports players.

Thus, the question arises – can e-sports be qualified as sport under the Sports Act?

In answering this question, it is first necessary to analyse whether e-sports meet the statutorily defined prerequisites expressed in Article 2(1a) of the Sports Act. This provision contains three elements that must occur cumulatively for an intellectual activity to qualify as a sport. These are:

- (1) competition,
- (2) the basis (of the competition) of the intellectual activity, and
- (3) the objective (of the competition based on intellectual activity), aimed at achieving a sporting result.

It is worth noting that the legislator does not explain any of the above-mentioned concepts within the Sports Act. Thus, there are no legal definitions of them, which would significantly facilitate the interpretation process. It is therefore necessary to consider the linguistic interpretation of the provision and decode the content based on the common meaning of the term in question. According to the colloquial understanding of the word 'competition', presented in the 'Great Dictionary of

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<sup>12</sup> Ibidem.

<sup>13</sup> Journal of Laws 2017, item. 1600.

<sup>14</sup> Badura, M., Basiński, H., Kałużny, G., Wojcieszak, M., 'Art. 2', in: Badura, M., Basiński, H., Kałużny, G., Wojcieszak, M. (eds), *Ustawa o sporcie. Komentarz*, Warszawa, Lex/el. 2011.

<sup>15</sup> <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1410> [accessed on 7 January 2023].

the Polish Language', competition is considered as 'striving to gain priority in something over another person or group of persons'.<sup>16</sup> In addition, for the purposes of interpreting this concept, one may consider using the legal definition of the term 'sports competition' found in the already repealed Act of 29 July 2005 on Qualified Sport.<sup>17</sup> Pursuant to Article 3(4) of that Act, 'sports competition is an individual or collective rivalry of persons, aiming at achieving results appropriate for a given sport discipline.'

The literature<sup>18</sup> indicates that the term 'competition' can be considered in two ways:

- (1) narrowly, i.e., competitions can only be organised by sports associations, having regard to Articles 7 and 13 of the Sports Act,
- (2) broadly, i.e., competitions may be organised by any entity that sets the rules of competition.

Based on a linguistic and systemic interpretation, one must conclude that it follows from Article 2(1a) in conjunction with Articles 7 and 13 of the Sports Act that competitions may be organised by any entity that establishes the rules of competition.

Furthermore, it should be noted that within the framework of a competition, which may be amateur or professional, in order for a given competition to be recognised as a sport, it must have established rules as its basis. In case of electronic sports, the rules of competition are drawn up by private law entities and, as emphasised in the literature, have the character of model contracts within the meaning of Articles 384-3854 of the Civil Code Act of 23 March 1964.<sup>19</sup>

In conclusion, by competition the author of this paper will consider individual or collective rivalry within the framework of predetermined rules, with the ultimate goal of achieving a specific result.

Another concept to be clarified is intellectual activity. According to the 'Great Dictionary of the Polish Language', 'activity' means 'undertaking activities of a certain kind and performing them most often in a lively, intensive manner', while 'intellectual' is related to the intellect, i.e., 'the entire mental capacity and knowledge of a person'. Thus, in the colloquial sense, intellectual activity is undertaking of activities of a certain type, related to the use of a person's mental faculties and knowledge. It is worth noting that within mental games, e.g., within a game of checkers or chess, some physical activity is also performed, in the form of, for example, moving pawns. However, the main activity will be the intellectual one, based on the player's well-thought-out moves within the framework of a chosen

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<sup>16</sup> <https://wsjp.pl/haslo/podglad/10570/wspolzawodnictwo> [accessed on 23 December 2022]; similarly in Sobol, E., *Słownik języka polskiego PWN*, Warszawa, 2007, p. 1173, it is explained that competition is 'the vying of several individuals or groups for priority in something, to gain something'.

<sup>17</sup> Journal of Laws No. 155, item. 1298, as amended; see also: Cajselski, W., 'Problemy prawne zatrudnienia w e-sporcie', in: Klimczyk, Ł., Leciak, M. (eds), *E-sport. Aspekty prawne*, Warszawa, 2020, p. 51.

<sup>18</sup> Biliński, M., *Sport elektroniczny. Charakter prawny*, Warszawa, 2021, p. 46.

<sup>19</sup> Słowik, S., 'Analiza regulaminów turniejów e-sportowych', in: Grzybczyk, K. (eds), *E-sport. Prawne aspekty*, Warszawa, 2021, p. 174 et seq.

strategy, while the physical one will be somewhat incidental. Similarly, the Voivodship Administrative Court in Warsaw (hereinafter: 'WSA in Warsaw') ruled in a judgment of 27 March 2019 that:

'It should also be borne in mind that a professional approach to playing chess, checkers, sports bridge as well as electronic sports requires participants to be physically active. In addition, games of chess, checkers, sports bridge and electronic sports develop reaction speed and strategic thinking. It should be assumed that not only physical activity, but also intellectual activity, can lead to a sporting result and, in addition, foster the strengthening of social bonds or self-esteem. This justifies extending the tax exemption also to winnings from e-sports competitions.'<sup>20</sup>

In summary – by basing (competition) on intellectual activity, the author of this thesis will consider competition related to undertaking activities within the framework of a chosen strategy, related to the use of a person's mental abilities and knowledge.

The last concept to be clarified is the goal (of competition), aimed at achieving a sporting result. An objective, according to the colloquial definition, is 'a result that one wants to achieve through some action',<sup>21</sup> while the result is 'that which has come about as a consequence of some action, event or process'.<sup>22</sup> That is to say, within the framework of this premise, the result intended to be achieved, which will be the achievement of a certain outcome of a given competition of athletes, will be relevant.

It is noteworthy that, when defining sport, the legislator used, within the framework of its last constructive premise, the notion of 'sporting result', which is a logical error when creating the provision (*idem per idem* error, i.e. 'the notion of sport is translated by means of a related and equally indefinite in terms of content notion of sporting results').<sup>23</sup> As emphasised in the literature – rightly, in the opinion of the author of this article – the last condition is superfluous, due to the fact that its meaning has already been consumed by the first premise, i.e. competition.<sup>24</sup>

On the sidelines of the premise defining sport and concerning the sporting result, the literature points out that achieving a significant result in e-sports competition is connected with significant financial gratifications (e.g., for winning a tournament)

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<sup>20</sup> Judgment of the Voivodship Administrative Court in Warsaw of 27 March 2019, III SA/Wa 1079/18, LEX No. 2691347.

<sup>21</sup> <https://wsjp.pl/haslo/podglad/26528/cel/4641329/dzialan> [accessed on 23 December 2022]; similarly in Dubisz, S., *Uniwersalny Słownik języka polskiego PWN. A-J*, Warszawa, 2008, p. 377, it is explained that a goal is 'what you are aiming for, what you are aiming at, what you want to achieve'.

<sup>22</sup> <https://wsjp.pl/haslo/podglad/3829/wynik/4817815/dzialan> [accessed on 23 December 2022]; similarly in Sobol, E., *Słownik języka polskiego PWN*, Warszawa, 2007, p. 1206, it is explained that a goal is 'what results from some activity, work, phenomenon'.

<sup>23</sup> This problem was highlighted in the legal opinion of 27 April 2017 on the government's draft act on amendments to the Act on Sports and the Act on Disclosure of Information on Documents of State Security Organs from 1944–1990 and the Content of Such Documents (Sejm print no. 1410), drawn up by the Bureau of Sejm Analyses, <https://www.sejm.gov.pl/sejm8.nsf/opinieBAS.xsp?nr=1410> [accessed on 27 December 2022]; see also: Badura, M. et al., 'Art. 2...', op. cit.

<sup>24</sup> Biliński, M., *Sport elektroniczny. Charakter prawny*, Warszawa, 2021, p. 50.

as well as the possibility of concluding contracts with professional e-sports teams or sponsorship agreements (e.g., with manufacturers of equipment for gamers).<sup>25</sup>

With the above in mind, if the statutory criteria are met, it will be possible to recognise e-sports as sports within the meaning of the Sports Act. However, it should be noted that the decisive factor in this respect will be the nature of the specific competition, and therefore not every e-sports competition will be a sport within the meaning of the Sports Act. What will be important, therefore, is for the competition to be based on specific rules known to the competitors, based on intellectual activity for the most part, and leading to the achievement of a set goal, which is the assumed result of the competition. For example, these criteria are met by competition in games such as Starcraft<sup>26</sup> or League of Legends,<sup>27</sup> where there are e-sports leagues, playing in a seasonal system, and competition in these games is based on the implementation of well-thought-out strategies.<sup>28</sup>

The above conclusion also seems to be accepted by court rulings. In the already quoted ruling of the WSA in Warsaw of 27 March 2019, the court emphasised in its reasoning: 'It is not the case that automatically all electronic games should be considered as sport. What is relevant here is the wording of the provision of Article 2(1a) of the Sports Act 2010 – competition based on intellectual activity, not competition in all types of electronic games, can be considered as sport.'<sup>29</sup>

In view of the foregoing argument, bearing in mind the rather general premises arising from the provision of Article 2(1a) of the Sports Act, one must conclude that e-sports should, in principle, be regarded as sports under the Act.

## AWARDS AND PRIZES FOR ELECTRONIC SPORTS PLAYERS

In the previous chapter it was explained that e-sports can be considered a sport under Polish legislation. It is therefore necessary to move on to the solution of the eponymous problem, namely – whether it is possible for municipalities to establish and finance prizes and awards for e-sports players under Article 31 of the Sports Act.

Article 31(1) of the Sports Act stipulates that prizes and awards may be established and financed by local authorities (including municipalities) for natural persons for sporting achievements (i.e., athletes). We can see that only natural persons may be the beneficiaries of prizes and awards for athletes. *A contrario*, legal persons,

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<sup>25</sup> Myrna, S., 'E-sport w świetle nowelizacji ustawy o sporcie', *Prawo mediów elektronicznych*, 2020, No. 1, p. 18.

<sup>26</sup> Kopańko, K., *Polski e-sport*, Kraków, 2021, pp. 70–90.

<sup>27</sup> Ludyga, M., 'Czy e-sport jest sportem?', in: Grzybczyk, K. (ed.), *E-sport. Prawne aspekty*, Warszawa, 2021, pp. 18–20; see also Kopańko, K., *Polski e-sport...*, op. cit., p. 390 et seq.

<sup>28</sup> See more on e-sports leagues in: Brzozowski, M., 'Organizacja e-sportowa', in: Grzybczyk, K. (ed.), *E-sport. Prawne aspekty*, Warszawa, 2021, p. 56 et seq.

<sup>29</sup> Judgment of the Voivodship Administrative Court in Warsaw of 27 March 2019, III SA/Wa 1079/18, LEX No. 2691347.



associations or sports clubs cannot receive these gratuities.<sup>30</sup> Therefore, in order to solve the problem posed, the author will strive to clarify the concept of an athlete.

In colloquial language, the concept of a competitor is often equated with the concept of an athlete, but it is not legitimate action to equate it, as the latter term has a broader meaning. As pointed out in the literature on the subject, the term 'sportsman' is not limited to an individual taking part in a competition, but means in general anyone practising sport.<sup>31</sup> It is futile to find in the current Polish legislation any explanation of the term 'athlete'. According to the explanatory memorandum to the draft Sports Act,

'the terms 'physical culture', 'sports competition', or 'sports club', 'national team' or 'athlete' have been abandoned, as the definitions so far have not always correctly and comprehensively described reality. Moreover, these concepts are commonly understood, while it is difficult to see the need to give them a different, special meaning from the perspective of the proposed law.<sup>32</sup>

For the sake of insight, however, the author will present the statutory definitions of a competitor that were previously applicable. Article 3(6) of the Physical Culture Act of 18 January 1996<sup>33</sup> provides that 'a competitor is a person practising a specific sport discipline.' The act further distinguished between professional players, who received a salary, and amateur players, who could only receive a stipend. Another sports regulation, i.e. Article 3(5) of the Qualified Sports Act of 29 July 2005,<sup>34</sup> specified that 'a competitor is a person practising a specific sport discipline and holding a competitor's licence entitling them to participate in sports competition.'

Although the Sports Act currently in force does not make a distinction between amateur and professional athletes, internal acts do, indicating that amateur athletes will be those athletes who do not have a contract with a sports club.<sup>35</sup>

With these considerations in mind, an e-sports competitor should be defined as a natural person taking part in e-sports competition (based on intellectual activity), either amateur or professional.

Further terms to be clarified are the terms 'prize' and 'award'. It is worth noting that the Sports Act also lacks a legal definition of these terms. The PWN Dictionary of the Polish Language (*Słownik języka polskiego PWN*) considers an award to be 'a diploma, decoration, money or valuable object, being a form of recognition or distinction for an achievement, victory in a competition, in a contest, etc.'<sup>36</sup> A distinction, on the other hand, is 'a prize in a competition, lower than the first

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<sup>30</sup> Kuczkowski, P., 'Stypendium sportowe dla zawodników ustanowione i finansowane przez gminy w orzecznictwie sądów administracyjnych – zagadnienia wybrane', *Roczniki Prawa i Administracji*, 2021, Issue 1, pp. 64–65.

<sup>31</sup> Fundowicz, S., *Prawo sportowe ...*, op. cit., p. 41.

<sup>32</sup> <https://orka.sejm.gov.pl/Druk6ka.nsf/wgdruku/2313> [accessed on 2 January 2023].

<sup>33</sup> That is Journal of Laws of 2007, No. 226, item 1675, as amended.

<sup>34</sup> Journal of Laws No. 155, item 1298.

<sup>35</sup> Biliński, M., 'Uczestnicy rynku sportowego', in: Leciak, M. (ed.), *Prawo sportowe*, Warszawa, 2018, p. 240.

<sup>36</sup> <https://sjp.pwn.pl/szukaj/nagroda.html> [accessed on 2 January 2023]; similarly in Sobol, E., *Słownik języka polskiego PWN*, Warszawa, 2005, p. 497, it is explained that a prize is



prizes.<sup>37</sup> From the aforementioned colloquial understanding of both terms, we can conclude that in terms of meaning they are very close to each other. In the dictionary definitions presented in this paper, a distinction is considered to be somewhat synonymous with a prize (a prize lower than the first prizes), albeit of lesser value. In doctrine, a sports award is defined as a unilateral, non-returnable monetary or in-kind benefit granted for the achievement of a specific sporting result.<sup>38</sup> Thus, an award may be a gratification expressed in money (monetary award), or expressed in things (prize in kind) for the achievement of a sporting result. For the definition of the term 'award', the already repealed Ordinance of the Minister of Sport of 22 September 2006<sup>39</sup> on Distinctions and Prizes for Athletes, where awards for athletes were defined as badges, cups and diplomas, is useful. The sports law literature indicates that a distinction is a type of consolation prize.<sup>40</sup>

Bearing in mind the above terminological findings, which will be relevant to the solution of the problem posed in this chapter, it is necessary to present the statutory regulations for the establishment and financing of awards and prizes for e-athletes by municipalities. Pursuant to Article 31(1) of the Sports Act, 'Local government units<sup>41</sup> may establish and finance periodic sports scholarships and prizes and awards to individuals for sports performance.' In addition, Article 31(3) of the Sports Act includes a specific authorisation to issue a normative act in the form of a resolution for the governing body (also a municipality), defining, inter alia, detailed principles, procedures for granting and withdrawing as well as types and amounts of prizes and distinctions, taking into account the importance of a given sport for that local government unit and the sports result achieved. An analysis of the aforementioned provisions leads to the conclusion that a municipality, as a local government unit (hereinafter also referred to as 'LGU'), may establish and finance prizes and distinctions for athletes who are natural persons and who achieve sporting results within a given sport which is important for that local government unit. The jurisprudence of the administrative courts<sup>42</sup> and the literature on the subject<sup>43</sup> state that a resolution issued pursuant to Article 31(3) of the Sports Act

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'a monetary sum, a diploma, a distinction, etc., which is a form of remuneration, recognition or distinction, for good results, achievements, victory in a competition, contest, etc.'

<sup>37</sup> <https://sjp.pwn.pl/szukaj/wyroznienie.html> [accessed on 2 January 2023]; similarly in Sobol, E., *Słownik języka polskiego PWN*, Warszawa, 2007, p. 1215, it is explained that an award is 'a reward for good performance in studies, work, sports, etc., lower than the first awards'.

<sup>38</sup> Tetlak, K., 'Finanse publiczne i podatki w sporcie', in: Leciak, M. (ed.), *Prawo...*, op. cit., pp. 257–258.

<sup>39</sup> Journal of Laws No. 181, item 1332.

<sup>40</sup> Badura, M., Basiński, H., Kałużny, G., Wojcieszak, M., 'Art. 31...', op. cit.

<sup>41</sup> Under Polish constitutional law, local government units include municipalities, districts and voivodships.

<sup>42</sup> It is an act of local law because it is of a general nature, being addressed to a circle of entities not specified by name, and abstract because it pertains to repeated factual situations; see more: Judgment of the Supreme Administrative Court of 22 March 2022, II GSK 1357/20, LEX No. 3325849.

<sup>43</sup> Kuczowski, P., 'Głosa aprobująca do wyroku Naczelnego Sądu Administracyjnego z dnia 1 grudnia 2017 r. Sygn. akt II GSK 282/16', *Roczniki Prawa i Administracji*, 2021, Issue 4, p. 289.

is an act of local law,<sup>44</sup> which has significant consequences in the event that this normative act is declared invalid (with *ex tunc* effect) by supervisory bodies or the provincial administrative court.<sup>45</sup> In addition, the provisions of the Act of 27 August 2009 on Public Finances<sup>46</sup> state that public expenditures should primarily be made in accordance with the provisions on particular types of expenditures and in an expedient manner. This indicates that there needs to be a legal basis for making the expenditure, for example norms of a material legal nature, contained in acts of both generally binding and internal law.<sup>47</sup> Purposefulness, in turn, means that the expenditure must be incurred as necessary for the performance of a public task.<sup>48</sup>

It is therefore essential for the LGU to correctly draft the resolution in formal and substantive terms, within the limits of statutory authority.<sup>49</sup> The present work may be helpful in this respect and provide not only a theoretical, but also a practical solution to a problem, which – in the case of prizes and awards for e-sports players – has not yet seen any publication.

Turning to the solution of the eponymous issue, it should be emphasised that Article 31(1) of the Sports Act indicates that prizes and awards may be granted to natural persons for their sports performance. Firstly, it follows from this provision, as already mentioned above, that both athletes with amateur status and athletes with professional status (awarding prizes to natural persons without specifying the status of an athlete) can be included in the scope. Secondly, the athletes must have achieved a specific sporting result, as determined by the LGU. The concept of sporting result has not been clarified by the legislator and, as is clear from the colloquial understanding of this concept presented in this thesis, a result is 'what has come about as a result of some action, event or process'.<sup>50</sup> Thus, a sporting result will be the result of a specific action of an e-sports player in competition. It is the municipality, within the framework of an important discretionary power, that has the prerogative to determine the sports result that will entitle the athlete to receive either a prize or an award. E.J. Krzeński, states that it is not necessary for the sporting results to be outstanding or high in any way.<sup>51</sup> Such a view is most

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<sup>44</sup> The prerequisites for a resolution to be considered an act of local law are set out, *inter alia*, in: Chmaj, M., Herc, G., 'Akty prawa miejscowego organów samorządu terytorialnego oraz procedura uchwałodawcza', in: Chmaj, M. (ed.), *Ustrój samorządu terytorialnego w Polsce*, Warszawa, 2005, p. 186; Bułajewski, S., 'Rada gminy jako organ stanowiący', in: Chmaj, M. (ed.), *Status prawny rady gminy*, Warszawa, 2012, pp. 88–124, see more in: Dąbek, D., *Prawo miejscowe*, Warszawa, 2020, pp. 85–103.

<sup>45</sup> Chmielnicki, P., *Akty nadzoru nad działalnością samorządu terytorialnego w Polsce*, Warszawa, 2006, pp. 212–22.

<sup>46</sup> Journal of Laws of 2022, item 1634, as amended.

<sup>47</sup> Cilak, M., 'Art. 44', in: Ofiarski, Z. (ed.), *Ustawa o finansach publicznych. Komentarz*, LEX/el. 2021.

<sup>48</sup> Kleszczewski, K., 'Art. 44', in: Dzwonkowski, H., Gołębiowski, G. (eds), *Ustawa o finansach publicznych. Komentarz prawno-finansowy*, Warszawa, 2014, LEX/el. 2021.

<sup>49</sup> Kaczor, J., 'Delegacje ustawowe do stanowienia aktów prawa miejscowego w zakresie finansowania sportu', in: Babczuk, A., Talik, A., *Finasowanie sportu ze środków publicznych*, Warszawa, 2014, pp. 99–104.

<sup>50</sup> <https://wsjp.pl/haslo/podglad/3829/wynik/4817815/dzialan> [accessed on 23 December 2022].

<sup>51</sup> Krzeński, E.J., *Ustawa o sporcie. Komentarz*, Warszawa, 2020, Article 31.

legitimate if one takes into account the criterion of the result necessary for a coach to receive an award. Pursuant to Article 31(2) of the Sports Act, awards may be established and financed for coaches who provide training to athletes achieving high sporting results in international sports competition or national sports competition. Thus, in this case, the legislator has specified that these must be high results, and for that within the framework of international sport competition or national sport competition.<sup>52</sup>

What is of significance in the present work, is that under Article 7(1) of the Sports Act, 'In order to organise and conduct competition in a given sport, a Polish Sports Association may be established', and under Article 13(1) of the Sports Act, the Polish Sports Association has the exclusive right to organise and conduct sports competition for the title of Polish Champion and Polish Cup in a given sport (paragraph 1). At this point the question should be asked – since there is currently no Polish e-sports Association, is it possible for an e-sports competitor to achieve a sporting result (within the framework of a competition)?

A linguistic interpretation of the provision of Article 7(1) of the Sports Act leads to the conclusion that the legislator has granted, inter alia, the Polish Sports Association (*Polski Związek Sportowy*, hereinafter 'Polish Sports Association' or 'PSA') the right to organise and conduct the competition, however, it does not follow from this provision that the association is exclusively authorised in this respect. The line of reasoning according to which the Polish Sports Association does not have the exclusive right to organise and conduct the competition is endorsed by W. Cajselski, who points out that in view of 'the use of the term "may" by the legislator, it follows that a situation in which competition in a given sport is conducted by an entity other than a Polish Sports Association is permissible'.<sup>53</sup> B. Uliasz, emphasises that the PSA has the exclusive right to organise and conduct competition for only two titles indicated in the Act, therefore in the remaining competitions competition may also be organised by other entities and PSA has no power to object.<sup>54</sup> A similar opinion is expressed by S. Fundowicz, who emphasises that the Polish Sports Association is not the only entity which is authorised to organise and conduct competition within a given discipline, but such entities may also include other entities and natural persons.<sup>55</sup> This view is also confirmed by the result of applying the inference *a contrario* from Article 13(1) of the Sports Act. Since, pursuant to Article 13(1), the Polish Sports Association has the exclusive right to organise and conduct sports competition for the title of Champion of Poland and for the Polish Cup, other types of competition may be conducted by other entities.

Taking the above into account, in the opinion of the author of the article, since it is not only the Polish Sports Association that is authorised to organise and

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<sup>52</sup> Incidentally, it should be noted that there is no valid argument for such a distinction, as the same criteria should be set by the legislator for both athletes and their coaches in order to motivate both to achieve significant results.

<sup>53</sup> Cajselski, W., *Ustawa o sporcie. Komentarz*, Lex/el. 2011, Article 7.

<sup>54</sup> Uliasz, B., *Wykonywanie i organizowanie sportu w Polsce. Studium administracyjno-prawne*, Toruń, 2019, p. 97.

<sup>55</sup> Fundowicz, S., *Prawo sportowe...*, op. cit., p. 76.

conduct sports competition, it is necessary to conclude that within the framework of e-sport, natural or legal persons, including e.g., producers of computer games, may be an entity authorised to organise sports competition (except for organising and conducting sports competition for the title of Champion of Poland and for the Cup of Poland).<sup>56</sup>

Pursuant to Article 31(3) of the Sports Act, when issuing a local act concerning the establishment of prizes and awards for individuals, the municipal council must take into account, in addition to the sporting result achieved by those individuals, the importance of the sport in question for that local government unit. Unfortunately, also in this case, the legislator has not clarified how this concept is to be decoded. In the colloquial sense, to 'have significance' is to have value, to be important to someone.<sup>57</sup> Undoubtedly, guidance provided in the case law of administrative courts will also be helpful in analysing this notion. In the judgment of the Provincial Administrative Court in Łódź of 11 July 2019, it was indicated that:

*'Thus, when determining the rules for awarding a scholarship [this also applies to prizes and awards – author's note], it is the duty of the authority first of all to determine the sports disciplines that are of significance for the given local self-government unit. Such disciplines could be, for example, disciplines with a well-established local or supra-local tradition, popular among the residents, which would obviously be part of the fulfilment of the authority's own task of creating conditions conducive to the development of sport.'*<sup>58</sup>

However, a more liberal view is also noticeable in the case law, pointing out that the international rank or prestige of a discipline is as acceptable premise as a local or supra-local tradition in practising sport.<sup>59</sup> An analysis of the court rulings leads to the conclusion that the constituting authority has considerable freedom to define the sports which are important for a given LGU. Thus, it may do so by indicating specific sports in the resolution or by indicating other criteria which will make it possible to determine the scope of the designation of 'a given sport', e.g., winter sports or athletics.<sup>60</sup> In addition, the case-law considers that, in accordance with the guidelines under Article 31(3) of the Sports Act, it cannot be sufficient to

<sup>56</sup> The opposite view is presented by Derlecki, P., 'Dopuszczalność finansowania przez jednostki samorządu terytorialnego stypendiów sportowych przeznaczonych dla zawodników sportów elektronicznych', *Przegląd prawa publicznego*, 2021, No. 12, pp. 112–113.

<sup>57</sup> <https://sjp.pwn.pl/szukaj/znaczenie.html> [accessed on 23 December 2022].

<sup>58</sup> Judgment of the Voivodship Administrative Court in Łódź, 11 July 2019, II SA/Łd 375/19, LEX No. 2703695; likewise: Judgment of the Voivodship Administrative Court in Gdańsk, 6 April 2017, III SA/Gd 89/17, LEX No. 2274654 'When establishing the principles for awarding scholarships, the authority is therefore obliged, in the first instance, to identify the sports that are significant for the given local government unit. Such disciplines may be those with well-established local or supra-local traditions, popular with the local population, which – for obvious reasons – would be part of the local government's own task of creating conditions conducive to the development of sport (Art. 27(1) of the Act). It was also the intention of the legislator (Article 31(3) of the Act) to link the amount of the benefit granted to the importance of the sport in question for the specific local government unit.'

<sup>59</sup> Judgment of the Supreme Administrative Court in Warsaw, 19 March 2019, I OSK 1222/17, LEX No. 2699310.

<sup>60</sup> Judgment of the Voivodship Administrative Court in Olsztyn, 30 June 2022, II SA/OI 340/22, LEX No. 3365890.

define in too general terms the sports which are of significance for the community, e.g., sports included in the programme of the Olympic or Paralympic Games.<sup>61</sup> Significantly, justifications to the judgments further emphasise that 'it is not the task of the administrative court to penetrate and verify why the municipality considered certain sports to be of significance to it (...).'<sup>62</sup>

Bearing in mind the above interpretative considerations regarding the phrase 'significance of a given sport' for a given LGU, including the attitude of the administrative courts, one would have to conclude that, in the case of many municipalities, it would be legitimate to include e-sports as one which is of significance for the local community. Such a conclusion is justified by the fact that this is a type of sport which, firstly, is very popular especially among young people in the area, and has become even more important in light of the COVID-19 pandemic. Secondly, professional e-sports competitions have been organised for many years in many localities in Poland, e.g., Intel Extreme Masters in Katowice,<sup>63</sup> Games Clash Masters in Gdynia or Poznań Game Arena.<sup>64</sup> Thirdly, for several years now, e-sports competitions have been organised in many smaller towns and cities by public or private entities under the patronage of local governments. Fourthly, in many localities, through cyclical e-sports tournaments, this sport becomes important for the community of a given local authority. According to the author, the importance of e-sports for a given community can also be demonstrated by the fact that e-sports players reside in the municipality, who achieve successes in this field in the national or world arena, and thus promote both their local authority in the national arena and e-sports among their local society.

It is worth noting at this point that the first local government on the map of Poland has already appeared, namely the City of Sosnowiec, which adopted a resolution taking into account the results in e-sports competition and its importance for the local community, admittedly not in terms of awards and prizes, but periodic scholarships for players.<sup>65</sup> Importantly, the resolution in question was positively reviewed by the supervisory authority and was published in the official gazette of the Śląskie Voivodship.

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<sup>61</sup> Judgment of the Supreme Administrative Court in Warsaw, 5 April 2019, I OSK 1623/17, LEX No. 2714312.

<sup>62</sup> Judgment of the Supreme Administrative Court in Warsaw, 19 March 2019, I OSK 1222/17, LEX No. 2699310.

<sup>63</sup> <https://intelextrememasters.com> [accessed on 7 January 2022].

<sup>64</sup> <https://imbaseat.com/najwazniejsze-e-sportowe-wydarzenia-w-polsce/> [accessed on 7 January 2022].

<sup>65</sup> Resolution No. 550/XXX/2020 of the Sosnowiec Municipal Council of 27 August 2020 on the Establishment of Sports Scholarships of the City of Sosnowiec (Official Journal of the Silesian Voivodship of 2020, item 6483).

## CONCLUSION

The 21<sup>st</sup> century is undoubtedly a period of unprecedented development of modern information technologies. It is also referred to as the age of digitalisation or the age of the information society.<sup>66</sup> As a result, the concept of sport, which has been encoded in social thinking to date, is also undergoing significant transformations at a rapid pace. In view of these changes, it has become necessary for Polish law to include regulations concerning the phenomenon that is e-sport. A prelude to this process was undoubtedly the enactment of the Act of 20 July 2017 amending the Sports Act and the Act on the Disclosure of Information on Documents of State Security Organs from the Years 1944–1990 and the Content of Such Documents, which should be welcomed. The amendment mainly broadened the definition of sport to include intellectual competition, it is, however, due to the residual regulation of e-sports that legal controversies arise. One of these controversies, which the author of this publication has tried to resolve, is the issue of establishing and financing prizes and awards for e-sports players. The Public Finance Act stipulates that public expenditures should, first of all, be made in accordance with the provisions on particular types of expenditures and in an expedient manner. This means that local authorities, including municipalities, must be particularly careful when it comes to spending funds on prizes or awards for e-sports players. This is important in the context of the proper drafting of a resolution pursuant to Article 31(3) of the Sports Act, because if the resolution is annulled with *ex tunc* effect, the material and legal basis on which public funds were granted to the beneficiary falls away. It is worth noting in passing that at present there are about 2480 municipalities in Poland alone, which means that the issue for bodies applying the law is significant.

Within the framework of this study, the author has come to the conclusion that – making certain assumptions – e-sport can be classified as sport within the meaning of Article 2(1a) of the Sports Act. Thus, it will be a competition based on specific rules known to the players, largely reliant on intellectual activity and aimed at achieving a predetermined goal, which is the assumed result of the competition.

Moreover, the article explains that e-sports competitions may be organised and conducted not only by Polish Sports Associations (e-sports does not have such an association), but also by other entities, including natural or legal persons, as indicated by the interpretation of the provisions of Article 7(1) or Article 13(1) of the Sports Act. Therefore, e-sports athletes will be able to obtain a certain sporting result within the framework of the competitions referred to in Article 31 of the Sports Act as fulfilling the condition for the award or distinction.

This article proves that the importance of a given sport for the community as a premise for gratification will be considered by indicating e-sports in the resolution issued pursuant to Article 31(3) of the Sports Act, bearing in mind the popularity of e-sports among the local community, but also through the occurrence of periodic tournaments in a given area or the residence of e-sports players in the municipality

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<sup>66</sup> Krztoń, W., 'XXI wiek – wiekiem społeczeństwa informacyjnego', *Modern Management Review*, 2015, No. 3, p. 101 et seq.



who achieve success in this field on the national and/or world stage and thus promote this entity as well as e-sports among the public.

It must therefore be concluded that, despite the lack of a comprehensive e-sports regulation, it is possible for municipalities to establish and finance awards and prizes for e-sports players.

As a *de lege ferenda* conclusion, it is necessary to postulate the introduction of a regulation to the Polish legal system that would, above all, comprehensively address the issue of e-sports, bearing in mind its specificity and difference from traditional sport. Currently, due to the lack of a Polish e-sports association, e-sports organisations as well as players and coaches, cannot take advantage of some of the financial support regulated by the Sports Act (for example, the lack of support for coaches under Article 31(2) of the Sports Act).

The legislator, bearing in mind the problematic nature of this article, should establish, among other things, an unambiguous legal definition of e-sport as well as clarify the understanding of the notion of 'the importance of a given sport for this local government unit', so that there is no controversy over the meaning of these terms, which are of fundamental importance for e-sport financing (even administrative courts encounter problems in this regard in practice).

The last demand is that in the proposed comprehensive e-sports law the criteria for the establishment and financing of awards currently set out in Article 31(1) of the Sports Act for e-sports players should be equated with the criteria for awards for coaches set out in Article 31(2) of the Sports Act, due to the lack of compelling arguments for maintaining dissimilarity in this respect. The same award conditions would motivate both of them to achieve sports results that are significant for the respective LGU.

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