THE OBJECTIVE, SOLIDARY AND DISCRIMINATORY LIABILITY OF CIVIL ORGANIZATIONS: *a partial analysis of the General Sports Law, through the prism of constitutionality control*

Luciano Rogério do Espírito Santo Abrão[1]

[1] Doutorando em Estudos da Linguagem pela Universidade Federal de Catalão - UFcat (2022); Master in Language Studies at the Federal University of Goiás - UFG/RC (2019); Master in Geography at the Federal University of Goiás - UFG/CAC (2011); Specialist in University Teaching at the Pontifical Catholic University of Goiás PUC-GO (1999) and Graduated in Law at the Higher Education Center of Catalão - CESUC (1992).

ABSTRACT

This research aims to conduct a discursive analysis of the General Sports Law - LGE (Brazil, 2023), through the theoretical-methodological framework of constitutionality and control. The objective is to substantiate hypotheses that, as will be delineated, demonstrate the material unconstitutionality of paragraphs 5 and 6 of article 178. This unconstitutionality stems from the establishment of a form of “Abstract Legislative Disregard for Legal Personality” that affects only one category of Civil Organizations, as well as an unequivocal (and notably atypical) Objective and Joint Liability for injuries resulting from unlawful acts perpetrated by its associates and/or managers.

Keywords: Partial unconstitutionality; sports law; objective civil liability; private organizations.

1- BRIEF INTRODUCTORY REMARKS

First of all, it is important to emphasize that the purpose of this research is to prove hypotheses that, in our view, result in the partial unconstitutionality of the General Sports Law - LGE, and that such affronts to the Magna Carta would tarnish the constitutional principles of Proportionality/Rationality/Reasonableness”, “Full Freedom of Association”, “Isonomy”, “Guarantee of State Non-Intervention”, “Constitutional Right of Assembly”, “Freedom of Manifestation of Thought” (right of expression and right of non-religious belief), “Right to Leisure”, “Cultural Rights” and “Constitutional Protection for manifestations of Popular Culture”.

With this in mind, we believe that, in order to follow an objective epistemological path, a few brief introductory remarks are necessary. Let’s take a look at them:

In the General Sports Law - LGE (Brazil, 2023) there are normative statements that establish, in the manner conjectured below, an exotic civil liability of a Private

Corresponding author: labrao@hotmail.com

Association (for acts foreign to its nature), its directors and members, caused by its associates, without their direct or indirect participation. Here they are:

> Art. 178. [...]
>
> [...]
>
> Paragraph 5 - **Organized supporters are civilly liable, objectively and jointly and severally**, for damage caused by any of their associates or members at the site of the sporting event, in its vicinity or on the way to and from the event.
>
> Paragraph 6 The duty to repair the damage, under the terms of paragraph 5 of this article, **is the responsibility of the organized supporters themselves and their leaders and members, who are jointly and severally liable, including with their own assets**.
>
> [...] (Brazil, 2023, **emphasis added**).

That said, we can see that the ordinary federal legislator has selected, from among the many Civil Organizations in national society, the Fans' Associations to inflict on them Objective and Joint Liability arising from unlawful acts committed by their members, as well as another legislative novelty, which, given its characteristics and for lack of a better name, we will call "Abstract Disregard of Legal Personality" by legislative authorization.

In this way, all other legally constituted Civil Organizations (except those of fans, of course), are in a privileged legislative condition, that is, unequally treated by the body of Brazilian legislation that regulates the creation, structuring and extinction of Civil Society Organizations. Thus, it should be repeated, only Fans' Associations, when compared to other Private Associations, are suffering such negative legislative discrimination.

In fact, this aspect of the federal regulatory text is so exotic that it refers to Fan Associations as depersonalized entities, using the wording: "**organized supporters**", exposing an institutional prejudice, especially when, as we will see below, it respectfully refers to other private Associations, establishing norms and isonomic treatment for sports Associations, national athletes' Associations, sports referees' Associations, Associations of sports management entities and even Associations of foreign coaches.

In this context, we will now consider the legal and constitutional grounds for our position, which is diametrically opposed to the constitutionality of these provisions contained in the so-called General Sports Law - LGE (Brazil, Law No. 14,597, of June 14, 2023).

2 THE CONSTITUTIONAL PRINCIPLES VIOLATED

2.1- THE REASONABLENESS/PROPORTIONALITY/RATIONALITY OF THE LAW

Despite the threefold designation of Reasonableness/Proportionality/Rationality, it is essential to note that, regardless of the choice of terminology, foreign constitutional jurisprudence varies between adopting the first (e.g. Great Britain), the second (e.g. the European Court of Justice) or the third (e.g. the Spanish Constitutional Court). In some countries, the principle of Reasonableness/Proportionality/Rationality is expressly written into the constitutional text (for example, in Portugal and Spain). [1]

In this complex context, there are theoretical and methodological differences in the sense that some consider the three terms to be synonymous, implicit and/or as elements that intersect or complement each other, as well as the need for the infra-constitutional legislator to balance between rational and reasonable in the law produced on the basis of the paradigm of the Democratic State of Law, the infra-constitutional legislator to balance between the rational and the reasonable, keeping proportion between the ends and the means that drive legislative public policies, without this transforming the judicial decision into an arena without constitutional limits, under the excuse of maintaining the constitutionality of infra-constitutional norms.

However, if, on the one hand, the Judiciary, in the light of the Constitution, cannot do everything, on the other hand, also by express provision of the Brazilian Magna Carta, the constitutional jurisdiction is obliged to protect the legal-constitutional system from attacks by ordinary legislators and the public administration that undermine the constitutional regime, principles and rules.[2]

In this way, “the principle of reasonableness has been used by the Federal Supreme Court as a general criterion against arbitrariness and administrative and legislative excesses, although there are various meanings for this arbitrariness and excess” (Sampaio, 2003, p. 82).

In fact, it is important to point out that reasonableness also sheds light on the subject in the case law of the Superior Court of Justice, since in a recent ruling, Justice

[1] See: SAMPAIO, José Adércio Leite. O Retorno Às Tradições: a razoabilidade como parâmetro constitucional. *In*: SAMPAIO, José Adércio Leite (org.). **Jurisdição constitucional e direitos fundamentais**. Belo Horizonte: Del Rey, 2003, p. 45-102.

[2] “[...] The Supreme Federal Court is primarily responsible for safeguarding the Constitution [...]” (Brasil, 1988, article 102, *caput*).

Marco Aurélio Bellizze, when he assures that, “[...] it would be unreasonable to extend patrimonial responsibility to a huge number of associates who had little influence on the practice of illicit associative acts [...][3]“, makes it clear that the principle of reasonableness is a safe North for the production/interpretation/application of Law in the Brazilian Constitutional State.

2.2- ISONOMY

In this respect, the objective and joint liability of fans’ associations, their directors and members, for unlawful acts committed in absentia by any of their members, as well as the extension of the responsibility to repair such damage to their directors and members who, for this purpose, respond with their own assets, is no longer legitimate in the Brazilian legal-constitutional system.

Another essential point lies in the fact that the practice of unlawful acts is prohibited by the statutes structuring the Fans’ Associations, which, before the LGE, like other Civil Society Organizations, would only be liable in a specific case, and even then if they had proven (direct or indirect) participation in the unlawful act carried out by their leaders and members. In fact, as already explained, until recently, there were not even any theses that extended the disregard of the legal entity to Private Associations.

Add to this the fact that they (the Fans’ Associations) are the only Civil Society Organizations affected by such legislative excess, and the fact that their members are the only kind of associates with reciprocal obligations, and we are faced with unconstitutional distinctions. Let’s see: “**Everyone is equal before the law**, without distinction of any kind, and Brazilians and foreigners residing in the country are guaranteed the inviolability of the right to life, liberty, **equality**, security and property [...]” (Brazil, 1988, article 5, caput, Federal Constitution).

In this sense, Article 7 of the Universal Declaration of Human Rights corroborates the Constitution: “Everyone is equal before the law and is entitled, without distinction, to equal protection of the law. Everyone has the right to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination” (United Nations, 1948).

[3] Special Appeal nº 1812929 - DF - 2019/0130084-7.

And since the international normative enunciations protecting human rights ratified by Brazil have the stature of constitutional rights and guarantees, the unconstitutionalities pointed out here take on more striking colors. Let's see: "The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party. **international treaties to which the Federative Republic of Brazil is a party**" (Brazil, 1988, article 5, paragraph 2, Federal Constitution, emphasis added).

Furthermore, the unconstitutionalities pointed out here are complex in that, like the UN Charter mentioned above, they are also generated by the effects of the integration of Brazilian constitutional normative enunciations at the level of domestic law, reaching infra-constitutional legislative enunciations established by the Civil Code in line with Constitutional Rights and Guarantees, since the LGE is creating reciprocal obligations between the members of a specific Association (that of Fans), even though the Civil Code is crystal clear when it establishes that there are no reciprocal rights and obligations between members.

In this sense, since the LGE establishes that damage caused by any of its members must be repaired, including by other members, even if they have no participation (direct or indirect) in the harmful act, it also inexorably violates the constitutional principle of equality, since these obligations do not affect members of other private associations.

In this respect, because the LGE deals with the structuring of sport in Brazil and the Civil Code deals with the legislative structuring of private associations in national law, the latter takes precedence over the former and, in the name of constitutional equality, should prevail. Let's see: "Art. 53. Associations are formed by the union of people who organize themselves for non-economic purposes. Sole paragraph. **There are no** reciprocal rights and **obligations between members**" (Brazil, 2002, emphasis added).

Thus, since Freedom of Association is a Constitutional Guarantee of human rights ("freedom of association for lawful purposes [...]", Article 5, XVII, Federal Constitution), when the Civil Code provides for the legislative structuring of private associations, its normative enunciations are regulating the Federal Constitution, and, as if that were not enough, specifically regulating part of the Magna Carta that deals with Fundamental Rights and Guarantees.

Furthermore, the General Sports Law (Lei Geral do Esporte - LGE) (Brazil, 2023), unlike the treatment given to Fan Associations, respects the Constitutional freedoms and rights of other Private Associations. A simple glance at the normative text is enough to see that the ordinary legislator was lavish with other existing associations in the context of Brazilian sport[4].

In this respect, the most striking paradigm is that of the Sports Associations, since this type of association includes the main Brazilian soccer clubs, whose legal nature is that of a private association, the same as the Fans' Associations, and despite the fact that they are the ones who promote the sporting events of the sport, profiting millions of reais from the right to broadcast the games, brand sponsorship, ticket sales, official club products, of souvenirs, drinks, food and the rental of boxes and advertising spaces, the General Sports Law (Lei Geral do Esporte - LGE) did not impose on them what we call the "Abstract Disregard of Legal Personality by legislative authorization", nor the Objective and Joint Liability for damages caused by any of their "associates or members at the site of the sporting event, in its vicinity or on the way to and from the event". (Brazil, 2023, excerpt from the LGE).

On the contrary, in the legislative production in question, the national ordinary legislator ignored the fact that organized supporters exist only because of soccer clubs. And, most exotic of all, it **extended consumer liability** (objective) to the entities that

[4] Let's look at some examples:

Art. 27. Sports organizations, regardless of their legal nature or form of structure, even if they are members of Sinesp, are autonomous regarding internal regulations to carry out self-regulation, self-government and self-administration, including with regard to the rules governing the practice of sports and competitions in the sports they govern or participate in, their internal structure and the way in which their leaders and members are chosen, as well as their association with other organizations or institutions, and they are guaranteed:
I - to establish, amend and interpret freely the rules appropriate to their sport, without political or economic influences;
III - to choose their managers democratically, without interference from the government or third parties;
IV - to obtain resources from public or other sources, without disproportionate obligations;
[...]
Art. 28. Sports organizations have freedom of association in the sports field, both internally and externally, and may choose the legal nature that best suits their specificities, regardless of the name adopted, the sporting modality or the form of promotion of the sport in which they are involved, as well as, in the case of a general sports organization, respecting fundamental rights and guarantees, decide the form and criteria for another organization to join it.
[...]
Art. 75. [...]
§ 4 Foreign coaches are permitted to practice the profession, provided that they prove to have a license from their national association of origin.
Art. 80. Sports referees are allowed to organize themselves in professional associations and unions. (Brazil, 2023, emphasis added).

promote sporting events (Confederations, Federations and Clubs), creating an inversion of responsibilities between Consumer and Supplier, since, at sporting events, fans (including members and leaders of Fans' Associations) fall under the definition of consumers, and Clubs, Confederations and Federations under that of suppliers. A fact that, of course, the General Sports Law itself recognizes.[5]

Another legislative inconsistency in the sports law, which highlights the non-isonomic and negatively discriminatory treatment reserved for fans' associations, their leaders and members, lies in the fact that, even when the text deals with the responsibility of the entities that organize and profit from sporting events, as well as the solidarity between them and their managers and the sports organizations competing in the competition and their managers, sums it up to the damage **caused to the spectator of the event**, and even then in the event of safety failures in the stadiums (fault) or failure to comply with the obligations expressly provided for in the Law (omission). Let's see:

> Art. 146. Spectators have the right to security at sporting events before, during and after the races or matches.
>
> [,,,]
>
> Art. 152. The regional sports organizations **directly responsible for holding the event or match**, **as well as their managers, will be jointly and severally liable with the sports organizations competing in the event or match and their managers**, regardless of fault, for damage caused to spectators as **a result of safety failures in stadiums or failure to comply with the provisions of this Chapter** (Brazil, 2023, emphasis added).

It is therefore clear that the obligation to provide security for the property and physical integrity of third parties at the venue of the sporting event and in its surroundings lies with the Federations, Confederations, Clubs and leaders of these institutions (suppliers), and not with the Fans' Association, their leaders and associates (consumers), who, in a clear affront to the Federal Constitution, were "granted" by

[5] Art. 142. Consumer relations in sporting events are specifically regulated by this Law, without prejudice to the application of general consumer protection standards.
§ 1 For the purposes of this Law and for the purposes of applying the provisions of Law No. 8,078 of September 11, 1990 (Consumer Protection Code), a consumer is considered to be a spectator of a sporting event, whether a fan or not, who has acquired the right to enter the venue where said event is held and who is supplied by the sports organization responsible for organizing the competition together with the sports organization holding the home field, if applicable, or, alternatively, the two competing sports organizations, as well as other natural or legal persons who hold the rights to hold the event or match. § 2º Sports organizations that manage and regulate sports at a national level are characterized as suppliers in relation to sporting events organized by them, even if the fulfillment of local material tasks relevant to them is the responsibility of third parties or other sports organizations (Brazil, 2023, our emphasis).

paragraphs 5 and 6 of article 178 of the General Sports Law (LGE), with the objective, joint and several and generic liability (Brazil, 2023).

However, *in concrete* terms, the damage done to the constitutional principle of equality can reach the point of legal absurdity. In this sense, let's return to the factual-hypothetical examples, and assume that two people (João and Maria) support, for example, Goiás Esporte Clube - GEC. Maria is a member of the club (a private association) and João is a member of the fans' association Força Jovem Goiás - FJG (another private association). Based on this scenario, let's imagine the following situation: on the day of a Goiás match in the Goiano soccer championship, Maria (without the direct or indirect participation of GEC) and João (without the direct or indirect participation of FJG) cause (in communion of wills) material damage to a commercial establishment located in the vicinity of the Serrinha Stadium in Goiânia.

In this case, depending on the General Sports Law, the private association that promoted and profited from the sporting event (Goiás Esporte Clube), because it was not involved in the harmful event caused by its member (Maria), will be exempt from liability. However, the other private association (Associação de Torcedores Força Jovem Goiás), its directors and other members, although they were not involved in the damaging event in question, could be held responsible for the damage caused by their member (José).

The paradoxical legal effects can be even more bizarre. Let's imagine that the material damage was caused by José, and that he is associated at the same time with the Football Club - GEC - and the Organized Fan Club - FJG - (again, two Civil Society Organizations, both of which have the legal nature of private associations).

In this situation, although José is a member of both the GEC and the FJG, the legal effects of the unlawful personal act committed by him (the material damage) will reach, regardless of fault, the Fans' Association, its directors and members, however, with regard to the same unlawful acts committed by José, civil liability will not reach the Sports Association (Football Club), its directors and members.

In this context, it is clear that other Civil Society Organizations, in a clear affront to the principle of constitutional isonomy, receive privileged treatment under the LGE. Even in its sole annex, which, when establishing the monthly base amount of the Athlete Allowance for the "national athlete" category, sets the amount according to criteria that depend on actions that reaffirm the autonomy of the national sports associations. Let's see:

> Athletes who have participated in the highest event of the national season or who are part of the national **ranking of** the sport officially published by the respective national organization of administration of the sport, having obtained, in both situations, up to third place, and who continue to train and participate in national competitions.
> Base Monthly Value of the Athletic Scholarship: R$ 925.00 (nine hundred and twenty-five reais).
> **The maximum events will be indicated by the respective** confederations or national **associations of** the sport (Brazil, 2023, emphasis added).

Another important reinforcement for our arguments lies in the fact that, in the event that these teratological legal provisions inscribed in paragraphs 5 and 6 of article 178 of the General Sports Law - LGE, which abstractly and generically affect Fans' Associations, their members and leaders, are allowed to prevail, by using the Constitutional principle of Isonomy **to the contrary**the federal Ordinary Legislator "will be authorized" to adopt identical measures with regard to other Private Associations in Brazilian civil society, the Associations of Teachers, Magistrates, Lawyers, Members of the Public Prosecutor's Office, Artists, of prospectors, gun collectors, shooters and hunters, rural producers, doctors, water slide testers, etc. In addition to the aforementioned Football Club Associations.

2.3- FULL FREEDOM OF ASSOCIATION: THE GUARANTEE OF STATE NON-INTERVENTION AND THE CONSTITUTIONAL RIGHT OF ASSEMBLY

In this way, as pointed out in general terms, these fragments of the General Sports Law violate the Constitutional Guarantees of Full Freedom of Association, the Guarantee of State Non-Intervention and the Constitutional Right of Assembly. The Constitutional text is clear when, in Article 5, it establishes that freedom of association for lawful purposes is full; that the creation of associations is independent of authorization; prohibits interference by public entities in their functioning and binds the suspension of their activities and/or their compulsory dissolution to due legal process (Brazil, 2023).[6]

[6] If we don't see:
Art. 5 All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, under the following terms: [...]
XVII - freedom of association for lawful purposes is complete, except for paramilitary associations; XVIII - the creation of associations and, in accordance with the law, cooperatives, do not require authorization, and state interference in their operation is prohibited;
XIX - associations may only be compulsorily dissolved or have their activities suspended by court order, requiring, in the first case, a final and binding decision;
XX - no one may be compelled to join or remain a member;

In these terms, as the aforementioned Universal Declaration of Human Rights, adopted and proclaimed by the United Nations General Assembly (resolution 217 A III) on December 10, 1948, and ratified by Brazil, also establishes, in its article 20, that everyone has the right to freedom of **peaceful** assembly and **association**, and that no one can be forced to join an association, the commitment of Brazilian law to Full Freedom of Association is twofold.

In fact, it is threefold, since Article 16.1 of the American Convention on Human Rights (Pact of San José de Costa Rica) regulates freedom of association in the following original wording: “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sporting or other purposes” (OAS - Organization of American States, 1969, STF, 2018).

However, paragraphs 5 and 6 of article 178 of the General Sports Law (Lei Geral do Esporte - LGE), in the world of life, actually promote interventions by the ordinary federal legislator in the way Fan Associations are organized and run, since by making them generically and abstractly liable in the civil sphere, for any unlawful acts that may be committed by their members at the site of the sporting event, in its vicinity or on the way to and from the event, it inhibits their leaders from convening meetings in sports venues (stadiums, gyms and the like) on the days and times of competitions (Brazil, 2023).

By the way, these meetings are the raison d’être of the Fans’ Associations, since, obviously, it is in them that the community that is part of them exercises the Constitutional Right of Assembly, since according to the Original Constituent Legislator, “everyone can meet peacefully, without weapons, in places open to the public, regardless of authorization, as long as they do not frustrate another meeting previously convened for the same place, and only prior notice to the competent authority is required (Brazil, 1988, article 5, XVI, Federal Constitution).

In this way, the interpretation/application of these provisions of the General Sports Law will need to undergo a threefold hermeneutic filter, because in addition to facing the sieve of the Federal Constitution (Constitutionality Control), they will have to be brought into harmony with the Universal Declaration of Human Rights and the American Convention on Human Rights - Pact of San José da Costa Rica

XXI - associative entities, when expressly authorized, have the legitimacy to represent their members judicially or extrajudicially; (Brazil, 1988, our emphasis)

(Conventionality Control)[7], due to the fact that “interpreting national laws in such a way that they do not conflict with international norms of protection [is] a means of avoiding non-compliance with those international obligations” (Cançado Trindade, 1989, p. 45).

In this context, the legal uncertainty and legislative intimidation introduced into the Brazilian infra-constitutional normative order by paragraphs 5 and 6 of article 178 of the General Sports Law - LGE (Brazil, 2023), are configured as obstacles imposed by the Brazilian state’s legislative activity on Fans’ Associations, their leaders and other members, since in addition to reducing the scope of the exercise of the Constitutional Guarantee of Freedom of Association, it hinders the realization of the main of its statutory objectives: to cheer, in an organized manner, for the Sports Institutions of their choice, in arenas, gyms and stadiums during sporting events.

2.4- FREEDOM OF EXPRESSION OF THOUGHT (RIGHT OF EXPRESSION AND RIGHT OF NON-RELIGIOUS BELIEF); THE RIGHT TO LEISURE, CULTURAL RIGHTS AND CONSTITUTIONAL PROTECTION FOR MANIFESTATIONS OF POPULAR CULTURE

In these steps, the unconstitutionalities increase when we add to the arguments on the subject, the Constitutional Principles of Freedom of Manifestation of Thought (right of expression and right of non-religious belief), the Right to Leisure, Cultural Rights and the Constitutional Protection of manifestations of national Popular Culture. Let’s see:

If these legislative obstacles come to fruition, they will have the real potential to intimidate and keep its leaders and members away from sporting events, for fear of being held civilly liable for unlawful acts carried out by other members, even if the unlawful practice is foreign to the association’s statutory objectives, unrelated to its will, without its direct or indirect participation, and will end up having a negative impact on the exercise of its sporting convictions in an organized manner (right of non-religious belief).

In this sense, such unconstitutionalities would exponentially diminish the power of pressure that fans exert on team managers to ensure that their opinions are taken

[7] In another research (not yet submitted for publication) we weighed the reflections of the topic in question from the perspective of Conventionality Control, under the title: Brazil's legislative obligations in the inter-American human rights system: reflections on the contemporary jurisprudential panorama in the Federal Supreme Court and the Inter-American Court of Human Rights.

into account in the political and administrative spaces of sports institutions. In soccer clubs, for example, fans are not allowed to express their dissatisfaction with managers, administrative and financial management, sports planning, etc. at board, council and president meetings.

Strictly speaking, in some clubs, the fans don't even have access to training sessions, in others only to specific training sessions, and even in training sessions that they can attend, the fans don't have the right to demonstrate because that space isn't suitable for complaints, protests and other demonstrations because it's a workplace for athletes and the sports professionals who advise them, and that, as such, requires a harmonious environment.

However, in soccer stadiums, before, during and after matches, fans have the right to demonstrate, make demands, boo, applaud and demand satisfaction from the "cartolas" [8], the coaching staff and the players. It turns out that when fans are organized, one person's voice becomes a collective voice, strong, audible, and cannot be ignored. Especially when they sing hymns and songs of support and encouragement, less so when they echo the collective feeling of administrative and/or sporting disapproval.

Another important point to highlight is the fact that in none of the main Brazilian soccer clubs do fans have the right to vote in elections for the presidency of the institution and/or its boards. In a small fraction, at most, a special category of "fans", the supporters, are granted the right to vote, even though in some cases the vote is not equal and is restricted to the position of president. However, only those members who pay higher monthly fees, provided they are strictly up to date with their financial obligations.

What's more, elections in the traditional mold, whatever they may be, are on their way to the museum of oblivion, since the concept of corporate clubs, previously disconnected and isolated in a few initiatives, has reached high levels with Federal Law No. 14,193, of August 6, 2021 (Brazil, 2021), which establishes the "Sociedade Anônima do Futebol" (SAF). In it, the Federal Ordinary Legislator established rules to regulate the constitution, governance, control and transparency, as well as the means of financing soccer activity and a specific tax regime for sports entities.

[8] Old popular expression used to designate people who are part of the board of a sports club, or a specific person who exerts influence over the main decisions in that institution.

In time: the legislator **did not use the word** "**fan**" in any of the provisions of the "SAF Law". It only appears once as a compositional complement to the word "supporter" in the Specific Football Taxation Regime (TEF), and even then, to include the money collected from this category of members (concealed in the condition of "fans") in the legal concept of provisional unified monthly taxable income[9].

In this context, the disrespect for fans promoted by clubs (their leaders and statutes), which is now reverberating in sports legislation in the terms conceived here, is at odds with another constitutional human rights guarantee, the Freedom of Manifestation of Thought, expressly provided for in the 1988 Constitutional Text (Brazil, article 5, IV and VI) , which ensures that "[....] free expression of thought" [right of expression], and "[...] inviolable freedom of conscience and belief [right of non-religious belief]".

In the same provision[10], the Constitution establishes Freedom of Religion (for us, the Constitutional Guarantee of Freedom of Belief of a religious nature). However, as this research obviously does not cover the horizons of religious faith, we will focus on its non-religious perspective, which we call the Constitutional Guarantee of Freedom of Belief of a non-religious nature.

Thus, as we have seen, in this research we conceive of freedom of belief from two perspectives: **religious** and **non-religious**. The second, in addition to religiosities, is made up of belief systems that are socially established through social practices rooted outside the religious sphere, but which, like the latter, are founded on conceptions and values that challenge materialist rationality. For us, this is the case of the phenomenon we call: **socio-sporting belief**[11].

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[9] Let's see:
Art. 32. In the first 5 (five) calendar years of the incorporation of the Football Corporation, it will be subject to the monthly and unified payment of the taxes referred to in § 1º of art. 31 of this Law, at a rate of 5% (five percent) of the monthly revenues received. § 1º For the purposes of the provisions of the caput of this article, monthly revenue is considered to be the totality of the revenues received by the Football Corporation, including those related to prizes and fan membership programs, except those related to the transfer of athletes' sports rights (Brazil, 2021, our emphasis).

[10] Art. 5º [...] VI - freedom of conscience and belief is inviolable, ensuring the free exercise of religious worship and guaranteeing, in accordance with the law, the protection of places of worship and their liturgies;

[11] However, we cannot deny that the deification of sports idols can reach religious boundaries. This is the case of the Maradonian Church. Founded in Rosario, Argentina, it has temples in other countries. In it, Diego Armando Maradona is considered a God, and its calendar is unique and divided into two eras (AD - Before Diego and AD - After Diego). The church celebrates baptisms, weddings, masses and other ecclesiastical acts. The Ten Commandments and the text of the Lord's Prayer are also adapted in honor of Diego. Let's look at part of a newspaper article published contemporary to the death of the Argentine football player: "The Maradonian Church was founded on October 30, 1998 in the city of

Thus, when people join together to cheer on the sports teams of their choice, they choose to spread their sporting ideals in an organized way, especially in sports venues at events that undoubtedly enhance the externalization of their beliefs in the social sphere of sport.

On another front, Freedom of Expression of Thought is strengthened by the American Convention on Human Rights (Pact of San José de Costa Rica), which, in its Article 13.1, in addition to guaranteeing everyone the right to freedom of expression, registers, in the Inter-American Human Rights System, the breadth of its scope by recognizing that "**this right includes** freedom to seek, receive and impart **information and ideas of all kinds**, regardless of frontiers, either orally, in writing, in print or in the form of art, **or through any other process of one's choice**" (OAS - Organization of American States, 1969, emphasis added, STF, 2018).

In this sense, the Covenant guarantees the subjects of the Covenanting States the "[...] **right to freedom of conscience** and religion. This right implies **the freedom to conserve** one's religion or **beliefs, or to change** one **'s** religion or **beliefs**, as well as **the freedom to profess and disseminate** one 's religion or **beliefs, individually or collectively, both in public and in private** (OAS - Organization of American States, 1969, article 12.1., emphasis added, STF, 2018).

In fact, these reflections show the dual dimension of Freedom of Thought conceived by the jurisprudence of the Inter-American Court of Human Rights: the individual dimension and the social dimension. From these, a range of rights are protected, including the right of the community to know the thoughts of others and to receive information from all kinds of sources. Let's see:

> The Court's jurisprudence has given broad content to the right to freedom of thought and expression enshrined in Art. 13 of the Convention (...) He pointed out that freedom of expression has an individual dimension and a social dimension, from which a series of rights are protected in that article. (...) In light of both dimensions, freedom of expression requires, on the one hand, that no one be arbitrarily harmed or prevented from expressing their own thoughts and therefore represents a right of each individual; but it also implies, on the other hand, the collective right to receive any information and to know the expression of the thoughts of others. (...) [IA Court. Lagos del Campo vs. Peru. Preliminary objections, merits, reparations and costs. Sentence of 31-8-2017. Free translation] (Brazil, Supreme Federal Court (STF), 2022, p. 286).

Rosario (Argentina). The faithful decided to consider Maradona's birth date (October 30, 1960) as their Christmas. From this, they created a temple for prayers and commandments, with registered followers in several countries. Argentina, Spain and Mexico are the countries with the largest number of faithful" (MOREIRA, 2020).

In this context, paragraphs 5 and 6 of article 178 of the General Sports Law also violate two other constitutional institutes. The Right to Leisure and Constitutional Protection for Popular Culture (Brazil, 2023).

With regard to the Right to Leisure, it is important to recognize that there are people whose only leisure activities are those promoted by Fans' Associations. It is therefore necessary to understand the constitutional right to leisure in its various constitutional dimensions.

To wit:

> **i) <u>Leisure as a Social Right</u>**
>
> Art. 6th **Social rights are** education, health, food, work, housing, transportation, **leisure**, security, social security, maternity and childhood protection, and assistance to the destitute, in the form of this Constitution (Brazil, 1988, emphasis added);
>
> **ii) <u>Leisure as an indirect labor right</u>**
>
> Art. 7 **These are the rights of** urban and rural **workers**, in addition to others aimed at improving their social condition: [...] IV - **minimum wage**, set by law, nationally unified, **capable of meeting their basic vital needs and those of their family with** housing, food, education, health, **leisure**, clothing, hygiene, transportation and social security, with periodic adjustments that preserve its purchasing power, and its linkage for any purpose is prohibited (Brazil, 1988, emphasis added);
>
> **iii) <u>Leisure as a form of Social Promotion linked to Sport</u>**;
>
> Art. 217. **It is the duty of the state to encourage** formal and **non-formal sports practices**, as a right of each individual, subject to: [...] Paragraph 3 **The Government will encourage leisure, as a form of social promotion** (Brazil, 1988, emphasis added); and,
>
> **iv) <u>Leisure as a Priority Right for Young People</u>**.
>
> Art. 227. **It is the duty of** the family, society and **the state to ensure** that children, adolescents and **young people**, with absolute priority, have **the right to** life, health, food, education, **leisure**, professional training, culture, dignity, respect, freedom and family and community life, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression (Brazil, 1988, emphasis added).

There is no doubt that the activities carried out by fans' associations are classified as legitimate manifestations of contemporary national popular culture and, as such, are sources of our traditional culture and participants in the Brazilian civilization process.

In this sense, as an obvious consequence, in the face of the legislative onslaught - here conceived as unconstitutional - to weaken the associative system of

the Organized Fans, we believe, in the light of the Federal Constitution, that their members and leaders have cultural rights to be defended, since, contrary to what the infra-constitutional legislator established in paragraphs 5 and 6 of article 178 of the General Sports Law - LGE (Brazil, 2023), the Constitutional Text determines that the state must guarantee "[....] everyone the full exercise of cultural rights and access to the sources of national culture, and will support and encourage the appreciation and dissemination of cultural manifestations (Brazil, 1988, Art. 215).

However, the guarantee of the exercise of cultural rights has two dimensions, because it is not only the leaders and members of the organized fans who are entitled to these rights (individual and associative rights). There is also the collective dimension to be protected. The other soccer fans (non-organized supporters), the athletes who are encouraged by the chants, anthems and performances with musical instruments, also exercise them.

Thus, in this political-constitutional arrangement, it is up to the state (Legislator, Administrator and Judge) to submit to constitutional mandates in order to protect "[...] the manifestations of popular cultures, and those of other groups participating in the national civilizing process" (Brazil, 1988, § 1, Art. 215).

In this context, the hypotheses we raised based on the theoretical-methodological concepts we chose to support our reflections on the exotic discriminatory accountability of fans' associations, led us to believe that the legal provisions in question run roughshod over various guarantees enshrined in both the 1988 Federal Constitution and the International (UN Charter) and Inter-American (Pact of San Jose) Human Rights Systems.

3 FINAL CONSIDERATIONS: institutional epistemic injustice and response legislation

In this surreal legislative context established by the normative statements extracted from paragraphs 5 and 6 of article 178 of the General Sports Law - LGE (Brazil, 2023), we conclude that there is a legislative attack against the guiding principles of the production/interpretation/application of law produced under the bases of the democratic rule of law, since the ordinary legislator chose a legally constituted private association as the scapegoat for the widespread violence in national society.

Furthermore, as we mentioned in the introductory section, the federal text is so exotic (and no less discriminatory) that it refers to Fan Associations as: "**organized supporters"**, exposing an institutional prejudice, given that, it should be repeated,

when the General Sports Law mentions the other private Associations (Sports Associations, National Athletes' Associations, Sports Referees' Associations, Associations of sports management entities and even Associations of foreign coaches), it does so, respectfully, and preserving their autonomy and constitutional freedoms.

Therefore, we believe that negative legislative discrimination has been proven, which, due to the scarcity of research on it, allows us to believe that the legal community, at least until now, has not conceived of it as being unconstitutional. "It so happens that legitimate legal-linguistic understanding necessarily [has] to be subjected to the hermeneutic filter of the mode of production/interpretation/application of the Law in the paradigm of the Democratic Rule of Law" (Abrão, 2019, p. 71), and this path undoubtedly leads us to the scenario of clear unconstitutionality of the provisions discussed here.

In this respect, such negative discrimination translates into legislative injustice, and by extending the concept of epistemic injustice developed by Miranda Fricker (2017), I believe we can conceive of it on an institutional level, since prejudice against supporters' associations, their leaders and members, means that violence, spread across all segments of society, is related to all the activities carried out by these institutions.

In this way, their experiences, denunciations, reports and testimonies, which have long been ignored by the judicial, public ministerial and public security authorities, now go beyond the judicial and administrative spheres and reach the national ordinary legislator as a result of Objective and Joint Liability for unlawful acts practiced by their associates, as well as what, it should be repeated, in the absence of a suitable name, we conceive, in this research and with reservations, as "Abstract Disregard of Legal Personality" by legislative authorization. An exotic species of accountability given its characteristics. In fact, exotic legislative creations require equally exotic names.

There are violent fans, even in the organizations. However, a minority cannot reflect the whole. Traditional organized supporters are legally constituted Civil Associations, under the terms of the Federal Constitution and the Law. It is necessary to understand that managers deal with thousands of members and supporters, and since the main income comes from the sale of official products (caps, shirts, gifts, etc.), anyone can buy them.

Currently, Força Jovem Goiás[12] has 5,422 members and a very high number of sympathizers, which can be measured by the data on the internet, since only on one of its social networks, *Facebook*[13], this supporters' association has 210 (two hundred and ten) thousand followers.

Therefore, at the conclusion of this analysis, we emphasize our criticism of what we call *response legislation.* By this we understand the dangers of the lawmaking *function*, especially in the production/interpretation/application of the Law in the paradigm of the Democratic State, being used to offer legislative "solutions" that, in addition to not solving the serious social problems historically rooted in our society, sediment institutionalized prejudices and, as if that weren't enough, in the case in question, diminish the power of control and mobilization exercised by the traditional legally constituted Fans' Associations.

In this scenario, we believe that paragraphs 5 and 6 of article 178 of the Lei Geral do Esporte - LGE (General Sports Law) (Brazil, 2023), in the world of life, promote interventions by the ordinary federal legislator in the way Fan Associations are organized and operate, since by making them generically and abstractly liable in the civil sphere for any unlawful acts that may be committed by their Members at the venue of the sporting event, in its vicinity or on the way to and from the event, they do not pass through the filters of the Systems for the Control of the Constitutionality of Laws and for the Control of the Conventionality of infra-constitutional legislation in the face of International Treaties incorporated into national domestic law, and, in this way, affront, in the terms set out here, various principles inscribed by the Original Constituent Legislator in the Constitutional Text of 1988.

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[12] The data was provided by the Association itself.
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