

Ban Facial Recognition Europe



LEGAL COMPLAINT

Complaint submitted in February 2021 by the campaign for the permanent ban of Facial Recognition used for identification and profiling in all of Europe.

The complaint package is composed of the following:

- The claims of violations (list of articles and regulations in EU)
- The evidence of violations (list of cases of FR uses in EU)
- The evidence of the will of the people (50,000 signatures)

This legal complaint is delivered to the European Data Protection Supervisor (EDPS) for asking them to exercise their mandate by ensuring that the European Commission and EU institutions are upholding their data protection obligations. This package is also sent to the European Commission to take enforcement action against the States that are currently violating EU fundamental rights and to the European Parliament to debate and pass a resolution supporting the ban of Facial Recognition.

Uses of Facial Recognition technology in Europe led to abuses of fundamental rights, lack of accountability, and misspending of public funds for several years. European institutions are responsible for not enacting a clear legal framework concerning Facial Recognition technology and not enforcing actions for violations of existing regulations.

LEGAL CLAIMS

The listed cases of use of Facial Recognition in EU must be considered in violation of articles in the Charter of Fundamental Rights of the EU, the General Data Protection Regulation (GDPR) and the Law Enforcement Directive (LED), European Data Protection Board Guidelines, European Convention on Human Rights, and the Council of Europe Data Protection Convention.

- Directive (EU) 2016/680

The Police and Criminal Justice Authorities Directive, also known as Law Enforcement Directive (LED), defines the processing of personal data by authorities dealing with criminal offences and evidence by police. Facial Recognition uses are violating fundamental rights in the Article 10 of this Directive, which states that every biometric data used in order to identify individuals is only possible "where strictly necessary" and "subject to appropriate safeguards for the rights and freedoms of the data subject".

- General Data Protection Regulation

In the General Data Protection Regulation (GDPR) violations with Facial Recognition concern the Article 9 with the idea that the processing of biometric data for identification is forbidden. Also Article 6 is violated when there aren't the conditions under which personal data can be legally processed, one such requirement being that the data subject has given their explicit consent.

- EDPB Guidelines 3/2019

The European Data Protection Board (EDPB) on 29 January 2020 adopted guidelines on the processing of personal data through video devices which has a dedicated section on special categories such as biometric data. The scope of application is GDPR, thus the guidelines generally apply to companies and authorities other than law enforcement and intelligence services. An instance of violation with Facial Recognition is with the point 66 of the guidelines: "the data controller should always try to minimize the risk of capturing footage revealing other sensitive data regardless of the aim."

The human rights violations concerning privacy apply with the use facial recognition and the following institutions define them:

- European Convention on Human Rights:

Article 8, "It provides a right to respect for one's private and family life, his home and his correspondence".

- Council of Europe Data Protection Convention:

Principles 108, about "the collection and processing of biometric data".

- European Court of Human Rights:

Article 12, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation."

- Charter of Fundamental Rights:

Article 11, "Freedom of assembly and association" The notion of anonymity is a prerequisite to join a political protest in public spaces.

Beyond privacy and surveillance, facial recognition infringes human dignity and enables social discrimination, therefore more violations of fundamental rights would apply to this legal complaint.

This legal complaint is addressed to the following institutions:

European Data Protection Supervisor, European Data Protection Board, European Union Agency for Fundamental Rights, Council of Europe, European Commission, European Parliament.