

# European values, fundamental rights and EU law and politics on biometrics

Maria Eduarda Gonçalves, Maria Inês Gameiro

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## **Central questions**

**Which values are being summoned by European law and regulation shaping the development and deployment of science and technology?**

**How are relevant principles and rights being tackled by EU regulation of biometrics?**

**What does that tell us about the ‘value system’ embedded in European law on science and technology (S&T) more generally?**

## Ideas underlying the research

- **The Charter of Fundamental Rights of the EU constitutes, alongside other legal instruments, the main legally binding framework of value-based European principles and rights**
- **Yet, is the new EU discourse focused on human values and the rights of the person shaping the legal and regulatory frameworks for sciences and technologies?**
- **Biometrics provide an interesting study case for such analysis.**

# BIOMETRICS



## **Biometric technology has become:**

- one of the central pieces of national and international security and immigration policies in Europe following the ‘9/11’ when security measures became more tightened worldwide approaching the idea of a ‘maximum security society’ (Marx 1988)**
- increasingly important economically as it is more and more employed to control access of workers, students, and other categories of people in various organisations**

The values interfered with by biometrics can be divided in two sets:

- Security and related rights
- Liberty, privacy, intimacy, human dignity and related rights (namely, data protection)

The classic and broader confrontation between security and democracy also comes up in this connection.

The right to conduct a business and the freedom of research also play a part in the biometrics' 'rights balance' to the extent that development and economic investment in biometric technologies are recognised as legitimate rights.

## EU legal framework on biometrics

**Article 6 of the Charter addresses *liberty and security* as part of an *unique right*.**

**However, this 'right to liberty and security' raises a number of questions:**

- **Why have liberty and security been treated in an integrated manner in the Charter?**
- **Should they be regarded as the two faces of the same coin or rather as conflicting principles or rights?**

- Decision N° 1982/2006/EC approving the 7<sup>th</sup> Framework Programme for Research and Development follows the same direction stating that ‘security in Europe is a *precondition of prosperity and freedom*’.

Security technologies, including biometrics, are a priority area for R&D under this programme.

- Regulation N° 2252/2004 - Biometrics in passports and travel documents

Basically a technical normative text, rather than a value or rights-oriented one.

In reality, the introduction of biometrics as such was not questioned from the fundamental human rights' angle.

-The European legislator has limited its consideration to biometrical data protection, disregarding the implications of the employment of biometrics on the individuals' intimacy component of privacy and on the exercise of freedom and democracy more generally.

Applying the data protection regime (Directive 95/46/EC) to biometrical data implies the presumption of the legitimacy of biometrics.

- n **The merging of liberty and security into one single right may have been a political stratagem to render EU security policy more acceptable to the European public.**
- n **‘The driving force has of course been *entirely political* and aimed at demonstrating some sort of response to terrorism and national security, while simultaneously introducing vastly increased powers of law enforcement activity.’ (IPTS 2005, p. 20).**

- n **However, conceiving security and liberty as merged into one single principle or right undervalues these rights' conflict.**

**‘If we continue blindly along this path, where will it take us in 10, 20 and 30 years from a societal perspective?’ (IPTS 2005)**

- n **The Art. 29 Data Protection Working Party, acknowledging the hypersensitive nature of biometrical data, considers that these data should only be used in a subsidiary way, that is, whenever ‘less intrusive material’ does not allow the same effect. But no specific regime has been adopted for biometrical data up to this day.**

## In sum

**Biometrics has been framed by the EU primarily in light of security values and commercial interests in detriment of the consideration of its implications for the exercise of freedom and democracy**

**Limitations of the procedures that led to adoption of biometrics have also been recognised:**

**‘It is time also to bring citizens squarely into the debate. Not by carefully manipulated opinion polls, but by honest and open public discussion. (...). The dialogue to date has been heavily influenced by commercial interest and political aspirations. There has been remarkably little genuine consultation with citizens on a matter which will have a significant impact upon society.’ (IPTS 2005, p. 21).**

## **Concluding,**

**Up to now expectations opened up by the Charter on Fundamental Rights for a renewed and stronger responsibility of EU institutions to promote a balanced, value-based regulation of biometrics end up somewhat frustrated.**

**How may this state of affairs be changed?**



# Thank you