

SPORTS, TECHNOLOGY AND LAW: THE RIGHT TO DATA PROTECTION IN THE FACE OF FACIAL RECOGNITION IN BRAZILIAN STADIUMS

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Abstract: The use of facial recognition in Brazilian stadiums has become mandatory due to provisions in the General Sports Law. Furthermore, the Safe Stadium Project was created, which utilizes technologies to make the sports arena safer. Given this, legal and social discussions arise regarding the impacts of collecting personal data. In this sense, the role of the ANPD is extremely important for guaranteeing the right to data protection in Brazilian stadiums.

Key words: biometric, data, stadium, protection, right

INTRODUCTION

The 21st century is marked by numerous technological advancements and the emergence of previously unseen possibilities, such as nanorobotics and artificial intelligence. Faced with these scenarios, the Law must adapt and seek to meet the emergence of new human needs and new rights. In this context, a new right that has emerged as a result of the digitalization of aspects of life is the right to data protection. In response to this new issue, the Brazilian legislature has drafted laws to protect this new right. Among the national legislations that address the topic is the Marco Civil da Internet (Brazilian Internet Bill of Rights), a set of regulations that established the protection of personal data as the foundation for regulating internet use in Brazil (BRASIL, 2014). Furthermore, the Lei Geral de Proteção de Dados (Brazilian General Data Protection Law) was subsequently enacted, which regulates the processing of personal data by legal entities and individuals and introduced important concepts such as data subject, controller, processor, and sensitive personal data into the national legal system. In addition, with Constitutional Amendment 115, the right to data protection was included in the list of fundamental rights and guarantees present in Article 5 of the Constitution. In view of this, fundamental rights in their classic formulation emerged as limitations on state power in its relationship with its citizens (FERNANDES, 2024). However, with the emergence of new legal paradigms, the possibility arose for the effectiveness of fundamental rights to affect not only a vertical relationship, between the individual and the State, but also to have horizontal effectiveness and reach legal relations between private individuals. Regarding this, there are two theses on the presence of fundamental rights in private relations. According to the first view, the effectiveness would be indirect and mediate. In this sense, sub-constitutional norms are interpreted in

accordance with the Constitution (FERNANDES, 2024). On the other hand, according to the second current, the effectiveness of fundamental rights in private relations would be direct and immediate (FERNANDES, 2024). Regarding this topic, in Brazil, there is no theoretical foundation, according to the jurisprudence of the Supreme Federal Court, on the application of fundamental rights in legal relations between private individuals; however, the Court has been applying them directly in the judgment of cases (FERNANDES, 2024). As examples of cases, it is possible to cite RE No. 158.215 from Rio Grande do Sul, in which the right to due process of law in the exclusion of a member of a cooperative was discussed; RE No. 161.243 from the Federal District, in which the constitutional right to equality of a Brazilian worker before a foreign company was discussed; and RE No. 201.819 from Rio de Janeiro, whose object of discussion was the exclusion of a member of the Brazilian Union of Composers without ensuring due process of law, the right to a fair hearing, and the right to a full defense. Thus, it can be inferred that the fundamental right to data protection should be applied to legal relationships, whether vertical or horizontal, which includes legal relationships in the sports field. In this sense, the General Sports Law, in its article 148, determines that the control and supervision of access to arenas with a capacity greater than 20,000 (twenty thousand) people must be carried out through image monitoring of turnstiles with biometric identification of spectators and must have a technical information center with sufficient infrastructure for image monitoring of the public and biometric registration of spectators (BRASIL, 2023). Given this, discussions arise regarding the security of biometric data, which, according to the General Data Protection Law, are considered sensitive data, and such personal data may only be processed in cases provided for in article 11 of this law, in an exhaustive list. Furthermore, in



2023, the Safe Stadium Project was created, consisting of a cooperation agreement signed by the Ministries of Sport, Justice and Public Security, and the Brazilian Football Confederation, whose objective is to increase the security of Brazilian stadiums through technology, which also raises issues related to the right to data protection of fans. Given this scenario, the National Data Protection Agency (ANPD) plays a leading role in overseeing and guaranteeing the right to data protection in Brazilian stadiums. Therefore, this work aims to analyze the right to data protection of spectators at sporting events in Brazilian stadiums in light of the implementation of facial recognition, its legal and social impacts, and the role of the ANPD in ensuring compliance with the General Data Protection Law.

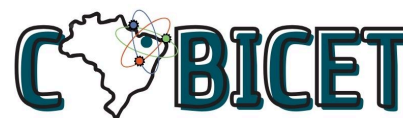
MATERIAL AND METHODS

To this end, the methodology to be used is bibliographic and documentary research, a dialogue between the General Data Protection Law and the General Sports Law, and analysis of practical cases.

RESULTS AND DISCUSSION

According to paragraph 1 of article 142 of the General Sports Law, the spectator of a sporting event is considered a consumer (BRAZIL, 2023). In view of this, it can be inferred that, since the legal relationship between the spectator and the organizations is a consumer relationship, the General Sports Law and the Consumer Protection Code are applied jointly, given that the former was enacted to complement consumer protection and therefore must be applied simultaneously with this legislation (SALES, 2023). Regarding this, a study was conducted by the Social Observatory of Football at the State University of Rio de Janeiro, carried out with O Panóptico, a project of the Center for Studies on Security and Citizenship, which points out that facial recognition of adolescents may violate the Statute of the Child and Adolescent and the General Data Protection Law. According to this work, there are gaps in how personal data such as facial images are collected and used, specifically in cases where the data subject has not reached the legal age of majority. Furthermore, among the weaknesses described in the report are the exposure of data to access by unauthorized persons, risks of leaks, and the use of information for commercial purposes. According to the authors, the law does not regulate how the processing, storage, and collection of this data should be carried out. In Brazil, responsibility for the safety of those attending stadiums is joint and several, meaning there is no analysis of elements of guilt or intent. It is therefore clear that the use of facial

recognition in stadiums should address the need to guarantee security, given that this is a right of spectators. On the other hand, however, biometric identification equipment is not error-free and confusion between individuals can occur. Regarding this, according to the study "A Rio of Cameras with selective eyes: the use of facial recognition by the Rio de Janeiro State Police," conducted by O Panóptico in the vicinity of the Maracanã stadium in 2019, 7 out of 11 people detained by the Rio de Janeiro Military Police did not have arrest warrants in their names. Thus, it can be inferred that the use of facial recognition can bring benefits such as faster entry for spectators, possible identification of individuals with outstanding arrest warrants, and prevention of ticket scalping. However, there may be other effects such as data leaks, unauthorized access, inappropriate handling of data from adolescents, and wrongfully detained individuals. In 2023, a cooperation agreement was signed between the Ministry of Justice and Public Security, the Ministry of Sports, and the Brazilian Football Confederation, called the Safe Stadium Project. The objective of this project is to establish public security policies in stadiums and arenas to make the environment for playing football safer and more welcoming for attendees. Among the measures are data cross-referencing to increase security, prevent ticket scalping, discrimination, violence, and match-fixing. Furthermore, tickets with the individual's CPF (Brazilian taxpayer ID) number allow for database searches to detect outstanding arrest warrants; moreover, stadium bans will be more easily enforced. In addition, facial recognition technology is among the technologies used. It can be inferred, therefore, that the implementation of this work has social and legal implications, given that it involves the collection, storage, and processing of sensitive personal data. Regarding this, according to the General Data Protection Law, the discipline of personal data protection is based on the inviolability of privacy, honor, and image, and the processing of personal data must follow good faith and observe the principle of purpose limitation, in which data processing must have legitimate interests, without the possibility of subsequent processing incompatible with that purpose, and the processing of public security data by private entities is prohibited, except in procedures under the supervision of public legal entities (BRAZIL, 2018). Therefore, data processing must follow a rigorous protocol. Although developed in conjunction with the Ministry of Justice and Public Security, the processing of spectators' personal data is the responsibility of the Sports Entity. Therefore, data processing must occur in accordance with Brazilian legislation, in a clear and transparent manner. Furthermore, it is also necessary that fans are aware that their data is being used in the Safe Stadium



Project and that Data Protection Impact Assessments are carried out. In addition, the data subject must be allowed to rectify and delete their data whenever convenient, and the contact information of the data protection officer must be provided so that the data subject can resolve any issues related to their personal information. Furthermore, their clear consent must be obtained at all stages of data processing. Finally, it is also important to have policies in place to prevent unauthorized access and data breaches.

CONCLUSION

The use of technology has become increasingly common and affects various areas of life, such as leisure and sports. In light of this, with the enactment of the General Sports Law, the use of facial recognition in Brazilian stadiums became mandatory. Among its objectives are making entry faster, curbing ticket scalping, ensuring greater security, and preventing the entry of people prohibited from attending stadiums and those with outstanding arrest warrants. In this sense, biometric data is considered sensitive under the General Data Protection Law, which raises discussions about the legal and social consequences of its processing. Furthermore, as stipulated in the General Sports Law, biometric registration is mandatory from the age of 16. Regarding this, the processing of data from individuals under 18 years of age is a violation of the Statute of the Child and Adolescent and the General Data Protection Law, given that the data subject is a person in development and cannot be expected to understand the consequences of the processing of their personal data. In addition, the use of facial recognition can have weaknesses such as unauthorized access, data leaks, lack of transparency about the processing, and confusion among individuals. Furthermore, with the creation of the Stadium Project, the use of technologies in stadiums and, consequently, data collection, began to be carried out in partnership with the Public Authorities for security purposes. Given this, other discussions also arise, such as the obligation to inform spectators that their data is being shared for this purpose. In this scenario, the role of the National Data Protection Agency (ANPD) is important in ensuring compliance with the General Data Protection Law (LGPD) and guaranteeing the right to data protection in Brazilian stadiums in the face of the implementation of facial recognition. To this end, technical notes were prepared on the use of facial recognition in stadiums and on the Secure Stadium Project; as a result, issues were found that need improvement, such as clarity and transparency in data processing.

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