



**THE REMUNERATION OF THE PROFESSIONAL FOOTBALL ATHLETE'S IMAGE
IN THE SPECTACLE SOCIETY**

**A REMUNERAÇÃO DA IMAGEM DO ATLETA PROFISSIONAL DE FUTEBOL NA
SOCIEDADE DO ESPETÁCULO**

**LA RETRIBUCIÓN DE LA IMAGEN DEL ATLETA PROFESIONAL DE FÚTBOL EN
LA SOCIEDAD ESPECTÁCULO**

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Abstract: This article aims to describe the process of economic exploitation of the image of professional soccer athletes in the context of the “spectacularization” of sport in society. The methodology of this project is based on the theoretical analysis of understandings related to this transdisciplinary process in order to complement the existing technical-theoretical framework. At first, it seeks to contribute to the systematization of current knowledge in relation to the historical evolution of sports legislation, the special sports employment contract and, subsequently, the analysis of the remuneration of the professional athlete's image, including in cases where such practice is considered a distortion of the athletes' image contract and, finally, issues related to the arena law institute. In short, the legal-sports system that guarantees economic gains arising from the exploitation of the athlete's image, resulting from the football event, was investigated.

Keywords: Spectacularization; Image; Arena; CETD

Resumo: O presente artigo almeja descrever o processo de exploração econômica da imagem dos atletas profissionais de futebol no âmbito da “espetacularização” do desporto na sociedade. A metodologia deste projeto se pauta na análise teórica de entendimentos relacionados a esse processo maneira transdisciplinar com o objetivo de complementar o arcabouço técnico-teórico existente. Em um primeiro momento, busca-se contribuir para a sistematização do conhecimento atual em relação à evolução histórica da legislação desportiva, do contrato especial de trabalho desportivo e, posteriormente, à análise da remuneração da imagem do atleta profissional, inclusive nos casos em que tal prática é considerada desvirtuamento do contrato de imagem dos atletas e, por fim, questões relativas ao instituto direito de arena. Em suma, investigou-se sistema jurídico-desportivo que garante a obter ganhos econômicos advindos da exploração da imagem do atleta, decorrente do evento futebolístico.

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Palavra-chave: Espetacularização; Imagem; Arena; CETD

Resumen: Este artículo tiene como objetivo describir el proceso de explotación económica de la imagen de los deportistas profesionales de fútbol en el contexto de la “espectacularización” del deporte en la sociedad. La metodología de este proyecto se basa en el análisis teórico de entendimientos relacionados con este proceso transdisciplinario con el fin de complementar el marco técnico-teórico existente. En un primer momento, se busca contribuir a la sistematización del conocimiento actual en relación a la evolución histórica de la legislación deportiva, el contrato especial de trabajo deportivo y, posteriormente, al análisis de la retribución de la imagen del deportista profesional, incluso en los casos en que dicha práctica se considera una distorsión del contrato de imagen de los deportistas y, finalmente, cuestiones relacionadas con el instituto de derecho de la arena. En definitiva, se investigó el sistema jurídico-deportivo que garantiza las ganancias económicas derivadas de la explotación de la imagen del deportista.

Palabras clave: Espectacularización; Imagen; Arena; CETD

1 Introduction

Brazilian football, like almost all sports, began as a ludic game. Upon gaining popularity, the modality started to have present characteristics of amateur organization. Later, with the growth of social interest in the sport, football became a sport that generated income, which paved the way for its professionalization, even if in an undeveloped way.

From a sport typically practiced among the poorest social levels, football has become one of the businesses that move most money in the most varied countries, with the Law as an ally in this process. In Brazil, the situation is not different.

According to Roberto de Palma Barracco:

Another example is the profession of the Brazilian soccer athlete. (...) With the growth of social interest in football, the sport is now regulated as a profession. And with the professionalism of Brazilian football, the State began to “discuss” with the sports legal system by creating rules that would regulate the legal relationships arising from it. Thus, football and sport are shown as national cultural heritage, being shaped by society as entertainment and business from then on. (BARRACCO, 2018, p. 49)

It is undeniable that football is responsible for moving large sums in the market. Regarding this, according to the 2020 Market X-Ray Report, devised by the Registration, Transfer and Club Licensing Board of the Brazilian Football Confederation (CBF):

From January 1st to December 31st, 2020, CBF registered 2,870 negotiations, 162 of which with values. On the way from abroad to Brazil, 25 loans and 33 purchases reached R\$ 531,566,271.00, whereas from Brazil to other countries, there were 33 loans and 82 sales, totaling R\$ 1,682,658,442.00. Among national clubs, there were 40 transfers involving R\$291,618,000.00. (CBF, 2020).

The sporting spectacle attracts the attention of millions of people and also moves billions of dollars a year. However, it only exists thanks to the collaboration of the ball artist, who is the professional soccer athlete.

José Eduardo Coutinho Filho comments on this profession:

There are few work activities as specific and personal as the one performed by the professional football athlete. Sports practice makes the player's performance during matches unique (...) Due to its various peculiarities, it is evident that the impact of the professional athlete's activity in sports, especially football, differs from ordinary work activities. (COUTINHO FILHO, José Eduardo, 2021, pp. 80-81)

In that context, the present study intends to build a detailed study of the sporting work activity. Therefore, given the importance of the subject to the Law, this research aims to introduce the development of sports legislation in Brazil, deal with the special sports employment contract, analyze the definition of image right and arena right, exposing the differences between those institutes regarding the sports labor relationship, as well as bringing to light the issues related to the marketing of the image rights of athletes via legal entity, in addition to fraud in the payment of the image of those athletes.

2 Evolution of sports legislation in Brazil.

It would not be an exaggeration to say that sport and society have an umbilical relationship. Regarding this, the practice and development of sport are intertwined with the rise of the first civilizations. Since the Greek and Roman societies, and also the peoples of the Middle Ages to the modern society, sport has started to have a multifaceted aspect, covering several fields, such as: social, political, economic, cultural and, therefore, legal (MELO FILHO, 2000). It is on this last point that the first analysis of this work will be based.

Between the Colonial Brazilian period and the "Estado Novo", there were few laws regulating sports, which were considered as informal practices. As reported by literature (DORIGO, 2011), sport in colonial times was seen as a mere physical practice or even as a utilitarian sport practice carried out by Indians and colonizers, such as fishing, hunting, canoeing, horseback riding and the use of bow and arrow (SILVA, 2008).

During the Second Reign, however, according to historian Manoel José Gomes Tubino (2002), the novelty in sports practices took place via a set of decrees aimed at military schools, which imposed sports practice as mandatory activities.

According to Correa da Veiga, one of the first laws that addressed the rights of athletes is statewide. The first legislation in favor of sports emerged in São Paulo, during the mandate of Ademar de Barros: Decree-Law n. 10,409, of August 14, 1939 (VEIGA, 2020).

At the national level, the initial milestone of sports legislation takes place in the middle of World War II, with the advent of Decree-Law No. 3199, of April 14, 1941. Now, with the growth of social interest in football, sport starts to be regulated as a profession (BARRACCO, 2018). In this regard, according to Alves e Pierantini:

this legislation was a very close adaptation to the Italian fascist legislation for sport, since all levels of Brazilian sport were under the seal of a larger body, the CND, regulated by the government at the time. (ALVES; PIERANTINI, 2007, p. 11).

In October 1975, during the Military Regime, a new legislation, very similar to the decree by Getúlio Vargas, was published: Law n. 6,251. This new law was the first to provide a legal definition of sport. With the emergence of this new legislation, the CND expanded its power, becoming, from then on, the Legislative, Executive and Judiciary of sport in Brazil (SILVA, 2008).

Subsequently, through Law 6,354 of September 1976, a mandatory transfer fee was established as an amount owed by one club to another for the transfer of the athlete during the term of the athlete's contract with the employer association and even after this period. For the first time, two bonds were considered: the first one, of a labor nature, and the second one, of a sporting nature. From then on, the athlete was subordinate to the club as an employee.

Law nº 8.672/93 (Lei Zico) was fundamental for the establishment of a new phase of sport in Brazil. This legislation brought in its 3rd article a broader and more detailed vision of what sport is, being it a predominantly physical and intellectual activity, which could be identified occurring in three manners: educational sport, participation sport and performance sport. The aforementioned law, in addition to instituting general rules on Brazilian sport, dealt with the employment relationship between clubs and athletes regarding the professional player's employment contract.

Besides, "Lei Zico" brought important provisions, such as: the possibility for clubs to become for-profit societies, the possibility of creating leagues and even the creation of legal bases for the arena right, an institute that will be further studied the course of this research. Likewise, it caused a drastic reduction of state interference in football, transferring a large part of this power to the private sector.

According to Correa da Veiga (2020), the connection between sport and Law was consolidated with the promulgation of the Federal Constitution of 1988, which started to treat sport as a fundamental and social right. Sport started to be protected in the Federal Constitution, in its article 217, reaching the same status of culture and education, while acting as one of the pillars that guarantee social development. Similarly, it is important to emphasize the autonomy of Sports Law regarding the judgment of its own disputes, having Sports Justice a fundamental role in solving problems related to the competition and discipline.

Currently, Law n. 9,615/98 – also known as General Sports Law, or “Lei Pelé” – is the main instrument that regulates the activity of professional football athletes. Such legislation brought the end of the mandatory transfer fee, and the sporting relationship, from then on, became an accessory to the professional soccer athlete's employment relationship.

It is important to emphasize that Law N. 9,615/98, in its article 26, states that athletes and sporting organizations are free to organize their professional activities, regardless of their modality. Therefore, it is through “Lei Pelé” that not only the football player, but all those who practice other modalities of sports can achieve the rank of sports professional, as long as the legal requirements are met.

3 The employment contract of the professional football athlete.

It is certain that the employment contract is a genre of which the employment contract is a species. Likewise, it is worth mentioning its definition in light of the doctrine, which classifies the employment contract:

[...] an employment contract can be defined as an agreement of wills, tacit, or express, by which an individual makes their services available to others, to be performed in person, not occasionally, in return for payment and subordinate to the employer. The definition, therefore, is built from the factual-legal elements that make up the employment relationship, triggered by the tacit or express agreement between the parties. (DELGADO, 2021, p. 501).

As they are different institutes, it is important to highlight the need to not confuse a work relationship with an employment relationship. In simple terms, the employment relationship has its provisions designated by means of a contract between employer and employee, which must be consensual, with the possibility of being agreed on by the contracting parties without complying with so many formalities..

However, although there is room for flexibility in drawing this instrument, there are exceptional cases that call for the compliance with several requirements for the formalization of the employment relationship. Therefore, in these cases, it is not an employment contract of a common nature, but of a special nature. This is the case of professional football athletes, who have their employment relationships guaranteed through a special sports employment contract. This is due to the various specificities of the profession, as well as the specific legislation that regulates it.

Concerning this, it is worth mentioning some of these particularities, such as items closely linked to sports performance (food, conditioning, physical and nutritional assessments), health (sleep, sexual behavior, supplementation and use of illicit substances), as well as factors that directly mention the image of the professional in the area (clothing, places visited, interviews, etc.) (BARROS, 2003).

It is considered as a rule that the special sports employment contract (CETD - Contrato

Especial de Trabalho Desportivo) is the instrument that enshrines the legal transaction agreed on by the athlete and an association, defining the conditions in which professional sports work will be carried out. In fact, some of these conditions are already pre-established in the *lex sportiva*, while some other provisions can be freely agreed on between the parties.

The CETD is based on article 28 of the “Lei Pelé”. It must be drawn up in writing, being the verbal form prohibited. In addition to the basic characteristics of the conventional employment contract - such as alterity, habituality, consensuality, bilaterality - the special legislation also defines that the CETD must be registered with the Brazilian Football Confederation (CBF).

The sports work relationship takes place on an onerous basis, under the guidance of the employer, which, in this case, is represented by a sports entity. Therefore, the special sports employment contract must establish the form and manner in which the athlete's remuneration will be paid, as well as prizes, gratuities and bonuses. It is noteworthy that remuneration is a gender of which salary is the species, therefore, every salary is remuneration, but not every remuneration is salary. (PERAGENE, 2020).

Furthermore, the employment relationship arises upon the signature of the contract and generates the institution's obligation to pay salaries, resulting from the employment relationship. The sports bond, characterized in §5 of article 28 of “Lei Pelé”, is complementary to the employment relationship and is responsible for guaranteeing the athlete “playing conditions”.

4 The commoditization of the athlete's image as a demand of the Society of the Spectacle.

According to Richelieu (2021), current society is experiencing the transition from sport to sportainment. Briefly, the aforementioned movement aims to unite sport and entertainment, transforming the sporting event into a spectacle geared towards the expectations and needs of the consumer². At that point, according to Marcos Motta, sport is no longer seen disconnected from the demands of the new generations, which can even generate new income for the players that offer the sports service³.

Furthermore, without a doubt, football is a unique phenomenon on the planet, given its popular, mediatic, economic and cultural aspect. At the social level, sport is seen as a cultural manifestation, which permeates the individual identity of each individual, giving them a feeling of belonging (BARRACCO, 2018). To prove this, it is enough to analyze the number of social relationships developed, daily, based on differences and similarities in tastes linked to different sports modalities.

In other words, sport is directly connected to national identity – which is part, if not the

² O que é o *sportainment* e como ele pode revolucionar o esporte brasileiro. Disponível em: <https://www.hubstage.com.br/post/o-que-e-o-sportainment>. Acesso em 07 jun. 2021.

³ O esporte deve ser considerado parte do entretenimento das pessoas. Disponível em: <https://brandpublishing.com.br/sportainment-esporte-deve-ser-parte-do-entretenimento-das-pessoas-diz-marcos-motta/>. Acesso em 07 jun. 2021.

main reason for seeing sport as a business (SOARES; VAZ, 2009) – while transcending physical and cultural barriers to reach the greatest number of individuals around the world.

In the media aspect, the importance of sport and football can be easily perceived. Every day, we are informed of million-dollar sales of athletes, investments by tycoons in football clubs, corruption scandals in sport and even improper attitudes that a certain player may have had in their spare time. Such events reverberate in news topics and sports programs, which reproduce, for days, weeks or even months, the same facts that are already known to fans and other consumers of the sports relationship.

Furthermore, the media have a fundamental role in the consolidation of sport in the national scene, after all:

the media have been instrumental in the consolidation of football as a national sport from the beginning, fueling the passion of Brazilians for this sport, whereas it was precisely there that access to the “sport business” happened, once the idolatry of the image of athletes has become a market good – such as “Diamante Negro” (Black Diamond), athlete Leônidas da Silva’s nickname, which was transformed into a chocolate bar by Lacta at the end of the 1930s (BARRACCO, 2018, p. 53).

This is justified because football has become an activity linked to the economic sphere. After all, sport, represented by football, has created its own industry – the sports spectacle industry – that generates and distributes consumer goods to its target audience: the fans.

Regarding this, it is worth mentioning the understanding of Simon Gardiner (2006), a scholar who defends the idea that the Sports Industry occupies a prominent position in the world economy scenario. For the aforementioned author: "Sport is now big business" (GARDINER, 2006, p. 37).

From this perspective, we quote Rafael Teixeira Ramos' understanding of the “sports show” as a generator of wealth in the global economy, occupying the top of the entertainment chain:

The economic exploitation of the "sports show", the formal and informal exercise of the economy in all areas of the "sports practice and event", and, consequently, the professionalization of sports have placed the Sports Economy at the top of the Entertainment Industry, being the sports market one of the greatest consumption potentials; therefore, to imagine the world without sport is to want to imagine an involution of the globalized economic crisis that devastates the world population (RAMOS, Op. cit., p. 7).

Still on the transformation of football as a business, Rafael de Palma Barracco weaves interesting thoughts about this phenomenon. According to the author:

Despite criticism on the transformation of sport as culture into business, this is a phenomenon that is now part of the spectacle, as seen in the exploitation of the image rights of athletes – either professional ones or not. Thus, there is a kind of commoditization of the individual-athlete by associating their image, and popularity, with goods and brands, which is enhanced by globalization and new technologies (BARRACCO, 2018, p. 51).

On the other hand, it is impossible not to point out the umbilical relationship between football and the media conglomerates, which decide not only on sponsorship quotas, but also how and in what way the sporting spectacle will reach fans' television sets, computers, tablets or cell phones.

It is widely recognized that the development of the means of communication has enabled these conglomerates - which are the major players who command the sporting spectacle - to generate new wealth, which, in turn, has enabled new possibilities of exploring the image of players, clubs and sponsors involved in the football event. Meanwhile, the final recipient of the sporting spectacle (aka, the fan) passively watches the movements of those who really rule football.

That said, it is in this spectrum of contemplation of suitable. In his work, *Society of the Spectacle* (2005), the French philosopher built 221 Theses weaving harsh criticisms against current society which, in his view, is organized around a constant falsification of real life, generated by the spectacularization of everyday life. At that point, complementing the aforementioned work, in his *Commentaries on the Society of Spectacle* (2003), the author states that:

The spectacle has spread itself to the point where it now permeates all reality. It was easy to predict in theory what has been quickly and universally demonstrated by practical experience of economic reason's relentless accomplishments: that the globalisation of the false was also the falsification of the globe. (DEBORD, 2003, p. 13)

Likewise, he completes:

Spectacular government, which now possesses all the means necessary to falsify the whole of production and perception, is the absolute master of memories just as it is the unfettered master of plans which will shape the most distant future. It reigns unchecked; it executes its summary judgements. (Idem)

The thought that permeates Debord's work is based on criticisms of the fetishization of merchandise and also on the massive presence of images in contemporary society, which induce its members to passively accept the capitalist logic (NEGRINI; AUGUSTI. 2021). In this regard, the relationship between image and spectacle is addressed in Thesis 4 of the work by Debord (2005), who argues that the spectacle is constituted by the social relationship between people, a relationship that is daily mediated by images. That is, the philosopher considers that contemporary society is permeated by representation, whereas "*The entire life of societies in which modern conditions of production reign announces itself as an immense accumulation of spectacles. Every thing that was directly lived has moved away into a representation.*" (DEBORD, 2005, p. 8).

According to Michele Negrini and Alexandre Augusti (2021), Debord considered that theatricality and representation took over society, causing it to not clearly distinguish what is natural from what is deceptive. In turn, this thinker's critique is too acute to the point where it is

possible to assume that, for Debord, even social relationships are not based on authenticity.

In Thesis 6, the philosopher sets out his view considering that the spectacle is a mechanism for society's domination, acting as a reaffirmation of the choices already made by those who own the means of production. Thus, as Negrini and Augusti add, "*the spectacle works in favor of capitalism and consumption ends up being its consequence*" (Idem, p. 04).

That said, it is clear that, for Debord, the consuming audience of the images and the spectacle, in addition to being alienated, maintains a passive posture towards this scenario of domination. This is restated in his Thesis 30, quoting his exact words:

The alienation of the spectator to the profit of the contemplated object (which is the result of his own unconscious activity) is expressed in the following way: the more he contemplates the less he lives; the more he accepts recognizing himself in the dominant images of need, the less he understands his own existence and his own desires. The externality of the spectacle in relation to the active man appears in that his own gestures are no longer his but those of another who represents them to him. This is why the spectator does not feel at home anywhere, because the spectacle is everywhere. (DEBORD, 2005, p. 19)

As Jamile Dalpiaz (2002) exposes, this is exactly the current scenario in which football consumers find themselves. After all, they no longer see with the same critical eye the sport with which they created strong passionate bonds. The current football scene is totally different from the previous one. Throughout time, the improvisation characteristic of Brazilian players yielded for cold and plastered tactical schemes. In addition, the interference of football executives and businessmen in the teams that perform the sporting spectacle. The sports consumer is faced with advances in the field of technology, but that has not necessarily caused a gain to the show itself and, today, they watch this change with a complacent look.

Regarding this, according to Jamile Dalpiaz:

Nowadays, little or nothing is seen of the art-soccer practiced here for years, one no longer sees the talent of a player, but an industry of (super) players. The practice of this sport no longer makes history, in the sense that the game is the spectacle, with a beginning, middle, end and period, in a search for the eternal present, as already pointed out by Debord when characterizing modern society. Technological innovation was also the last factor in the constitution of today's football spectacle, as satellite broadcasting, cameras and all the technological apparatus available, place us in the condition of contemplators. (DALPIAZ, 2002, p. 10).

That is, it is practically impossible for the fan to consume their favorite club outside of this pure business system, which treats this fan not only as a customer - consumer of the show, sporting goods, services and licensed products - but also, at the same time, as raw material for the construction of new images of the spectacle that football is. It is about the realization of a cultural industry that is not restricted to Brazil, but which finds here fertile soil to prosper without being questioned.

Furthermore, through the analysis of the football environment, it is possible to see the

application of Debord's thought to this industry. Never have the strength of the media and the tyranny of images been as present as they are today. Also, at no other time in history, have those involved in the sporting spectacle had as much decision-making power as they do today, to the point of breaking the boundaries of football with the fields of art, economy, culture, everyday life and even politics .

About this, referring to the opinions of Roberto Da Matta (1982), Jamile Dalpiaz explains that:

football played in the country must be seen not only as a sport, but also as a set of values and social relations. Music, relationships with saints and spirits, hospitality, friendship, commensality and, of course, carnival and football allow Brazilians to get in touch with their social world. In these domains, the rules do not change and are indistinctly accepted by everyone. (DALPIAZ, 2002, p. 10).

After all, several players have been taking advantage of the image built by the Brazilian football tradition, signing multi-million dollar agreements with federations, clubs and athletes. The presence of several companies in the telecommunications and streaming industry is worth mentioning, investing in the modality, mainly with regard to advertising quotas and broadcasting rights. On the other hand, the substantial sponsorships offered are mentioned, including the ones by financial institutions that decided to explore a share of this market seeking to improve their own image by associating with sporting entities.

Therefore, if a particular player has astronomical image value, it is important to understand why the market considers its value as such. The construction of images in football comes from the demand of the sport's consumer, making it impossible to debate the incongruity of these values linked to the footballer's image without associating them with those that support the structure of the spectacle.

5 Personality rights.

Before delving into the issues related to the license to use image (known in football only as image right) and arena right, it is necessary to address the concept of personality rights.

On the concept of personality rights, Caio Mário argues that:

in addition to economically appreciable, so-called patrimonial rights, there are others, not less valuable, worth of protection by the legal system. Pertaining to human nature itself, they occupy a supra-state position, having already found in legal systems the objectivity that rules them, as power of action, legally enforceable (PEREIRA, 2020, p. 200).

Historically, the presence of the so-called personality rights in contemporary Constitutions stems from the ideas of the Natural Law School. With respect to this current of thought, it proclaimed the existence of innate rights, such as the right to life, liberty, health, honor etc. And that was essentially how the *mens legislatoris* proceeded, converting such jus naturalistic

ideals into precepts incorporated in the 1988 Magna Carta.

Personality rights are umbilically connected to the human condition itself. This, therefore, is a matter of rights that result from the protection of the dignity of the human person and the individual's ability to control the use of their image, honor, name and everything else that is worthy of protection, support and defense in the constitutional, criminal, administrative, procedural and civil order.

Therefore, personality rights are those indispensable for the full and healthy development of the individual's physical and mental virtues. Such rights accompany the person from the beginning to the end of their personality, which, according to article 6 of the Brazilian Civil Code, occurs with the death of the human person. However, the relevance of the matter is such that some rights such as the honor, image and moral right of the author of an intellectual work (see article 24, §1 of Law 9,610/98) are guaranteed even after the end of the individual's life.

Moreover, it is worth noting that when dealing with personality rights, it is even not technical to say that the person has or does not have the right to personality. In fact, it is from the personality that rights radiate, being more correct a statement in the sense that personality is the support of all rights and obligations (PEREIRA, 2020, p. 203).

In short, they are rights that aim to protect the human being in what is proper to him, as well as his projections to the outside world. Therefore, the violation of these rights may cause property repercussions, such as the right to indemnity for damages in the event of improper use of a person's image.

6 Image right and image use license.

Correa da Veiga (2020) teaches that a great part of the professional soccer athlete's salaries is paid through the execution of image rights assignment agreement. In fact, although this practice has a legal basis, it has been discussed in the Courts since some clubs and athletes sign this type of contract without the proper and proportional use of the player's image, which will be further discussed.

As explained above, image rights are closely linked to personality rights. Therefore, anyone has the right to see their portrait in public only upon their consent. After all, the doctrine classifies the image right as "essential, absolute, opposable *erga omnes*, general, inalienable, imprescriptible, inexpropriable and unseizable" (VEIGA, 2020, p. 289). However, the image right has a peculiarity that makes it different from other personality rights, which is its patrimonial content, subject to economic exploitation by its holder.

Concerning this, according to Francisco Ferreira Jorge Neto and Jouberto de Quadros Pessoa Cavalcante:

the right to the image cannot be the object of a contract; however, the holder may assign the use of his image (=right) to third parties, which is called image rights assignment agreement of the professional football player.(JORGE

NETO & CAVALCANTE, 2019. p. 1062).

Still on the image rights assignment agreement for the use of the player's image, the authors comment that:

The image rights assignment agreement is the formal legal transaction for a fixed period between the professional football athlete and the sports entity and/or sponsors, whose objective is the exploitation of the athlete's image, as a way of promoting the club brand and/or sponsor products. It must contain: (a) the means by which the image will be disseminated (television, newspaper, magazine, poster, billboard, etc.); (b) type of event (promotions, parties, interviews, etc.); (c) the deadline for its use; (d) the amount of use (image exposure number); (e) exclusivity or non-exclusivity; (f) the amount to be paid and the method of payment; (g) form of review. (Idem).

Therefore, although the image right is not transferable, it is subject to licensing for a specific period of time and purpose. Thus, it is possible to have permission, authorization or concession for the use of the image by third parties, as long as such provision is agreed on in a contractual instrument, containing: purpose of use of the image, territorial coverage, means of dissemination, amount of publication etc. (VEIGA, 2020).

The image right finds legal support in item XXVIII, of article 5 of the Magna Carta and in article 20 of the Civil Code. By doing so, the constituent legislator ensured the inviolability of the person's image in its physiognomic aspect and in its corresponding reproduction, which cannot be violated under penalty of indemnification (VEIGA, 2020). Also, according to Precedent 403 of the STJ, the payment of indemnity does not depend on proof of the damage caused.

Back to the question linked to the double aspect of the image, item X of article 5 of the Federal Constitution brings the conception of image that is most addressed daily, referring to the person's physical representation, either as a whole or as separate parts of the body (MARCONDES, 2020). Here, it refers to the concept of portrait-image.

However, the word image also encompasses the meaning of a set of socially recognized characteristics of the individual. In other words, the image also has the idea of characteristics that are specific to a particular individual. It is the attribute-image, represented in item V of article 5 of the Constitutional Text.

Hence, it is the spectrum of the athletes' attribute-image that attracts the interest of major players in the sports market, who seek to associate their brands with relevant role figures in the sports scene, whose images are consistent with the concept they intend to convey to their consumer audience.

Given the aforementioned characteristics of the image, it is possible to conclude that the image right is *sui generis*: while the portrait-image is non-transferable, the attribute-image can be economically exploited. After all, in the last hypothesis, it is not about the transfer of the image itself, but only the possibility of licensing it for the use of the patrimonial rights arising from the use of the image in question (MARCONDES, 2020).

It is important to emphasize that the terms “image agreement” or “image assignment agreement”, frequently used in everyday life, are not correct when dealing with this instrument. It would be more accurate to call it an “image rights assignment agreement”, since the holder only grants the exercise of the exploitation right for a specified period, and may also do so onerously, but not giving away the right to the image itself. After all, as discussed above, this is personal and therefore unavailable (CAÚS & GOÉS. 2013).

Furthermore, there is no doubt that the constitutional text extends the protection of the image to professional football athletes. Therefore, players' image rights may be subject to a license for use, assignment and authorization, with or without commercial exploitation. However, the commercial use of the image, sound, voice, name and sporting nickname of the professional football player will depend, at all times, on their prior and express authorization, and they may be indemnified for the misuse of their image (CAÚS & GOÉS, 2013).

7 The possibility of exploitation of the athlete's image by a legal entity.

Law N. 9,610/98 (Copyright Law) was enacted aiming at authorizing that personal rights be used by third parties. Regarding this, in its article 89, such legislation establishes that the rules relating to copyright may be applied, as appropriate, to the rights of artists, interpreters and performers, who are characterized for using, in the performance of their functions, personality rights, such as the image.(MARCONDES, 2020).

As for the possibility of assigning and licensing these rights to third parties, it is based on article 49 of the same Law. Besides this, taking into account that article 89 of Law N. 9,610/98 considers copyright applicable to the rights of artists, interpreters and performers, it is possible to conclude that people are authorized to exploit and dispose, according to their interests, the rights of personality, such as the image, name, voice etc, without any restriction as to how this would be done (MARCONDES, 2020).

Corroborating the provisions of the Copyright Law, Law n. 11,196/05, in its article 129, establishes that personal rights can be exploited through a legal entity. In other words, the legislator recognized that legal entities can be involved in activities related to the use of personality rights, provided that they respect the tax and social security provisions related to it.

Regarding this, it is important to emphasize that, traditionally, companies are responsible for producing goods and services necessary for life in society and that, since the moment these have gained prominence with the development of society and trade, business activities have not been restricted to the latter (COELHO, 2015). Thus, with the development of society, new needs emerged, which made way for new fields of business activities, being the activity of assigning the use of the image of athletes one of these, in line with §5 of its article 980-A, Civil Code.

Moreover, such activity is included in the National Classification of Economic Activities (CNAE), in subclass 2.3, under N. M-7490-1/05 - Agency of professionals for sporting, cultural

and artistic activities. In its explanatory notes, it is clear that this subclass also includes the assignment of image use by artists and athletes. Hence, there is legal basis for athletes to have their images exploited through a legal entity, given the business nature of their activities.

The nature of the activity performed by athletes quickly makes them public figures who carry with them a range of personal attributes, such as beauty, strength, success, charisma etc. Some of these attributes have huge commercial value, since during the practice of their professions, such characteristics turn these athletes into actual brands.

Concerning this, the lessons of Carlos Eduardo Ambiel can be mentioned:

there are plenty of examples of people, especially artists and athletes, from the most diverse modalities, who, due to the success obtained in their professional activity, have become a very valuable name and brand known around the world, including extreme cases of athletes such as Michael Jordan, Ayrton Senna, Roger Federer, Tom Brady, David Beckham and so many others who made their names and images world famous brands related to invaluable personal attributes such as victory, efficiency, elegance, patriotism, health, beauty and success (AMBIEL, Op. cit., p. 83).

That said, it is known that football players, at the time of their hiring, started to sign, in parallel with the employment contract, an image rights assignment agreement, which is established between the sports association and the legal entity constituted by the player with this objective.

About this, the "Lei Pelé" clearly provides for the possibility of the employer club to have an image rights assignment agreement with the athlete. This is the case since its articles 31, *caput* and 87-A admit the coexistence of both contracts: image and employment. Therefore, by reading the aforementioned provisions, it is understood that the rule comprises the possibility for the professional athlete to sign two simultaneous contracts to earn remuneration for their sports services. And, as already explained, the sports legislation itself limits the amount to be paid the athlete as image right, limited to 40% (forty percent) of the athlete's total remuneration.

8 The tax issue of the exploitation of the image of the professional soccer athlete through a legal entity.

As explained above, despite the assignment of the image right of professional soccer players to third parties through a legal entity, this procedure is still the subject of questioning by the Internal Revenue Service. After all, the amounts collected by the tax authorities vary a lot when comparing the payment of Income Tax (IR) by an individual with that collected by a legal entity.

Concerning this, according to Rafael Marchetti Marcondes:

The reason for so many conflicts between tax authorities and taxpayers is due to the difference between the tax burden levied on the results calculated directly on the individual and those calculated through a legal entity. (MARCONDES, 2018, p. 26).

About this, the taxation of a legal entity depends directly on the system of collection to which it is subject, namely: real profit, presumed profit, arbitrated profit or "Simples Nacional" (Idem). Such a conclusion can be reached through the analysis of article 44 of the National Tax Code (CTN), by which the legislator made it possible for the income tax to be calculated based on: the income actually calculated (real); on presumption of income (presumed); in amounts defined by the tax authorities. (MARCONDES, 2020).

It is noteworthy that, for the most part, companies holding the right to commercially exploit the image, voice, name, nickname and other representations of the attribute-image of football players are subject to the presumed profit or even the "Simples Nacional" regime (MARCONDES, 2020). The real profit regime would even be possible, but it would only be interesting in the case of athletes who had a very high turnover in their companies.

Considering that the option for the "Simples Nacional" is an exception in the case of legal entities constituted by professional athletes, the majority of such companies are subject to the cumulative regime of calculation of the PIS/COFINS from the application of the joint rate of 3.65% (that is, 0.65% of PIS + 3% related to COFINS) on its gross revenue, which corresponds to the basis of calculation (MARCONDES, 2020)

As for the ISS, when the athlete provides services to third parties through a legal entity, without an employment relationship, the amount referring to this tax will be calculated as it is for other companies. Again, the tax calculation basis corresponds to the value of the service provided (assignment of image rights), while its rate may vary between 2% and 5%, according to the particularities of the activity, pursuant to article 8, item II and article 8-A of Complementary Law N. 116/2003.

It is worth noting that the overwhelming majority of legal entities constituted by athletes, and which aim to market the player's image, do not have employees. In other words, most of these companies are exempt from paying FGTS, INSS and contributing to third parties (MARCONDES, 2020).

Concerning this, the adoption of the business model in this type of transaction becomes interesting for those who pay the amounts for the assignment of personality rights, as, in the absence of an employment relationship, the amounts paid are not considered salary and, in turn, are not subject to standard charges of this nature of obligation, such as INSS, FGTS, vacations etc.

In order to demonstrate this difference in the amounts received by the athlete as image rights, Table 1 presents the tax burden of a company subject to the presumed profit regime and Table 2 the tax burden on the earnings of an athlete as an individual entity. The amount of BRL 100,000.00 (one hundred thousand reais) was considered as the value to be received as image rights by the athlete, while the legal entity constituted by him does not have employees (which exempts him from the payment of FGTS and INSS). Notice:

Table 1 – Taxation of income earned by a legal entity.

	IRPJ	CSL	PIS	COFINS	ISS	SUBTOTAL
BC = % revenue	32	32	100	100	100	-
BC (R\$)	32,000	32,000	100,000	100,000	100,000	-
Al. (%)	15	9	0,65	3	5	-
Al. (R\$)	4,800	2,880	650	3,000	5,000	16,330
Addit. (%)	10	-	-	-	-	
Addit. (R\$)	1,200	-	-	-	-	1,200
TOTAL						17,530

Source: MARCONDES, 2020, pp. 154 -155 (modified).

Legend:

BC: basis of calculation – defined from the percentage applied to the revenue

Al: rate

Addit: additional

	IRPF	ISS	SUBTOTAL
BC = % do rend.	100	100	-
BC (R\$)	100,000	100,000	-
Al. (%)	27,5	5	-
Al. (R\$)	27,500	5,000	32,500
TOTAL			32.500

Tabela 2 - Taxation of income earned by an individual.

Source: MARCONDES, 2020, p. 155 (modified).

Legend:

BC: basis of calculation – defined from the percentage applied to the revenue

Al: rate

That is, the discrepancy between the amounts earned by individuals and companies is so great that, as shown above, it is clear why many athletes choose to receive funds related to image rights through a legal entity. In fact, not only do athletes prefer this method, but clubs also prefer it.

9 The characterization of fraud in the image use license agreement.

In fact, when accompanied by faithful compliance with the laws, the image rights assignment agreement does not bear any relation to the salary, as it is a civil and, therefore, an indemnity payment. However, the distortion of the image contract makes the values perceived by the player to be considered as salaries, bringing about the payment of all legal charges and other labor rights to which the athlete harmed by this legal relationship is entitled. (JORGE NETO,

CAVALCANTE, Op. cit.).

Therefore, regarding the effective validity of this instrument, it is necessary to take into account: the effective use of the image as participation in advertisements, interviews, publicity campaigns etc; the notoriety of the athlete's image, represented by the player's social recognition among fans and other actors in society; the proportional use and notoriety of the athlete's image when compared to the value earned by him (JORGE NETO, CAVALCANTE, Op. cit.).

The situation of fraud in image contracts can be observed from the moment when reality is faced with: (a) image contracts with values much higher than the athlete's effective salary; (b) contractual situations in which the amounts provided for as indemnity for the use of the athlete's image do not correspond to the mandatory clauses relating to the athlete; (c) the non-effective use of the player's image by the employer; (d) players who do not have increase in salary in CETD, but have their image contracts constantly increased (JORGE NETO, CAVALCANTE, Op. cit.).

10 The concepts of arena and arena rights

According to the doctrine, the name arena right has a Latin origin, and it means “sand”, referring to the material that covered the stage of the amphitheaters of the Roman Empire (27 BC - 476 AD) in which the fighters - most of whom were prisoners of war, slaves or criminals – fought against each other, or against animals, in order to serve as a spectacle and entertainment for the Roman plebs (VEIGA, 2020; MARCONDES, 2020).

About this, Rafael Marchetti Marcondes teaches:

The stadiums in which the confrontations were held had their floor made of sand, in order to absorb the blood that poured from gladiators and animals during violent battles. Consequently, little by little, the word arena, which once referred to the material used for the flooring of these public leisure spaces, started to designate them. (Idem).

It is interesting to notice that the Roman legacy is present in several aspects of contemporary Western society, not limited to the legacy of the Civil Law legal system, Christianity and the Latin matrix of the Portuguese language. Concerning this, in the middle of the twenty first century, the same combat logic of the Roman arenas is still used on the field of football arenas, as consumers of sporting events oftentimes value more the grit of those who perform the sporting spectacle, sweating the most – and sometimes even bleeding – while they are wearing a club's shirt, than the plasticity of their movements on the field.

Currently, the word refers to the specific legal institute applicable to sporting entities. In this regard, the so-called arena right refers to the clubs' right to authorize or prevent the broadcasting or rebroadcasting of images of sporting events by any means or process (MARCONDES, 2020). In other words, the arena right corresponds to the amount paid to athletes for their exposure in the sporting event.

That said, it is noteworthy that the arena right is not to be confused with the image right.

It is known that the image right is guaranteed by items V, X and XIII of article 5 of the Federal Constitution. It is imprescriptible, personal, opposable and unavailable (PERAGENE, 2020). Nowadays, the arena right is regulated by article 42 of the “Lei Pelé”, which establishes the ownership of the sports practice entity, which pays its participating athletes a percentage of 5% of the stipulated price for the broadcasting of the sports event.

In short, this value can be analyzed from the perspective of two movements: the one that defends its civil nature and the one that considers it as having salary nature.

The first movement, supported by Felipe Legrazie Ezabella (2006), understands that the arena right has no connection with the athlete's employment contract, as it aims to protect the player's image, which is the value earned by the athlete in this institute. According to this movement, the arena right has its historical evolution linked to Copyright Law, not Labor Law. Hence, according to Correa da Veiga, the arena right is a species of the image right, encompassed in it while it consists in the broadcasting of the image of the participating athlete in televised games (VEIGA, 2020). Therefore, also according to Marcos Ulhoa Dani, such institute has a civil nature and represents a mere indemnity value, not integrating the player's salary (DANI, 2019, p. 66).

On the other hand, the second movement is led by Domingos Sávio Zainaghi, Sergio Pinto Martins and Alice Monteiro de Bastos (PELUSO, 2009). For the aforementioned scholars, the arena right has a remunerative nature. Thus, they consider that the arena right derives directly from the athlete's work since, in the absence of such work, said right also ceases. Therefore, the second movement also considers the repercussions that the arena right has on social security aspects and on other obligations, such as: the 13th salary, vacations, prior notice and FGTS.

Nevertheless, it is important to highlight that there are occasions when such obligation is not even due. That is, when there is no broadcasting or rebroadcasting of the sporting event, when the capture of these images is for journalistic purposes and is restricted to a maximum of 3% of the total time of the event, or even when the club authorizes the capture of images for free, the amount referring to the arena right will not be owed to the athletes participating in the event.

It is also noteworthy that, according to the doctrine, some professionals who also build the sports spectacle with athletes should not receive amounts referring to the arena right. About this, according to Correa da Veiga and Ezabella, both coaches and masseurs, physical trainers or even ball persons "are not eligible to receive part of the value to be shared from the arena right" (EZABELLA, Op. cit.), given that “their appearances in the audiovisual media result from their work activities” (Idem).

11 Conclusion

This research sought, through a systemic analysis of the historical, legal, economic, philosophical and social scenario, to contribute to the study of the main points surrounding the

performance of the professional soccer athlete in the sporting spectacle, as well as the factors that enabled the economic exploitation of their image, resulting from the work on the field, outside the four lines.

In order to do so, the historical part of the subject was investigated to detect when the legislation recognized the professional football athlete as a particular kind of worker, guaranteeing him constitutional and infra-constitutional rights and guarantees. Then, the main differences between the special sports employment contract and the conventional employment contract were highlighted. Next, an analysis was made on why and in what way the remuneration of the professional football athlete's image can be dealt with. The development of the theme was based on a critical analysis of Guy Debord's work entitled *Society of the Spectacle* (1967), from which a parallel was made between the high values connected to the profession of football athlete with the idea of the spectacularization of some elements of life in society.

Subsequently, it was decided to continue the study through the doctrinal, constitutional and infra-constitutional aspects connected to personality rights, from which the right to image derives. The legal possibility of the player to market his attribute-image through a company was investigated, as well as the possibility of clubs to acquire these image rights through sublicensing with companies that already have the right to negotiate the image of these players.

Due to the complexity of the issue related to the assignment of the image right of athletes to companies for them to negotiate, the economic feasibility of this operation was investigated. It was noticed that the taxation levied on legal entities is lower than that levied on individuals, which demonstrates the advantage of this type of operation.

Once the problems related to the tax authorities had been overcome, the issue was investigated from the perspective of the Labor Court. It was shown that, in case irregularities concerning those items are identified, the athlete's image agreement will be considered distorted, which, in turn, would characterize the salary nature of the obligation and would justify the payment of other amounts related to it.

In its last part, this paper addressed the second form of remuneration for the athlete's image: the arena right. The etymological issue of the term "arena" was addressed, comparing it with the current concept we have about the term and the legal nature of the institute.

In summary, this research aimed to investigate part of the sports-legal system that guarantees athletes and clubs the possibility of performing the sporting spectacle and obtaining economic gains arising from the exploitation of the image of the football event. Football is a product inserted in the capitalist logic that, as well as the aforementioned system of production of wealth, phagocytes various social and commercial relationships that surround it. The soccer player, who was previously seen as idle, is now seen as a showcase worker, who can link his own brand built through his work on the field to that of other companies that wish to associate with a successful figure in sport. And those commercial relationships between athletes, clubs and

companies may or may not be intermediated by another legal entity that holds the image rights of the one who guarantees the existence of the sporting event.

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