

# Facial Recognition at the Fitness Center Under the General Data Protection Regulation Article 9(1) and 9(2)(a)

Daria Bulgakova<sup>\*</sup>, Valentyna Bulgakova<sup>\*\*</sup>

## Abstract

There are significant concerns regarding the legitimacy of biometric data processing within the European Union. Therefore, it is imperative that facial data processing adheres to the criteria and standards outlined in the General Data Protection Regulation (GDPR).

According to GDPR Article 9(1), the processing of biometric data is prohibited. In high-incursion situations that involve the private sphere, obtaining consent becomes crucial. It requires further justification and confirmation about the

---

<sup>\*</sup> Ph.D. in International Law, Advocate of Ukraine, Dnipropetrovs'k Regional Bar Council, Kryvyi Rih, Ukraine. Email: dariabulgakova@yahoo.com; ORCID: <https://orcid.org/0000-0002-8640-3622>.

Дар'я Анатоліївна Булгакова, Доктор Філософії з Міжнародного Права, Адвокат, Кривий Ріг, Україна.

<sup>\*\*</sup> Pedagogue-Methodist of the Highest Category, Kryvyi Rih, Ukraine. Email: krotona24@gmail.com; ORCID: <https://orcid.org/0009-0009-6463-5228>.

Валентина Анатоліївна Булгакова, Педагог-Методист Вищої Категорії, Кривий Ріг, Україна.

lawfulness of the process, as specified in GDPR Article 6. Hence, the European Union relies on Data Protection Authorities in Member States to assure obedience to GDPR in practice.

Regardless above mentioned, the authors aim to investigate compliance with the GDPR Article 9(1) and 9(2)(a) through the case study about facial recognition technology with biometric involvement at a fitness center in Denmark.

The research focuses on analyzing the Danish Data Protection Agency's investigation of FysioDanmark concerning the facial biometric recognition of customers' and employees' faces at the entrance to a fitness center for membership control checks and business optimization. The authors have made the following findings. The Agency warned the entity in question about the use of a system in fitness centers to uniquely identify customers without obtaining their consent. Furthermore, the research has shown that the application of consent as a legal ground to avoid prohibition to uniquely identify employees can't be granted as an appropriate argument due to an imbalance of employment relationships meaning the consent is not freely given.

Based on the given outcomes, the authors propose measures to prevent

---

**Acknowledgments.** The authors are thankful for the useful advice about the practical understanding of the GDPR Articles 51, 57, and 58 given by Tetiana Leshchenko, Head of the Dnipropetrovs'k Regional Bar Council, Dnipro, Ukraine. The opinion of Tetiana Leshchenko became significant to comprehend the role of the Danish Data Protection Authority (DPA) concerning fitness center FysioDanmark.

**Подяка.** Автори роботи “Практика Розпізнавання Облич у Фітнес-Центрі відповідно до статті 9(1) та 9(2)(а) Загального Регулювання Захисту Даних” вдячні за корисні поради щодо практичного осмислення статей 51, 57 та 58 Загального Регулювання Захисту Даних (GDPR), надані Тетяною Олександрівною Лещенко, Головою Ради Адвокатів Дніпропетровської області, Дніпро, Україна. Думка Тетяни Олександрівни є значимою у розумінні діяльності Датського органу із нагляду у дотриманні захисту даних (DPA) у фітнес-центрі FysioDanmark.

投稿日：2023 年 3 月 30 日；採用日：2023 年 5 月 21 日