

# **Serbia: State of Affairs Report**

## **Part 1: Country Snapshot**

### **1.1 Brief Country Data**

On paper, the Serbian Constitution includes basic protections for freedom of the press and of expression, as well as personal data protection, including on the internet, but government enforcement or protection of these freedoms is limited at best. There are numerous laws that have the same goal. A continued issue in the country is self-censorship of journalists due to various government pressures. A positive step towards reducing some of this pressure was the removal of defamation from the criminal code in 2012.

In recent years in Serbia a significant increase of the Internet usage is noted, which lead to expansion of a multitude of new online media outlets (news websites and portals, blogs) which contribute to a more vibrant, diverse and informative online media sphere. On one hand, the intensified consumption of Internet enabled an immense number of citizens to become easily and promptly informed and up-to-date with daily happenings and news. On the other hand however, the majority of the journalists and experts perceive a vast number of the internet-media as unreliable outlets which offer a wide range of information not in line with journalists' ethics and to a great extent related to propaganda and hate speech.

A vast number of laws in Serbia affect Internet communication in many aspects – human rights, freedom of expression, criminal actions, buying and selling goods and services, copyright, and privacy, to name a few.

## **Part 2: Access to Internet & Internet Services**

### **2.1 Penetration**

Internet penetration in Serbia reached 62.075% according to the World Bank. 65.62% of Serbian households own a computer.<sup>1</sup>

### **2.2 Demographics**

There is a significant difference between the number of Internet users in urban and rural areas of Serbia. Internet penetration in rural Serbia is 44%, compared to 56% in urban areas.<sup>2</sup>

### **2.3 Uses of Internet**

According to the data published by the Statistical Office of the Republic of Serbia in 2016, percentage of households in Serbia with Internet access is 64.7. The percentage tends to increase – in the year 2010, this percentage was 39,0, and in 2006 – 18,5.

Almost all (99.5%) of the households with Internet access had broadband (fixed or mobile) connection to the Internet. The usage of the social media is also increased; there are more than 2 million Facebook profiles. According to Facebook, there are 3,800,000 active Facebook users, and on the other hand 2,400,000 active social media users accessing social media on a mobile device.

#### **2.4 Barriers to access (ex. Government, poverty, etc)**

The main barrier to Internet access is poverty. In rural areas in Serbia many households do not have a computer and therefore limited access to Internet. This is different in urban areas, where almost all households with a computer have an access to Internet.

### **Part 3: ICT Actors & Infrastructure**

#### **3.1 Fixed, Mobile and International Telecommunications**

##### **Fixed Communication**

Fixed-broadband communication subscriptions are mostly reduced, mainly because of the popularity and ease of mobile communication. According to data collected from Statistical Office of the Republic of Serbia, there are 37.33 fixed-telephone subscriptions per 100 inhabitants.

##### **Mobile Connection**

Mobile cellphone subscriptions in Serbia are high, with a rate of 122.13 subscriptions per 100 inhabitants. There are 15.57 fixed (wired) broadband subscriptions per 100 inhabitants (61.12 active mobile-broadband subscriptions per 100 inhabitants) the majority of mobile subscriptions (61%) are pre-paid packages and only 23% of subscriptions were for 3G connections as of 2014.<sup>3</sup> (Percentage of total mobile subscriptions that are pre-paid- 66%, percentage of total mobile subscriptions that are post-paid- 34%, percentage of mobile subscriptions that are 3g connections- 19%)

##### **International Communication**

International internet bandwidth per Internet user in Serbia (Bit/s) 112,372

### **Part 4: Regulatory ICT Policy**

#### **Regulatory authority of electronic media**

The independent regulatory organization with the aim of: effective implementation of the established policy in the field of media services in the Republic of Serbia; improvement of the quality and diversity of electronic media; contribution to the preservation, protection and development of freedom of opinion and expression; protection of the public interest in the field of electronic media and the protection of users of electronic media, in accordance with the provisions of the electronic media.

### **Regulatory agency for electronic communications and postal services (RATEL)**

Established in 2010 by the Electronic Communications Law. RATEL is an independent organization, with the status of a legal entity, which shall exercise authority to implement electronic communications policy. This includes encouraging market competition of electronic communications networks and services, improvement of network capacity and quality of services, and the protection of interests of electronic communications users, in line with the provisions of the Law and by-laws adopted in accordance with the Law.

### **The Press Council**

The Press Council is an independent, self-regulatory body that brings together publishers, owners of print and online media, news agencies and media professionals. It was established to monitor fulfillment of the Journalist's Code of Ethics, and solving complaints made by individuals and institutions related to media content. The Press Council is also authorized to mediate between aggrieved individuals, institutions and editorial staff. Further more the Council is able to issue public warnings in cases of violation of ethical standards as defined by the Journalist's Code of Ethics. The Press Council is engaged in the education of media professional to act in accordance with the Journalist's Code of Ethics and works to strengthen the role of media in Serbia.

## **Part 5: Information Security, Data Protection and Privacy**

Cyber security can no longer be considered separate from security in the real world. The damage arising from cyber-attacks is very real and has real consequences in the offline world. Nevertheless, because of the unique characteristics of technology, and the types, perpetrators and victims of such attacks, the issue of cyber security demands the special attention of all those involved in the Internet.

Specific legislation pertaining to cybercrime is mandated through the following legal instrument: - Criminal Code art. 298-304a. (CHAPTER TWENTY SEVEN - CRIMINAL OFFENCE AGAINST SECURITY OF COMPUTER DATA). But Serbia does not have any specific legislation and regulation regarding cybersecurity and compliance requirements. - Administrative Agency for Joint Service of Government Authorities performs the tasks of managing security risks in information-communication systems of public administration bodies, protecting the public administration network and data, cooperation and coordination related to information security.

Serbia does not have any officially recognized national (and sector specific) cybersecurity frameworks for implementing internationally recognized cybersecurity standards.

Serbia is one of the few countries in Europe without a Computer Emergency Response Team (CERT) whose aim is to provide rapid response to cyber security threats and incidents.<sup>1</sup>

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<sup>1</sup> <http://www.osce.org/serbia/170361>

Serbia does not have any officially recognized national cybersecurity strategy. However, Serbia adopted a development strategy for Information Society in the Republic of Serbia by 2020 which has six priorities for development. One of the strategy priorities is Information Security, which will have to be developed by improving legal and institutional framework, critical infrastructure protection, fight against cybercrime and scientific, research and development work.

The Action plan (2013-2014) determines activities for the cybersecurity improvement in Serbia. The competent institution for proposing strategic and action plan documents in the area of information society is Ministry of Trade, Tourism and Telecommunications.<sup>2</sup>

## **5.2 Types of attacks, actors, and those targeted**

Serbia is also not immune to cyber threats. Last year, websites of official institutions and the media were victims of a direct distributed-denial-of-service (DDoS) attack in the aftermath of an incident at a football match with Albania. In a country like Serbia, where more than 50% of the population has Internet access, citizens are increasingly relying on global IT networks in their daily life. Benefits of using the Internet are accompanied by risks which require joint efforts from government and academic institutions, civil society organizations and businesses. Currently the country does not have operational or legislative mechanisms to deal with them.

- The Government of Serbia had big problems with hackers attacks in recent years. It seems that cyber criminals hacked the Serbian State's network, accessed to the identities of almost all Serbians, which are now exposed to risks of frauds and identity theft. Five hackers have claimed they hacked the internet backbone of the Serbian Identity system and stolen ID numbers of almost all citizens of Serbia. Though the has not been confirmed by the Serbian authorities, the hackers have leaked a screenshot of what seems to be details of Serbian citizens.<sup>3</sup>

- Recently media organizations have become a very popular target for cyber attacks – attacks carried out by hacker-activists or by criminals, who infiltrate the targets to facilitate online fraud schemes. (the most famous example is attack on Peščanik media .)

Vladimir Radunovic Director of Cyber-security and E-diplomacy Programmes thinks that "the money one needs to invest into organizing a cyber-attack is small, risks for the attacker are small, but the consequences can be huge, and a countrywide cyber attack could result in a direct loss of more than 10 million Euros per day."<sup>4</sup>

## **5.3 Government surveillance**

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<sup>2</sup> [https://www.itu.int/en/ITU-D/Cybersecurity/Documents/Country\\_Profiles/Serbia.pdf](https://www.itu.int/en/ITU-D/Cybersecurity/Documents/Country_Profiles/Serbia.pdf)

<sup>3</sup> <http://securityaffairs.co/wordpress/31068/cyber-crime/serbia-hackers-stolen-national-database.html>

<sup>4</sup> <http://www.osce.org/serbia/170361>

There are no government restrictions on access to the Internet, e-mail, or Internet chat rooms. There are isolated reports that the government monitors e-mail. Individuals and groups are able to engage in the peaceful expression of views via the Internet, including by e-mail.

The constitution prohibits arbitrary interference with privacy, family, home, or correspondence. While the law requires the Ministry of Interior to obtain a court order before monitoring potential criminal activity and police to obtain a warrant before entering property except to save persons or possessions, police occasionally fail to respect these laws. Most observers believe authorities selectively monitor communications, eavesdrop on conversations, and read mail and e-mail. Human rights leaders also believe that authorities monitor their communications. The law obliges telecommunications operators to retain for one year data on the source and destination of a communication; the beginning, duration, and end of a communication; the type of communication; terminal equipment identification; and the location of the customer's mobile terminal equipment. While these data can be accessed by intelligence agencies without court permission, a court order is required to access the contents of these communications.<sup>5</sup> In 2013 the Constitutional Court of Serbia ruled that a court approval is necessary also for data collection.

OSCE Representative for Freedom of the Media Dunja Mijatović recently expressed her concern about the disappearance of various online contents in Serbia and the detaining of individuals because of their Facebook statuses regarding the great floods that hit the region. Websites that published critical articles aimed at the government, such as "Druga strana" and "Teleprompter", were under attack, while the whole "Blog" section of the daily newspaper website "Blic" was removed after journalist Dragan Todorović published a blog post called "AV ostavka" ("AV resignation").

On June 11th, Member of the European Parliament Marietje Schaake sent a letter to the European Commissioner for Enlargement and European Neighbourhood Policy Štefan Füle regarding the cases of online censorship and intimidation of individuals in Serbia.

## **Part 6: Legal Overview**

### **6.1 Laws**

#### **Constitution 2006:**

Article 50 of the Constitution of the Republic of Serbia prescribes freedom of the media: "Everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner laid down by the law."

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Censorship shall not be applied in the Republic of Serbia. Competent court may prevent the dissemination of information through means of public informing only when this is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence. The law shall regulate the exercise of right to correct false, incomplete or inaccurately imparted information resulting in violation of rights or interests of any person, and the right to react to communicated information”.

Furthermore, The Constitution guarantees numerous other rights related to internet data protection and freedom of expression, such as Confidentiality of letters and other means of communication (Article 41), Protection of personal data (Article 42), Freedom of thought, conscience and religion (Article 43), Freedom of thought and expression (Article 46), Right to information (Article 51).

However, Article 20 of the Constitution prescribes general conditions for restrictions of human rights - Human and Minority Rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. Also, articles listed above contain certain reasons for restriction, such as conducting a criminal procedure, protection of the public safety, public health, protection of rights and reputation of others etc.

### **European Convention on Human Rights, ratified in 2003:**

Article 16 of the Serbian Constitution prescribes: “Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly. Ratified international treaties must be in accordance with the Constitution”.

Therefore, Article 10 of the ECHR is directly applicable in Serbia.<sup>4</sup> Article 10 prescribes extensive protection of the freedom of expression, including freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. However, this right may also be the subject to certain restrictions, for the same reasons listed in Serbian Constitution.

### **Law on Electronic Communications**

This Law governs the terms and manner of performing the activities in the electronic communications sector; powers of the government authorities in the electronic communications sector; the status and operation of the Republic Agency for Electronic Communications; protection of rights of users and subscribers; security and integrity of

electronic communications networks and services; protection of privacy within the sector of electronic communications; lawful interception and data retention; fees; public consultation procedures in the electronic communications sector; performing electronic communications activities according to the general authorization regime; design, construction or installation, use and maintenance of electronic communications networks, associated facilities, electronic communications equipment and terminal equipment; interconnection and access; universal service provision; market analysis; designation of operators with significant market power (SMP) and the Agency's regulatory competencies related to operators with SMP; management and use of addresses and numbers; media content distribution and broadcasting; supervision over the enforcement of this Law; penalties for actions contrary to the provisions of this Law and other issues of relevance to the functioning and development of electronic communications in the Republic of Serbia.

In 2013, the Constitutional Court of Serbia brought a Decision (published in the Official Gazette of Serbia No. 60/2013, 10.07.2013.) ruling that two articles of this law were unconstitutional. The court ruled that inviolateness of confidentiality of letters and other means of communication is inviolable includes any data related to electronic communication. Therefore, declination of this Article of Constitution when using the data about when, with whom, from where and how long did a person make contact via electronic communication is possible according to Article 41 par. 2 of the Constitution, which means that this data may only be used for a limited time and upon a Court Decision, in case it is necessary for purposes of criminal investigation or protection of security of Serbia, in accordance with the law.

### **The Law on media and Public Information**

This law outlines the rules governing public information. The purpose of the law is to secure and protect the presentation, reception and exchange of information, ideas and opinions through the media. Additionally, to promote the values of a democratic society, conflict prevention and peacekeeping through truthful, timely, reliable and complete information. The law promotes editorial autonomy of media organizations, the free flow of information. It specifically prohibits state actors from pressuring, threatening or blackmailing editors, reporters or sources of information. There are also provisions that prohibit hate speech, protect private life and personal records, and certain court procedures which may breach provisions of the law. It is also stated that public information is free and cannot be subject to censorship.

### **Criminal Code**

In 2012, defamation has been decriminalized, and is now a civil offense. Articles criminalizing *insult* remained in Criminal Code. Such offences are technically not punishable by prison sentence, but journalists can still be imprisoned if they are unable to pay associated fines. Investigative reporters and media outlets risk lawsuits or threats

of legal action for insulting “powerful” people. In July, a Belgrade Appeals Court upheld an October 2013 defamation ruling requiring the B92 broadcaster to pay 200,000 Serbian dinars (\$2,280) in connection with an article that implicated a former assistant minister of health in mismanagement of public funds.

In 2014, there was a notable decrease in court rulings in which heavy fines were levied in response to politicians’ claims of being slandered in the media. Journalists attributed the shift to an improved understanding among judges of Serbia’s media laws. Nevertheless, some confusion within the judiciary over Serbia’s media laws continues; in particular, journalists say that judges often ignore a law holding that journalists cannot be penalized for publishing or rewording official government statements.

The criminal code outlines *criminal offences against the security of computer data*, which includes unauthorized access to protected computers, computer networks and electronic data processing.

Besides, there are numerous criminal offences that aim at protecting personal data, such as Violation of Privacy of Letter and other Mail (Article 142), Unauthorised Wiretapping and Recording (Article 143), Unauthorised Photographing (Article 144), Unauthorised Publication and Presentation of another’s Texts, Portraits and Recordings (Article 145), Unauthorised Collection of Personal Data (Article 146)

Also, Article 387 of Criminal Code of Republic of Serbia (Racial and other discrimination) prohibits hate speech:

Who spread or otherwise make publicly available texts, images or any other representation of ideas or theories advocated or encourages hatred, discrimination or violence against any person or group of persons based on race, color, religious affiliation, nationality, ethnic origin or other personal property, shall be punished by imprisonment of from three months to three years.

### **Criminal Procedure Code**

Criminal Procedure Code of Serbia introduced several special investigative techniques for criminal investigations, upon the written and reasoned request of a Public Prosecutor. These interception methods include secret surveillance of communication, secretly monitoring and recording of a suspect, and computer data search of a suspect.

### **Law on Free Access to Information of Public Importance:**

The law is created to allow all individuals living in Serbia the right to obtain information from government authorities. This law contains four basic legal rights regarding access to information of public importance (Article 5):

- the right of the applicant to be informed whether the public authorities hold have specific information, i.e. whether it is otherwise accessible;

- the right of the applicant to have the information of public interest accessible by providing free of charge insight in a document containing the information;
- the right of the applicant to obtain a copy of the document containing the requested information, upon reimbursing the necessary costs of copying the document and
- the right of the applicant to receive a copy of the document sent to the address by mail, fax, electronically or otherwise, upon reimbursing the costs of sending

If the requested information is already available to the public, the applicant is entitled to be informed by the body about where and when it was published. If the document contains information that the public has no legitimate interest to know, the applicant has the right to access other parts of the documents. According to this Law, Information of public importance is information held by a public authority body, created during or relating to the operation of a public authority body, which is contained in a document and concerns anything the public has a justified interest to know.

#### **Law on Personal Data Protection:**

This law sets out the conditions for personal data collection and processing, the rights and protection of persons whose data are collected and processed, limitations to personal data protection, proceedings before an authority responsible for data protection, data security, data filing, data transfers outside the Republic of Serbia and enforcement of this law. According to the law, every person is entitled to personal data protection regardless of their nationality and residence, race, age, gender, language, religion, political and other affiliations, ethnicity, social background and status, wealth, birth, education, social position or any other personal characteristic. The law introduces the Commissioner for Information of Public Importance and Personal Data Protection, who is responsible for personal data protection, as an autonomous public authority who exercises his/her powers independently.

Although the current law implements basic European data protection principles, it is not complied with Directive 95/46. The law does not prescribe possibility to collect personal data by granting consent through online platform, by ticking boxes, which makes the application of the law in era of digitalization almost impossible. It obliges data controllers to obtain consent of data subjects signed certified electronic signatures. It is difficult to expect that internet users will use electronic signatures. In accordance with Action Plan published on website of Ministry of Justice, the Law shall be complied with Directive 95/46 and GDPR. The basis for compliance shall be Draft model of Law, released by the Commissioner.

However, the Draft Law (released by Ministry of justice) is neither complied with the Draft Model of Commissioner and with Directive, nor with GDPR. Now, it is expected that the new Government, in the context of accession negotiations of Chapters 23 and 24, release the new draft of Law.

### **The Electronic Media Act**

Adopted in 2016, this law regulates the conditions and manner of audio and audio-visual media services, conditions and procedures for issuing licenses for the provision of audio and audio-visual media services, and other issues relevant to the field of electronic media. Furthermore, it introduces the regulatory body for electronic media, its organization and field of work.

### **Law on Copyright and Related Rights:**

This law regulates the rights of the authors of literary, scientific and artistic works (the copyright), right of performers, right of the first publisher of a free work, rights of producers of phonograms, videograms, broadcasts and databases, and rights of the editors of printed editions as rights related to the copyright, the way of exercising the copyright and related rights and the judicial protection of such rights. In the case of exploitation of the copyright work under the provisions of this law on copyright restrictions, the name of the author and the source from which the work is taken must be stated.

## **6.2 Litigation**

### **The Public Information Law – Hate Speech:**

First-instance verdict (November 2011) of the First Basic Court in Belgrade for severe discrimination of LGBT people against Dragan Marković Palma, president of the political party One Serbia (Jedinstvena Srbija, JS) and the mayor of Jagodina, marking the first time in Serbia that a politician is penalized for *hate speech* and *discrimination* of the LGBT population. The decision is confirmed by the Second Instance Court.

### **Causing Panic and Disorder Arrests**

During floods in Serbia in 2014, many people were arrested (including minors) and detained for spreading information via social networks (facebook, twitter etc) about seriousness of the floods as well as number of victims. None of the procedures resulted in court cases after the initial investigation. It is suspected that the arrests were made to repress citizens who published information different from that published by official authorities.

### **Endangerment of Safety**

Lawyers' Committee for Human Rights filed a criminal charge against a former spokesman for the anti-terrorist unit of Ministry of Interior, Radomir Pocuca, since he published the call for football fans to unite and fight against the non-governmental organization, Women in Black.

The statement was posted on his personal Facebook page, the day before a silent vigil by Women in Black on 26 March to commemorate the anniversary of the start of the international armed conflict in Serbia and Kosovo in 1999. This call for a lynching caused an avalanche of threats, in person, on Facebook and via e-mail. Threats were particularly serious because they came from a civil servant at an institution in charge of law enforcement and the prevention of violence. The case is still ongoing before the Higher Court in Belgrade, rendering and pronouncing decision is expected on December 14<sup>th</sup>.

## **Part 7: Information Campaigns and Internet Activism**

- Advocacy work on IF
  - Topics of activism, activist networks and campaign
  - Mediums: social media, journalism, blogs, etc
- Government Response
- Opportunities for additional/alternative advocacy

### **Failure to Protect Citizens' Personal Data:**

In November 2014, social networks began to circulate a link to the file (that weighs more than 19 gigabytes), made up of over 4000 financial documents including personal data. It contained information on exactly 5,190,396 Serbian citizens. During the inspection, the Commissioner for Information of Public Importance and Personal Data Protection determined that the document in question was located on a publicly accessible page on the site of the Agency, since an unspecified date in February 2014 – for more than 10 months. To record this is the largest breach of privacy of the citizens of Serbia.

On October 12<sup>th</sup> 2016, the Commissioner for Information of Public Importance and Personal Data Protection warned the public that the misdemeanor proceedings against the persons responsible in the Agency for privatization, i.e. directors and agents of the agency at the time of the incident when they compromised identification numbers of almost all adult citizens of Serbia, will soon be obsolete.

### **Civic Activism During Floods in 2014**

Internet activism was organized from the first day of the flood (13.05.2014.), in order to collect and exchange accurate information from affected areas to organize help for those in need. The involvement of citizens and activists were focused on humanitarian and legal issue that arose from the devastating affects of the May 2014 floods.

### **Censorship Related to Floods of 2014**

Only few days after the floods and widely spread citizens' activism, "The other side" and portal "Teleprompter" were temporarily incapacitated; additionally, the entire blog of Dragan Todorovic published on web portal "Blic" was deleted.

In the absence of a strong parliamentary opposition, with a small number of printed and electronic media that criticize the government, state officials attacked critical thought on the Internet, suffocating freedom of expression. Faced with uncomfortable questions and facts that do not suit them, authorities resorted to force and censorship. See also, “Causing Panic and Disorder Arrests” section above.

**Decriminalization Lobbying:** YUCOM has pioneered an initiative to decriminalize defamation, as well as carried out successful regional campaigns of monitoring the implementation of new laws (most recently, the Freedom of Information Act).

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