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# State of pandemonium: Digital rights in the Western Balkans and COVID-19



# Table Of Contents

- 3 Executive summary
- 4 Introduction
- 5 Problem description
- 8 Rationale for action
- 10 Policy options / scenarios and recommendations
- 11 References

# State of pandemonium: Digital rights in the Western Balkans and COVID-19

Danilo Krivokapić, Bojan Perkov  
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## EXECUTIVE SUMMARY

The COVID-19 pandemic caused many shockwaves globally, eg disruption to daily interaction (physical and social distancing measures), disruption to education, disruption to work, restrictions on freedom of movement, etc.<sup>1</sup> But, particular concern has been raised for the respect of human rights during this global public health crisis. Countries across the world have introduced various legal measures and technological solutions to combat consequences of COVID-19, leading to increased intrusion into their citizens' lives. In such circumstances, privacy and personal data protection were among the first 'victims', while infringement of other rights, such as freedom of expression and information, came soon after. The Western Balkans are no exception – numerous breaches of digital rights and freedoms could be witnessed during the pandemic, threatening to further decrease the overall state of human rights riding on the public fear of a major health crisis.

The purpose of this paper is to show that the pandemic should not under any circumstances be used as a *carte blanche* for irreversible reduction of human rights standards, especially through the use of intrusive technologies. The authors' findings presented in the paper highlight that there are already many issues in the Western Balkans in terms of digital rights and freedoms, particularly concerning personal data privacy and security, misinformation and attacks on journalists, which only deteriorated during the COVID-19 pandemic.

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1 European Union Agency for Fundamental Rights, *Bulletin #1: Coronavirus pandemic in the EU - fundamental rights implications, 1 February - 20 March 2020* (European Union Agency for Fundamental Rights April 2020) <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-coronavirus-pandemic-eu-bulletin\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf)> accessed 27 May 2020.

## INTRODUCTION

As the global shock caused by the novel coronavirus loomed, countries of the Western Balkans such as Albania, Serbia, North Macedonia, Montenegro and Bosnia and Herzegovina engaged in measures to control the spread of COVID-19. Some of them, for example Serbia, went further and introduced a state of emergency on 15 March 2020, a legal mechanism usually invoked only in the most difficult times for a society, which was ultimately lifted on 6 May.<sup>2</sup> A state of emergency was also declared in North Macedonia, but unlike in Serbia, it was done after a broad consensus was reached between all relevant political parties in the country.<sup>3</sup> Other countries from the region introduced strict measures as well – Albania made it mandatory to use a portal for citizens to obtain permits to leave their homes, with additional restrictions on movement for the elderly and children.<sup>4</sup>

However, even though certain human rights, such as privacy and freedom of expression, are limited as a result of the proclaimed state of emergency, that does not provide the government with the authority to completely suspend all guaranteed human rights, regardless of the necessity and seriousness of the situation. As stated in the Council of Europe Information document SG/Inf(2020)11 on respecting democracy, rule of law and human rights in the framework of the COVID-19 crisis, any derogation from the guaranteed human rights ‘must have

a clear basis in domestic law in order to protect against arbitrariness and must be strictly necessary to fighting against the public emergency’.<sup>5</sup>

As a consequence of the pandemic, several key risks for digital rights and freedoms in the Western Balkans region could be identified, including threats to privacy and personal data protection, spreading misinformation and conspiracy theories about the coronavirus, as well as pressures on free expression, mainly towards journalists reporting about the pandemic. All these issues threaten to extend further after the pandemic shockwave and introduce a techno-dystopia<sup>6</sup> of the ‘new normal’, which could have disastrous consequences for the already frail democratic potential of Western Balkan countries. For example, in their latest ‘Nations in Transit 2020’ report, Freedom House did not categorise Serbia and Montenegro as democracies for the first time since 2003. These two countries are now classified as ‘transitional/hybrid’ regimes.<sup>7</sup> When it comes to media freedoms, the situation is concerning as well. According to Reporters Without Borders, the Western Balkan countries are ranked below the 50th place on the latest World Press Freedom Index. Bosnia and Herzegovina (58th place) has the best rank, while Albania (84th) North Macedonia (92nd), Serbia (93rd) and Montenegro (105th) are dangerously close to the ‘red zone’, which starts at 111th place with Bulgaria.<sup>8</sup>

2 N1 Belgrade, ‘Serbian parliament lifts state of emergency’ (N1, 6 May 2020) <<http://rs.n1info.com/English/NEWS/a596769/Serbian-parliament-lifts-state-of-emergency.html>> accessed 10 May 2020.

3 Florian Bieber and others, ‘The Western Balkans in Times of the Global Pandemic’ (Balkans in Europe Policy Advisory Group April 2020) 9 <<https://biepag.eu/wp-content/uploads/2020/04/BiEPAG-Policy-Brief-The-Western-Balkans-in-Times-of-the-Global-Pandemic.pdf>> accessed 27 May 2020.

4 Arjan Dyrnishi, ‘Albania’ in Max Brändle and others, ‘Democracy and the State of Emergency – Political Battles Emerging out of the Corona Crisis in the Western Balkans, Croatia and Slovenia, Report Two’ (Friedrich Ebert Stiftung 2020) 4 <<http://library.fes.de/pdf-files/bueros/belgrad/16213.pdf>> accessed 27 May 2020.

5 Council of Europe, ‘Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis – A toolkit for member states’ SG/Inf(2020)11 (Council of Europe 7 April 2020) 3 <<https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>> accessed 27 May 2020.

6 Naomi Klein, ‘Screen New Deal: Under Cover of Mass Death, Andrew Cuomo Calls in the Billionaires to Build a High-Tech Dystopia’ (*The Intercept*, 8 May 2020) <<https://theintercept.com/2020/05/08/andrew-cuomo-eric-schmidt-coronavirus-tech-shock-doctrine>> accessed 27 May 2020.

7 Zselyke Csaky, ‘Nations in Transit 2020: Dropping the Democratic Facade’ (*Freedom House*) <<https://freedomhouse.org/report/nations-transit/2020/dropping-democratic-facade>> accessed 10 May 2020.

8 Reporters Without Borders, ‘Index details – Data of press freedom ranking 2020’ (*Reporters Without Borders*) <[https://rsf.org/en/ranking\\_table](https://rsf.org/en/ranking_table)> accessed 11 May 2020.

## PROBLEM DESCRIPTION

Since the onset of the pandemic in the Balkans and the first reported cases of infection, it seemed that citizens would experience challenges for the respect of their rights and freedoms. At a press conference on 19 March 2020, the President of Serbia and leader of the ruling party, Aleksandar Vučić said that the movements of ‘Italian phone numbers’ were being tracked by the police, referring to the fact that a large number of Serbian citizens returned to the country from abroad on the eve of the pandemic. He also mentioned ‘another method’ used for tracking movement in case people left their phones behind, but he did not specify what it was.<sup>9</sup> Neighbouring Croatia was on the brink of adopting controversial legislative changes which would enable mobile phone location tracking, but they were put on hold in early April.<sup>10</sup> It is interesting to note that Croatia employed the use of drones to look for breaches of state measures, mostly regarding the ban on public gatherings.<sup>11</sup>

Taking the above into account, it should be highlighted that there were cases of serious breaches of privacy and personal data during the pandemic, mainly concerning health data. Given the already low level of privacy culture<sup>12</sup> in the Western Balkans, it seems that personal data protection was almost completely disregarded by the authorities, thus exposing citizens to great privacy risks, for example making sensitive information on health conditions of citizens publicly available.

The most serious case occurred in Serbia and it refers to the COVID-19 Information System, the Serbian national system for storing and processing data on the spread of the coronavirus,

for which the login credentials were available on a website of a health institution in plaintext. The case was discovered accidentally by the SHARE Foundation team who searched online for legislation adopted in the response to the pandemic. Even though the competent authorities reacted quickly upon SHARE Foundation’s alert, the webpage containing the username and password was live for eight days, which is usually enough to be indexed by Google and searchable later.<sup>13</sup>



*Screenshot of the webpage with login credentials for the COVID-19 Information System*

Sensitive data on the medical condition of citizens also fell victim to negligence in Montenegro, where the National Coordination Body for Infectious Diseases published names of people who were given mandatory self-isolation orders online, in order to prevent further violations. In Bosnia and Herzegovina, cantonal and local institutions published data of people in isolation and self-isolation, some of them even data of COVID-19 positive citizens. However, in late March 2020, the Agency for Personal Data Protection of Bosnia and Herzegovina issued a ban on publishing any data of citizens either infected with coronavirus or in mandatory (self-) isolation.<sup>14</sup>

In the course of the pandemic, misinforma-

9 Filip Stojanovski, ‘COVID-19 pandemic adversely affects digital rights in the Balkans’ (*Global Voices*, 30 March 2020) <<https://globalvoices.org/2020/03/30/covid-19-pandemic-adversely-affects-digital-rights-in-the-balkans>> accessed 11 May 2020.

10 See source in Croatian: Melita Vrsaljko, ‘Tracking mobile phones put on hold’ (*Al Jazeera Balkans*, 10 April 2020) <<http://balkans.aljazeera.net/vijesti/pracenje-mobitela-stavljeno-na-cekanje>> accessed 11 May 2020.

11 Katja Milicic, ‘Vukovar police using drones to enforce social-distancing measures’ (*The Voice of Croatia*, 14 April 2020) <<https://glashrvatske.hrt.hr/en/news/domestic/vukovar-police-using-drones-to-enforce-social-distancing-measures>> accessed 11 May 2020.

12 Maja Zivanovic, ‘Journalists Chief Victims of Digital Rights Violations in Serbia’ (*Balkan Insight*, 14 November 2019) <<https://balkaninsight.com/2019/11/14/journalists-chief-victims-of-digital-rights-violations-in-serbia>> accessed 27 May 2020.

13 Share Foundation, ‘A Password Pandemic. How did a COVID-19 password end up online?’ (*SHARE Foundation*, 23 April 2020) <<https://www.sharefoundation.info/en/a-password-pandemic>> accessed 11 May 2020.

14 Stojanovski (n 9).

tion, conspiracy theories and misleading stories flourished.

Disinformation and fake news continue to proliferate around the world, with potentially harmful consequences for public security, health and effective crisis communications, as outlined in the EEAS Report from April 2020. In this context, it is important to distinguish the very different forms of misinformation and disinformation, as well as other forms of information manipulation. In the region of the Western Balkans, Eastern Partnership and the Middle East and North Africa, there is a trend to portray the European Union (EU) and its partners as ineffective, divided and cynical in their response to COVID-19. As such, the pandemic is repeatedly presented as a weakness of democratic systems to effectively deal with the crisis. Under such circumstances, devoid of reliable information, citizens are becoming distrustful of official government communication and are vulnerable to fake news and conspiracy theories, which are spreading through both mainstream media and social networks.<sup>15</sup>

This may be somewhat related to the frightening statements of public officials. For instance, Serbian President Vučić said at one point: ‘all our cemeteries will be small to take all of us if you listen to other people’s suggestions; I beg of you to listen to your state’.<sup>16</sup> One night in late March 2020, citizens in Serbia with SIM cards of Telekom Serbia, a state-controlled company and one of the two largest telecommunications companies in the country, received a SMS

message from the crisis HQ in which they were asked to stay at home, claiming that ‘the situation is dramatic’ and that the Italian and Spanish scenarios were looming.<sup>17</sup>

Across the region however, fact-checking portals and initiatives have detected and debunked numerous cases of articles from obscure websites, widely shared unsupported claims and even outright falsehoods. One such initiative from Croatia, *Faktograf*, found numerous misinformation related to the pandemic, vaccination, Bill Gates and the coronavirus itself, which were mostly spread on social media and via popular chat applications in the Western Balkans, such as Viber and WhatsApp.<sup>18</sup> Some citizens even suffered legal consequences for posting unverified and misleading information online: a Russian national was arrested in Montenegro after she had shared claims that ‘1000 people are infected in Montenegro and that six people died’ and that ‘Montenegro is expecting the Italian scenario’.<sup>19</sup>

Timely and accurate information is even more important in times of social crisis such as the COVID-19 pandemic, but journalists found themselves in dire straits for simply doing their job. One such example was Ana Lalić, reporter at the *Nova.rs* portal, who was arrested and had her electronic devices confiscated in the process because of her story about poor working conditions in one large Serbian hospital.<sup>20</sup> She was released from custody quickly after a public outcry, but was still targeted on social media and accused of acting against the ‘interests of the

15 EUvsDisinfo, ‘EEAS Special Report Update: Short assessment of narratives and disinformation around COVID19/Coronavirus Pandemic’ (*EUvsDisinfo*, 24 April 2020) <<https://euvsdisinfo.eu/eeas-special-report-update-2-22-april>> accessed 20 May 2020.

16 Julijana Mojsilovic, ‘Serbia’s planes fly people home, but authorities aren’t happy to have them back’ (*N1*, 27 March 2020) <<http://rs.n1info.com/English/NEWS/a582547/Serbia-s-authorities-not-happy-with-Serb-nationals-returning-from-abroad.html>> accessed 12 May 2020.

17 Telegraf, ‘The government again texts citizens: Dramatic situation, Italian scenario looming’ (*Telegraf.rs*, 1 April 2020) <<https://www.telegraf.rs/english/3172968-the-government-again-texts-citizens-dramatic-situation-italian-scenario-looming>> accessed 12 May 2020.

18 See source in Croatian: Faktograf, ‘Live blog: disinformation about the coronavirus’ (*Faktograf.hr*) <<https://faktograf.hr/2020/04/28/live-blog-dezinformacije-o-koronavirusu>> accessed 12 May 2020.

19 See source in Bosnian: Radio Sarajevo, ‘She wrote on social media: Russian woman arrested in Montenegro for spreading panic’ (*Radio Sarajevo*, 23 March 2020) <<https://radiosarajevo.ba/vijesti/regija/pisala-na-drustvenim-mreza-ma-ruskinja-uhapsena-u-crnoj-gori-zbog-sirenja-panike/371329>> accessed 12 May 2020.

20 Milica Stojanovic, ‘Serbian Reporter’s Arrest Over Pandemic Article Draws PM’s Apology’ (*Balkan Insight*, 2 April 2020) <<https://balkaninsight.com/2020/04/02/serbian-reporters-arrest-over-pandemic-article-draws-pms-apology>> accessed 12 May 2020.

state', even through sponsored posts, ie paid adverts used so that posts could be seen by a larger number of users.<sup>21</sup> While reporting on an Easter mass in the Croatian town of Split, which was held during a ban on public gatherings, *Dalmatinski* journalist Živana Šušak Živković and *TVN1* camera operator Ivana Sivro were attacked by several men who tried to stop them from filming.<sup>22</sup>

The Government of Serbia tried to put the Pandemic Crisis Headquarters in charge of obtaining, verifying and disseminating all information regarding the pandemic. In this way, the media and journalists would be prevented from obtaining information from sources (including experts) which are not authorised by the headquarters. Professional journalist associations, international organisations and legal experts considered this measure as unconstitutional:

Such a measure leaves the media without relevant local sources, as well as without relevant local voices, such as those of health workers and local politicians, who could confirm or deny information coming from the field, since such sources and interlocutors are now obliged by the Government to direct information exclusively to the central crisis response team or public health institutes. And should the media lack relevant sources and interlocutors, they will neither be able to inform nor to rebuff the misinformation that we are all witnessing, regardless of government measures. And it's certainly not good.<sup>23</sup>

After these public and evidence-based reac-

tions, the document was withdrawn on the request of the Serbian President.

Living in the digital era, constantly surrounded by always-connected devices collecting and processing our personal data, gives rise to the use of new technological solutions, particularly by the state. An example are the 'contact tracing apps', ie software intended for installation on mobile phones in order to trace people who have been in contact with those who are infected with coronavirus, which gained popularity during the COVID-19 pandemic. Smartphones are an integral part of our private sphere, as confirmed by the Court of Justice of the European Union (CJEU) in its *Planet49* judgment.<sup>24</sup> Without proper safeguards, contact tracing applications are deemed to be intrusive for privacy due to access to some of our most sensitive data – our movements, places we visit, social contacts and our health status. The Government of North Macedonia has developed such an app, called 'StopKorona!', and it seems to be in line with standards provided by the European Commission<sup>25</sup> as it is voluntary and deletes collected data after 14 days.<sup>26</sup> However, it remains to be seen whether other Western Balkan countries will implement similar solutions and how, especially taking into account the recent data privacy and security scandals.

Another sensitive issue is the introduction of smart video surveillance, with Belgrade being the focus of international attention when it comes to the Balkans, as the installation of 1,000 cut-

21 Council of Europe Alert, 'Journalist Ana Lalic Detained Overnight after Reporting on Conditions in Hospital' (*Council of Europe*, 1 April 2020) <<https://go.coe.int/YwRQ2>> accessed 12 May 2020.

22 Committee to Protect Journalists, 'Croatian reporters attacked while documenting Easter Mass amid COVID-19 lockdown' (*Committee to Protect Journalists*, 16 April 2020) <<https://cpj.org/2020/04/croatian-reporters-attacked-while-documenting-east.php>> accessed 12 May 2020.

23 Živković Samardžić, 'Informing the public about the condition and consequences of COVID-19, Government may have taken things a step too far' (*Živković Samardžić Law Office*, 1 April 2020) <<http://www.zslaw.rs/informing-the-public-about-the-condition-and-consequences-of-covid-19-government-may-have-taken-things-a-step-too-far>> accessed 3 June 2020.

24 Case C-673/17 *Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband eV v Planet49 GmbH* [2019] para 70 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0673>> accessed 20 May 2020.

25 European Commission, 'Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection' (Communication) C(2020) 2523 final (16 April 2020) <[https://ec.europa.eu/info/sites/info/files/5\\_en\\_act\\_part1\\_v3.pdf](https://ec.europa.eu/info/sites/info/files/5_en_act_part1_v3.pdf)> accessed 20 May 2020.

26 Bojan Stojkovski, 'North Macedonia Leads Region in COVID-19 Tracing App' (*Balkan Insight*, 16 April 2020) <<https://balkaninsight.com/2020/04/16/north-macedonia-leads-region-in-covid-19-tracing-app>> accessed 20 May 2020.

ting-edge cameras with facial recognition capabilities was announced in early 2019.<sup>27</sup> During the COVID-19 pandemic, this intrusive technology has already been used in some repressive regimes, such as Russia. Moscow has an advanced video surveillance system consisting of 170,000 cameras, which were used to identify citizens in violation of quarantine or self-isolation. The Mayor of Moscow boasted how the authorities managed to track down a Chinese woman who got off a flight from Beijing in February 2020, when the disease was spreading internationally.<sup>28</sup>

The COVID-19 pandemic caused twists and turns in other important aspects of the intersection between the physical and digital realm. Facebook, Inc, the Californian technology behemoth which owns popular online platforms Facebook, Instagram and WhatsApp, announced in early March 2020 the expansion of its transparency and verification rules for political and electoral advertising to 32 additional countries, including Serbia and North Macedonia. In both countries elections have been announced for 2020. This meant that political and electoral adverts on Facebook in these two countries would face higher scrutiny, similar to those in the United States of America (USA) and the EU. Advertisers would have to get authorised by Facebook and much more information about advert expenditure and demographics targeted by adverts would be available.<sup>29</sup> However, the pandemic first caused the delay and later the postponement of this policy until further notice ‘due to a reduced and remote workforce’, as cited by Facebook.<sup>30</sup>

All things considered, personal data of West-

ern Balkans citizens, much like the rest of the world, are mostly controlled by gigantic multinational companies originating from jurisdictions with a different cultural perception of privacy and data processing in comparison to Europe, eg the USA or China. This basically makes the citizens of the Western Balkans and their weak states powerless to take control over data, an essential asset<sup>31</sup> in the digital economy. To make things worse and more complicated, we might see a scenario where the states make an ‘unholy pact’ with these companies for the alleged purposes of combating the spread of the virus instead of standing up for the data rights of their own citizens.

## RATIONALE FOR ACTION

Moments of social crisis, which the COVID-19 pandemic undoubtedly is, often create new challenges for countries with fragile democratic institutions, such as those in the Western Balkans. Technology is becoming more embedded in society in different ways<sup>32</sup> and states are using digital tools and services without applying appropriate safeguards in terms of privacy, security and human intervention when it comes to algorithmic decision making.

The greatest public health crisis of the 21st century so far has led the states around the world to turn to technology as the ultimate solution, even though it can only help in combating the spread of coronavirus. The fascination with technology, particularly in countries which are less developed in terms of infrastructure and access

27 Bojan Stojkovski, ‘Big Brother Comes to Belgrade’ (*Foreign Policy*, 18 June 2019) <<https://foreignpolicy.com/2019/06/18/big-brother-comes-to-belgrade-huawei-china-facial-recognition-vucic>> accessed 21 May 2020.

28 Mary Ilyushina, ‘How Russia is using authoritarian tech to curb coronavirus’ (*CNN*, 29 March 2020) <<https://edition.cnn.com/2020/03/29/europe/russia-coronavirus-authoritarian-tech-intl/index.html>> accessed 24 May 2020.

29 Share Foundation, ‘Facebook is starting to follow electoral and political advertising in the Balkans’ (*Share Foundation*, 9 March 2020) <<https://www.sharefoundation.info/en/facebook-is-starting-to-follow-electoral-and-political-advertising-in-the-balkans>> accessed 24 May 2020.

30 Facebook for Business, ‘Requiring Authorization for Ads About Elections and Politics in 32 Additional Countries’ (*Facebook*, 5 March 2020) <<https://www.facebook.com/business/news/requiring-authorization-for-ads-about-elections-and-politics-in-32-countries>> accessed 24 May 2020.

31 Frank Sorrentino, ‘Banks Are Sitting On The Digital Economy’s Most Valuable Resource: Data’ (*Forbes*, 27 January 2020) <<https://www.forbes.com/sites/franksorrentino/2020/01/27/banks-are-sitting-on-the-digital-economys-most-valuable-resource-data/#18800dbc1a96>> accessed 27 May 2020.

32 Jonathan McCully, ‘Explainer: What is the “Digital Welfare State”?’ (*Digital Freedom Fund*, 27 April 2020) <<https://digitalfreedomfund.org/explainer-what-is-the-digital-welfare-state>> accessed 25 May 2020.

to digital tools, leads to the path where complex social problems are trying to be solved with technological solutions, which do not actually solve that problem and instead create even greater tensions. A typical case of this is the installation of thousands of facial recognition cameras in Belgrade – efficiency in fighting and preventing crime has become an excuse for putting the majority of innocent and law abiding citizens under constant mass surveillance in the streets.<sup>33</sup>

A recent example from Bosnia and Herzegovina has shown how much the state leadership feels comfortable in abusing the resources at their disposal for surveillance, at least hypothetically. Namely, Milorad Dodik, the President of Republika Srpska, the Serbian entity of Bosnia and Herzegovina, recently stated he was listening to wiretapped phone conversations of opposition politicians. However, he later claimed that he was ‘joking’ after opposition parties and the Bosnian branch of Transparency International had filed criminal complaints against him.<sup>34</sup> In situations like this one, it is quite devastating to see disregard for consequences of such statements, even when they are made in the heat of a political battle or as a joke to make fun of political opponents.

On top of all that, the technology and infrastructure used to collect, process and store personal data of Western Balkans citizens on a mass scale are in most cases owned and operated by large multinational companies, which are out of reach of Western Balkans governments, at least those which are not EU member states. These countries, with weak institutions and practically non-enforceable laws when it comes to companies from distant and powerful jurisdictions, are in the position of territories where ‘anything goes’ and data exploitation for huge profits is possible.

This is also starting to change however, at

least with very small steps, as Google LLC recently notified the Commissioner for Information of Public Importance and Personal Data Protection of Serbia that they have appointed a data protection representative in that country, ie an entity for all complaints and issues regarding personal data processing of people residing in Serbia. This comes as a result of an initiative by SHARE Foundation, which filed complaints to the Commissioner in late 2019 against Google LLC and Facebook, Inc for their failure to comply with the new Serbian Law on Personal Data Protection<sup>35</sup> requiring them to appoint local representatives for personal data matters, as they offer services and products (including YouTube, Gmail, Google Maps, Instagram and WhatsApp) in the territory of Serbia.<sup>36</sup>

It seems that problems regarding digital rights and freedoms in Western Balkan countries run deep and that the pandemic just flushed more of them out onto the surface. SHARE Foundation, an organisation dedicated to protecting digital rights and freedom based in Serbia, conducts monitoring of the state of digital rights since 2014 by documenting violations. So far, the foundation has registered more than 600 violations of digital rights in Serbia most of which never reached a legal conclusion. In 2019, SHARE Foundation joined forces with the Balkan Investigative Reporting Network (BIRN) to expand the monitoring and apply the methodology to five more countries in the region: Bosnia and Herzegovina, Croatia, Hungary, North Macedonia and Romania.<sup>37</sup> It quickly turned out that the newly monitored countries share very similar problems to Serbia, ie that violations of digital rights and freedoms, such as insults, threats and smear campaigns, hate speech or manipulations, are also an issue of public interest.

33 Bojan Perkov, ‘hiljade.kamera.rs: community strikes back against mass surveillance’ (*Share Foundation*, 19 May 2020) <<https://www.sharefoundation.info/en/hiljade-kamera-rs-community-strikes-back>> accessed 25 May 2020.

34 Danijel Kovacevic, ‘Bosnian Serb Chief Shrugs Off Illegal Wiretapping Charges’ (*Balkan Insight*, 21 May 2020) <<https://balkaninsight.com/2020/05/21/bosnian-serb-chief-shrugs-off-illegal-wiretapping-charges>> accessed 26 May 2020.

35 Law on Personal Data Protection 2018 (*Zakon o zaštiti podataka o ličnosti*) (Serbia).

36 Share Foundation, ‘Share has brought Google to Serbia’ (*Share Foundation*, 22 May 2020) <<https://www.sharefoundation.info/en/share-has-brought-google-to-serbia>> accessed 25 May 2020.

37 Share Monitoring, ‘Digital monitoring database: Keeping track of online violations in Southern and Eastern Europe’ (*Share Foundation and BIRN*) <<https://monitoring.bird.tools>> accessed 18 May 2020.

## POLICY OPTIONS / SCENARIOS AND RECOMMENDATIONS

The years ahead of us will be filled with numerous social, technological and economic challenges. Although Croatia and Serbia have adequate regulations in areas of personal data protection, electronic communications and information security, other countries need improvement of their respective national legal frameworks, especially given the fact they are in different stages of the EU accession process. Moreover, as all Western Balkan countries are members of the Council of Europe, they signed and ratified both the European Convention on Human Rights<sup>38</sup> and Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)<sup>39</sup> with Serbia and Croatia having ratified the 2018 Protocol amending the Convention.<sup>40</sup> Finally, it is important to highlight that all emergency measures affecting human rights taken during the pandemic should be immediately stopped once the disease is put under control. As Chair of the Committee of Convention 108 and Data Protection Commissioner of the Council of Europe reiterated in their joint statement, ‘it is important to recall that data protection can in no manner be an obstacle to saving lives and that the applicable principles always allow for a balancing of the interests at stake’.<sup>41</sup>

From a more practical perspective, here are some policy recommendations from the overview and analysis provided within this policy paper:

- There must be full respect of national legal frameworks concerning the digital environment in practice, which in most cases is well

written, given the fact it is in line with the EU standards, but not implemented in practice due to low culture of privacy and security;

- Before the introduction of new technological solutions, there needs to be an open, inclusive and vibrant discussion on the proposed technology and its purposes with all relevant stakeholders, including civic organisations and expert communities. Crucial questions regarding what kind of society we want to live in will be asked, and intrusive technologies, eg smart video surveillance and facial recognition, can put the current social contract between the government and its citizens to the test;
- When implementing new technical solutions, adequate technical and organisational measures need to be implemented, particularly in terms of the respect of ‘privacy by design’ and ‘privacy by default’ principles,<sup>42</sup> which are new technical standards and also required by the EU General Data Protection Regulation (GDPR);<sup>43</sup>
- Make the source code for digital solutions, eg contact tracing apps, publicly available as it ensures transparency, particularly if these solutions are developed using public funds;
- Before implementing mass data processing activities, which by rule involve technological solutions, a proper privacy impact assessment needs to be performed in accordance with legal requirements and submitted to the national data protection authority for approval of the data processing in question;
- Support and strengthen the capacities of the national data protection authorities, as well as national institutions overseeing information security, taking into account that these

38 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953).

39 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (adopted 28 January 1981, entered into force 1 October 1985).

40 Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (adopted 10 October 2018, not yet entered into force).

41 Alessandra Pierucci and Jean-Philippe Walter, ‘Joint statement on the right to data protection in the context of the COVID-19 pandemic’ (*Council of Europe*, 30 March 2020) <<https://www.coe.int/en/web/data-protection/statement-by-alessandra-pierucci-and-jean-philippe-walter>> accessed 27 May 2020.

42 Shay Danon, ‘GDPR Top Ten #6: Privacy by Design and by Default’ (*Deloitte Switzerland*) <<https://www2.deloitte.com/ch/en/pages/risk/articles/gdpr-privacy-by-design-and-by-default.html>> accessed 26 May 2020.

43 Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ L119/1.

are still relatively new institutions in the Western Balkans;

- Enforce the legal obligation which requires the appointment of data protection officers in public sector institutions and continuous education and training of staff in this regard;
- Make strong efforts to have large platforms appoint their representatives in the Western Balkan countries, in order to enable communication between the companies operating them and citizens and authorities. These representatives should not be used only to 'check the box' and formally fulfil legal requirements, they should actually respond to requests and help citizens enjoy their rights;
- Insist that Facebook applies full transparency for political and electoral adverts on its platforms in the Western Balkans, as is already the situation in Croatia which is a member state of the EU;
- Journalists must be allowed to work and perform their social function without any interference from public or private actors. Cybersecurity and data protection capacities of journalists and media organisations should be improved through mechanisms such as educational tools and manuals, mentorship programmes and centralised technical support;
- The prosecution should act promptly in cases of online threats and these cases should be resolved in court with priority. The role of local representatives of popular online platforms is also essential for the legal resolution of these cases;
- State bodies and institutions should not under any circumstances hide information from the public during times of social crisis under the pretext of 'prevention of spreading panic';
- Strengthening media and information literacy must be one of the priorities of Western Balkan governments. In times of aggressive misinformation campaigns, citizens need to be able to adequately process the information they encounter online and recognise reliable sources.
- Improve digital competences of the population through formal and informal education in order to strengthen the economy and increase the overall quality of life by preparing citizens for challenges of the 21st century, especially the youth.

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This document has been produced with the financial assistance of the European Union and as part of the Global Campus of Human Rights. The contents of this document are the sole responsibility of the authors and can under no circumstances be regarded as reflecting the position of the European Union or of Global Campus of Human Rights.



2020

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Global Campus of Human Rights

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<http://doi.org/20.500.11825/1622>

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