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Essai  
“Human Rights and Digital Technologies”

*Sujet : La vidéosurveillance algorithmique durant les Jeux Olympiques de 2024 :  
impact sur les libertés individuelles*

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# INTRODUCTION

When thinking about surveillance<sup>1</sup>, everybody's mind goes to think about Orwell's 1984 or Foucault's concept of "panopticism", from *Discipline and Punish: The Birth of the Prison*<sup>2</sup>. In both examples, surveillance is seen as a deleterious concept, infringing on one of the People's most basic rights: their right to privacy. This concept of privacy has been defined by the Cambridge Dictionary<sup>3</sup> as "someone's right to keep their personal matters and relationships secret" but it could also be defined legally as "The right to be left alone and to keep certain matters secluded from public view, as recognized in Article 8 of the European Convention on Human Rights and the Human Rights Act 1998. The right includes privacy of communications (telephone calls, correspondence, etc.); privacy of the home and office; environmental protection; the protection of physical integrity; protection from unjustified prosecution and conviction of those engaged in consensual nonviolent sexual activities; and protection from being photographed and described in circumstances where the individual has a reasonable expectation of privacy"<sup>4</sup>. As stated in this last definition, the right to privacy is a human right that has been enshrined in the communitarian law of the European Union to be protected at a higher level than simply a national one. But the ECHR also allows the High Contracting Parties to deviate from this not-so-absolute prohibition under very strict conditions; and it will be the topic of our essay.

Last summer took place the Olympic Games in Paris. For the occasion the French Government decided to experiment the use of algorithmic video surveillance (AVS) for the first time. This type of video surveillance is very specific since it relies on the use of an algorithm to determine or spot any behavior that would've been considered abnormal. According to the French Public Authorities, the algorithm had been taught among other things how to spot a starting fire or someone trying to enter a prohibited area. The Police could then be warned and intervene.

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<sup>1</sup> Definition of Surveillance - Cambridge Dictionary; the careful watching of a person or place, especially by the police or army, because of a crime that has happened or is expected.

<<https://dictionary.cambridge.org/dictionary/english/surveillance>>.

<sup>2</sup> Definition of Panopticism - Encyclopedia; Panopticism is a social theory named after the Panopticon, originally developed by French philosopher Michel Foucault in his book *Discipline and Punish*. The "panopticon" refers to an experimental laboratory of power in which behaviour could be modified, and Foucault viewed the panopticon as a symbol of the disciplinary society of surveillance. <https://encyclopedia.pub/entry/31034>.

<sup>3</sup> Definition of Privacy Cambridge Dictionary <<https://dictionary.cambridge.org/dictionary/english/privacy>>

<sup>4</sup> Definition of Privacy - Oxford Reference

<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100346847>>.

To begin the argumentation here, we need to agree on the idea that AVS is necessarily representing an infringement of the people's right to privacy as it's permanently collecting images of the citizens and the tourists, keeping the collected data to then be submitted to an AI that's been trained to watch over them without a significant aim, meaning that even an innocent person could be a potential target of this new type of state surveillance. Therefore all the problem resides in understanding whether the Government still had the right or not to use these AVS systems under the subsection 2 of Article 8 ECHR that allows infringements under certain conditions. I will argue that the French Government crossed a line here and that he had no right to monitor the people as it did during the Olympics.

## **I – A LACK OF PROPORTIONALITY IN THE “MEAN” REGARDING THE “AIM”**

Article 8 ECHR<sup>5</sup> states that “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country (...)”. The second subsection of this article enumerates all the reason possible to interfere with the right to privacy, the question is then, did the French Government meet any requirement necessary to justify the interference during the Olympics ? Moreover, the ECtHR in its jurisprudence<sup>6</sup> rose the idea that the rights that are liable to interferences are still protected by the principle of proportionality, creating an obligation for the interferer to find a balance between the measures he's putting in place and the goal he's trying to reach; this balance exists to ensure that the measure taken is the least restrictive of the right while still permitting the achievement of one of the goal stated in the article 8 ECHR (national security, public safety, etc.). In this case of 1968, the ECtHR stated that “The Convention therefore implies a just balance between the protection of the general interest (...) and the respect due to fundamental human rights”. Knowing the main reason for surveillance is and has always been national security, was it at risk here and was the response proportionate to the goal to achieve ? If we consider the notion of risk for the national security to be proportionate to the amount of people being in Paris during the event, we should then start by comparing the number of tourist coming every summer to Paris and the amount of people that specifically came for the event during the 2024 summer; Paris being a very

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<sup>5</sup> Article 8, 'European Convention on Human Rights'.

<sup>6</sup> 'CASE “RELATING TO CERTAIN ASPECTS OF THE LAWS ON THE USE OF LANGUAGES IN EDUCATION IN BELGIUM” (MERITS)' <<https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22001-57525%22%7D%3E>>.

touristic city, there are tourists coming from many places at all time of the year. Therefore, if the French Government usually don't feel like AVS is needed to monitor the streets of Paris because of the tourists, only an exponential multiplication of the number of visitors would have justified the use of algorithmic video surveillance.

During the Olympics, Paris only registered a raise of its touristic activity of 19%<sup>7</sup>, piking from 2,6 million to 3,1 million this year. On the other hand, the number of cameras added around the 12 Parisian Olympic sites was of 485<sup>8</sup>, all of them equipped with AI systems permanently monitoring the visitors. When appreciating the criteria of proportionality of the measures put in place, regarding the goal to achieve, one might ask if the augmentation of less than a quarter of tourists' activity would necessitate the installation of 485 right-interfering devices. In my opinion, if there was a proportionate answer to be given here to the rise of risks for the national security, it wasn't this one. AVS is a way of intruding people's privacy and allows the French Government to profile millions of people without them knowing they're even being filmed. There were many other ways to control that terrorists and other people wanting to endanger the French national security were not being let in the country nor around the stadiums that were not involving mass surveillance and profiling. For instance, the French Public Authorities could have decided to increase drastically the number of police patrols around the sites or to reinforce the customs control at the airport, etc.

And even in considering that one might have a different opinion on the matter, that these measures where in fact proportionate and necessary or in accordance with the goal to achieve, other arguments are playing in favor of the idea that the French Government wasn't even allowed to take such measures without break.

## **II – THE ABSENCE OF ACCORDANCE TO THE LAW**

If we look back at article 8 ECHR<sup>9</sup>, it is mentioned the “accordance with the law”, meaning no interference can be justified if it is not grounded on a law. Therefore, the French Government has had to publish a law to authorize the use of algorithmic video

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<sup>7</sup> 'JO Paris 2024 : le nombre de touristes a augmenté de 19% à Paris pendant les Jeux - France Bleu' (*ici par France Bleu et France 3*, 12 August 2024) <<https://www.francebleu.fr/infos/societe/jo-paris-2024-une-hausse-de-19-des-touristes-a-paris-pendant-les-jeux-5953883>> .

<sup>8</sup> Arthur Carpentier, 'Comment la vidéosurveillance algorithmique a été déployée pendant les Jeux olympiques' (14 August 2024) <[https://www.lemonde.fr/societe/article/2024/08/14/comment-la-videosurveillance-algorithmique-a-ete-deployee-pendant-les-jeux-olympiques\\_6280517\\_3224.html](https://www.lemonde.fr/societe/article/2024/08/14/comment-la-videosurveillance-algorithmique-a-ete-deployee-pendant-les-jeux-olympiques_6280517_3224.html)> .

<sup>9</sup> 'European Convention on Human Rights'.

surveillance during the Olympics. This law is a law of the 19th of May 2023, n°2023-380<sup>10</sup> that states in its article 10 that the authorization of AVS is conditioned to the information of the public “by any appropriate mean, of the use of algorithmic treatment on the collected images”. Following a referral under Article 61-1 of the French Constitution, the Constitutional Court stated that the information of the citizen about what would be made of the collected images and data was a critical criteria to recognize this article as valid<sup>11</sup>. Even though the aforementioned texts do not set any legal requirement regarding the amount of information that needs to be transmitted nor any advice on how to measure the information of the citizens, some human rights advocate<sup>12</sup> have spoken about this matter, warning about the absolute lack of information regarding the terms of the surveillance, even warning about a possible propaganda coming from the French Authorities about a greater security for all with AVS. Some even said the Government was trying to shape the People’s consent for a future mass surveillance experimentation.

In addition to this lack of information, some texts authorizing the use of AVS were not even published on time; the Police Prefect of Paris, Laurent Nuñez, only published the authorizing document for AVS on the 30th of July 2024 when the Authorities had been using it for four days already, since the begin of the Olympics on the 26th of July. Some legal actions have been taken to sanction the illegality of the images and the data collected by the cameras in the span of these four days.

Therefore, it is questionable that the French Government even respected the criteria of accordance to the law and then, if so, as ever had the right to use AVS during the Olympics.

In conclusion, we have seen in this development that the French Authorities didn’t respect any of the criteria stated in Article 8 ECHR, allowing interferences with the right to privacy. Therefore, they shouldn’t have infringed it with the use of AVS which is without a doubt a danger for anyone privacy.

In my opinion, the respect of human rights being a core principle of any democratic state, we should never allow any sort of interference, especially in the name of national security. This concept having many definition depending on who’s using the term, the possibilities of an authoritarian leader or regime twisting it and generalizing surveillance would be too numerous. As an example, China as always legitimized its mass

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<sup>10</sup> Article 10 - LOI N° 2023-380 Du 19 Mai 2023 Relative Aux Jeux Olympiques et Paralympiques de 2024 et  
 Portant Diverses Autres Dispositions (1) - Légifrance  
[https://www.legifrance.gouv.fr/jorf/article\\_jo/JORFARTI000047561989](https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000047561989) .

<sup>11</sup> ‘Décision n° 2023-850 DC du 17 mai 2023 | Conseil constitutionnel’ <https://www.conseil-constitutionnel.fr/decision/2023/2023850DC.htm> .

<sup>12</sup> ‘Après les Jeux de Paris, la bataille de la VSA est loin d’être finie’ (*La Quadrature du Net*, 9 October 2024)  
<https://www.laquadrature.net/2024/10/09/apres-les-jeux-de-paris-la-bataille-de-la-vsa-est-loin-detre-finie/> .

surveillance with the excuse of protecting its people and national security<sup>13</sup>, and no one in the Western World would ever argue against the idea that China isn't acting according to the democratic principles nor would want their country to act like China does towards its citizens.

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<sup>13</sup> 'The Chinese Surveillance State Proves That the Idea of Privacy Is More "Malleable" than You'd Expect' (*MIT Technology Review*) <<https://www.technologyreview.com/2022/10/10/1060982/china-pandemic-cameras-surveillance-state-book/>> .