

State Led AI and Biometric Surveillance Initiatives in a Captured State:
How Serbia's Draft Law on Internal Affairs (2021/2022) will Impact Civil Society and Serbia's
Path Toward Democracy

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Summary

The paper analyzes the state of democracy in Serbia to understand how state led artificial intelligence and biometric surveillance initiatives will impact Serbia's path toward democratization. Section 1 describes the state of democracy in the country by reviewing the country's party system, the functioning of the branches of government, the quality of media freedom, the capacity of independent authorities, and the role of civil society. Section 2 looks at the state led biometric and artificial intelligence initiatives, specifically the Draft Law on Internal Affairs. Section 3 uses Section 1 and analyzes it under the framework of David-Barrett's state capture framework and draws conclusions on how the Draft Law and other similar initiatives will impact civil society and the future of democracy in Serbia. This analysis draws the conclusion that due to Serbia's position in state capture, passing the Draft Law on Internal Affairs and legitimizing the use of AI and biometric surveillance technology will hinder the ability of civil society to function, and thus threaten Serbia's transition to democracy.

Acronyms

AI- Artificial Intelligence
BIRN- Balkan Investigative Reporting Network
CEE- Central and Eastern Europe
CoE- Council of Europe
CSO- Civil Society Organizations
DOS- Demokratska opozicija Srbije
DS- Democratic Party
DPA- Data Protection Authority
DPIA- Data Protection Information Assessment
ECHR- European Convention on Human Rights
ECtHR- European Court on Human Rights
EU- European Union
FDI- Foreign Direct Investment
FOI- Freedom of Information
FSU- Former Soviet Union
GDPR- General Data Protection Regulation
HJC- High Judicial Council
LED- Directive on Law Enforcement
LPDP- Law on Personal Data Protection
MEP- Member of the European Parliament
MHMRSD- Ministry for Human and Minority Rights and Social Dialogue
MIA- Ministry of Immigration and Asylum
MoI- Ministry of Interior
MP- Member of Parliament
OSCE- Organization for Security and Co-operation in Europe
PRC- People's Republic of China
SLAPP- Strategic Lawsuits Against Public Participation
SNS- Serbian Progressive Party
SRS- Serbian Radical Party
SPC- State Prosecutorial Council
SPS- Socialist Party of Serbia

Introduction

Governments around the world have implemented artificial intelligence (AI) and biometric surveillance technologies to promote safety and security. Western countries, such as the United States, the United Kingdom, and several members of the European Union, have implemented these technologies under these exact guises. Because of this precedent, the Republic of Serbia's government and its supporters question why Serbian civil society has had such an inflammatory response to the implementation of these technologies throughout their country. However, these reactions to the new biometric and AI initiatives must be understood within the context of the state of Serbia's democracy. Civil society organizations (CSOs) cite many issues, including the current state of the party system, the ways the branches of the government function, the constant attacks on media freedom, the lack of capacity of independent authorities, and the potential increase of data misuse in the future. Given the captured state of democracy in Serbia, CSOs predict that the AI and biometric surveillance initiatives, legalized in the impending Draft Law on Internal Affairs, will be misused by the government. The purpose of this report is to analyze the current state of democracy in Serbia under the framework of state capture and to understand the potential implications of state-led AI and biometric surveillance initiatives for democracy.

Based on this analysis, this paper argues that Serbia is in a position of state capture. Under the conditions of state capture the adoption of the Draft Law on Internal Affairs and the increased legitimization and use of AI and biometric surveillance technology will severely curtail the power of civil society and thus weaken and perhaps, even reverse, Serbia's democratic transition.

1. Definitions

1.1. State Capture

State capture is a useful way to examine the state of democracy in Serbia because of the current over encompassing position the Serbian Progressive Party plays in the government. This term state capture was introduced by Hellmen, Jones, and Kaufman in 2000 to describe the economic capturing of Former Soviet Union (FSU) states during their transition from centrally

planned economies to open markets¹. For the purposes of this paper, David-Barret's notion of state capture as an end goal rather than a process that occurs when a country is transitioning to democracy is more useful. Her definition draws attention to the role of political elites in the process of state capture². David-Barret defines state capture as,

“... a type of systematic corruption whereby narrow interest groups take control of the institutions and processes that make public policy, excluding other parts of the public whose interests those institutions are supposed to serve”³.

State capture differs from classic corruption or bribery in that those in power do not disregard the rules, they instead rewrite them⁴. This results in a deeper change that can be much more difficult to reverse. State capture has previously been associated with countries in transition, especially in the FSU. Serbia's case differs from those of the FSU, as cited by Hellemn et al, because politicians are leading Serbia's state capture. There is considerable influence from businessmen with relations to the Serbian Progressive Party (SNS); however, that relationship is not covered in this report.

The state capture framework David-Barrett focuses on the formation of law and policy, the implementation and influencing of administrative decisions, and the disabling of checks on power. David-Barret emphasizes the intentional nature of the elite's actions, the mechanisms affected by the capture, and the importance of independent institutions in building resilience against capture. She utilizes three areas to examine the elements of state capture at play. First, the formation of law and policy analyzes how the captor, in this case the SNS party, has secured control over the means of violence and shaped the “rules of the game”. Area two, the implementation of policy by government bodies and civil service looks at how the captor has influenced administrative procedures that simultaneously benefit the captor and its network and disadvantage its opponents. Finally, area three, accountability institutions, examines how the aptor disabled institutions that hold those with power accountable⁵.

¹ Joel S. Hellman, Geraint Jones, and Daniel Kaufmann, “‘Seize the State, Seize the Day’ : State Capture, Corruption, and Influence in Transition,” September 2000, <https://doi.org/10.1596/1813-9450-2444>.

² Elizabeth David-Barrett, “State Capture and Inequality | CIC” (Center on International Cooperation, December 17, 2021), <https://cic.nyu.edu/resources/state-capture-and-inequality/>.

³ David-Barrett, “State Capture and Inequality | CIC.”, 4

⁴ *ibid.*

⁵ *ibid.*, 5

1.2. Other Definitions

1.2.1. Political, Vertical, Horizontal, and Diagonal Accountability

The V-Dem Institute defines political accountability as mechanisms that hold those with political power accountable through methods of applying sanctions and transferring decision making power. There are three methods of such accountability. First, vertical accountability, or electoral accountability relies on the ability of the constituents to hold government accountable through elections or political parties. Second, horizontal accountability is checks and balances that exist within legislative and judicial branches to hold the executive branch accountable. Third, is the ability of civil society and media to hold the government accountable. This exists primarily through the spreading of information, protests, and a variety of other forms of public engagement⁶.

1.2.2. Civil Society

Civil society will be defined as informal groups located outside of the state and the economy. The United Nations Civil Society Unit within the Outreach Division defines civil society organizations as,

“any nonprofit, voluntary citizens’ group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, civil society organizations perform a variety of services and humanitarian functions, bring citizens’ concerns to governments, monitor policies, and encourage political participation at the community level”⁷.

For the purposes of this paper, the terms CSOs and civil society focus on pro-democracy and human rights and/or single-issue organizations that encourage public participation. Civil society will be understood as a diagonal form of accountability that works to hold the government accountable.

1.2.3. State Led AI and Biometric Surveillance Initiatives

When discussing the state led AI and biometric surveillance initiatives, the analysis is referring to the procurement of cameras and related software that allows for facial recognition

⁶ Emily Walsh, “Political Accountability: Vertical, Horizontal, and Diagonal Constraints on Government,” Policy Brief (V Dem, 2020), https://www.v-dem.net/media/publications/pb_22_final.pdf.

⁷ United Nations Department of Global Communications. “About Us.” United Nations Civil Society Unit, Outreach Division. United Nations. Accessed May 15, 2023. <https://www.un.org/en/civil-society/page/about-us>.

and other similar technologies that would be allowed under the Draft Law on Internal Affairs in 2021/22.

2. Serbia's Transition to Democracy

The bloody dissolution of Yugoslavia put Serbia's path towards democracy a decade behind the rest of Central and Eastern Europe (CEE)⁸. The Bulldozer Revolution and the elections in 2000 mark the beginning of Serbia's transition from authoritarianism to democracy⁹. Serbia's transition timeline can be partitioned into four distinct time periods. The first period, from 2000 until 2004, was characterized by competition between political parties and active participation of civil society¹⁰. The government was led by Demokratska opozicija Srbije (DOS) which had a strong pro-EU orientation¹¹. In this period, there was competition between political parties and active participation of civil society. Before the prime minister was assassinated in 2003, the Djindjic government began the initial stages of the democratization process. However, after the assassination, the process of reforms began to slow¹². The second period, from 2004 to 2008, was defined by the stagnation of the EU accession process led by the Kostunica governments and the stagnation of the EU accession process. In the third period, from 2008 until 2012, the pro-EU parties returned to power with the Democratic Party (DS) in control of the government and the Socialist Party of Serbia (SPS) as a minority partner. The last period, from 2012 onward, began with the election of SPS and the Serbian Progressive Party (SNS), both Milošević regime successor parties, to the government¹³. Since 2012, the government has been progressively pursuing policies that have led to state capture.

From WWII until the end of the Cold War, Yugoslavia was considered one of the more 'liberal' countries that functioned under a one-party communist system. Consequently, many in

⁸ Jerzy J. Wiatr, "Political Leadership in the Transition to Democracy," in *Political Leadership Between Democracy and Authoritarianism*, 1st ed., Comparative and Historical Perspectives (Verlag Barbara Budrich, 2022), 117–55, <https://doi.org/10.2307/j.ctv27tctmb.9>, 124

⁹ Marija Stambolieva, "Welfare and Democratization – Comparing Croatia, Serbia and Macedonia," *Social Policy & Administration* 47, no. 2 (2013): 142–60, <https://doi.org/10.1111/spol.12012>, 153

¹⁰ Nebojša Vladislavljević, "Media Discourse and the Quality of Democracy in Serbia after Milošević," *Europe-Asia Studies* 72, no. 1 (January 2020): 8–32, <https://doi.org/10.1080/09668136.2019.1669534>, 9

¹¹ Antonino Castaldo and Alessandra Pinna, "De-Europeanization in the Balkans. Media Freedom in Post-Milošević Serbia," *European Politics and Society* 19, no. 3 (May 27, 2018): 264–81, <https://doi.org/10.1080/23745118.2017.1419599>, 270

¹² Stambolieva, "Welfare and Democratization – Comparing Croatia, Serbia and Macedonia.", 154

¹³ Castaldo and Pinna, "De-Europeanization in the Balkans. Media Freedom in Post-Milošević Serbia.", 270

the West predicted that Serbia would move quickly down the path of democracy¹⁴. However, the assumption that Serbia's path towards democracy would resemble anything linear was quickly proven incorrect. Since 2012, Serbia has leaned increasingly towards authoritarianism and has consistently presented elements of a captured state. The democratic society that was being cultivated after the fall of Milošević has been systematically undermined.

Effective pressure to continue governmental reforms comes primarily from outside institutions and foreign governments. Serbia faces increasing criticism from the European Union¹⁵. In 2014, the EU granted Serbia candidate status. This has allowed the EU to place direct pressure on the Serbian government to pursue reforms if it wants to continue receiving benefits granted to candidate members¹⁶.

The ruling party, SNS, and its leader, President Aleksandar Vučić, publicly use pro-European rhetoric and pro-democratic reforms. However, since the mid-2010s, and especially since COVID-19, the ruling party has looked less towards the EU as a friend in the international community and is beginning to turn towards China. Serbia and China's relationship has flourished based on mutual interests, especially in the realm of natural resource extraction. Anti-west sentiment in Serbia has been strong, especially since the NATO bombing of Belgrade in 1999 and the recognition of Kosovo's independence by a large majority of Western countries. SNS has been able to capitalize on the disconnect between EU and Serbian public sentiments while continuing to use positive EU statements in its rhetoric¹⁷.

The war in Russia has also had an impact on Serbia's international relationships as Serbia continues to go against EU wishes and refuses to implement sanctions. This look towards China for solutions and continued relationship with Russia has affected the EU's ability to influence reforms that would enable a functioning democracy. This shift becomes clear in the Serbian government's AI and biometric surveillance initiatives.

¹⁴ Vladislavljević, "Media Discourse and the Quality of Democracy in Serbia after Milošević.", 29

¹⁵ Celso Cancela and Paula Lamoso, "Serbia's EU Membership, the Corner Stone of Western Balkans, into Question." 6, no. 2 (2020): 31.

¹⁶ Ibid.

¹⁷ Vuk Vuksanović, "Russia and China, Friends and Brothers of the Captured State – Analysis of Narratives Used to Capture the State" (Belgrade Center for Security Policy, December 13, 2021), <https://bezbednost.org/en/publication/russia-and-china-friends-and-brothers-of-the-captured-state-analysis-of-narratives-used-to-capture-the-state/>.

Section 1: State of Democracy in Serbia

3. Introduction

Section 1 analyzes the state of democracy in Serbia to determine if the country is in a position of state capture which allows for an understanding of how increased surveillance by the government could be misused. First, the state of the party system, followed by the role of the branches of government, the quality of media freedom, the capacity of independent authorities, and the role of civil society are examined. Additionally, the position of Serbia in the EU accession process and its relationship with China are added to help understand the position of Serbia in geopolitics. Although the relationship with Russia is not discussed in further detail than above, because it does not play a prominent role in the use of AI and biometric technologies, it is an important consideration and is highly influential when it comes to the functioning of democracy in Serbia.

4. State of the Party System

Serbia has been categorized as a hybrid regime by international democracy monitoring NGOs for almost a decade, corresponding with the fourth phase of the democratic transition from 2012 until today. The country's party system is characterized by weak institutionalization, high volatility, and dominance of identity-based divisions¹⁸. In addition, the party system is heavily polarized. Old communist elites present themselves as transformed and continue their governance in right wing parties in a proclaimed pluralist environment, even though there is a lack of strong opposition¹⁹. Between 2000 and 2012, in the first two stages of the transition, right after SNS officially gained power, Serbia witnessed numerous competitive elections in a true pluralist environment. Power successfully changed hands several times, primarily between parties that had worked to remove Milošević from power. However, since 2012, genuine party competition has been scarce due to unlawful influence in the election process, the misuse of

¹⁸ Dušan Spasojević, "Riding the Wave of Distrust and Alienation – New Parties in Serbia after 2008," *Politics in Central Europe* 15, no. 1 (June 1, 2019): 139–62, <https://doi.org/10.2478/pce-2019-0006>, 143

¹⁹ Spasojević, "Riding the Wave of Distrust and Alienation – New Parties in Serbia after 2008.," 142

public funds for political campaigns, and violence against the opposition, which has allowed the ruling party to function under a significant advantage²⁰.

4.1. Ruling Parties

The current ruling party, the Serbian Progressive Party (SNS) broke away from the extreme right-wing Serb Radical Party (SRS) in 2008 and inherited its leadership, infrastructure, and some Members of Parliament (MPs). SNS has tried to remove itself from the SRS legacy by presenting itself as “the movement of discontented people” allowing them to draw support from new areas of the population that have historically felt underrepresented²¹. Before the 2012 elections, there was a stronger opposition party presence. However, the disintegration of the Democratic Party of Serbia and the split of the Democratic Party led to the consolidation of control by the rising SNS party. SNS has a similar history to SRS where it is mostly led by former leaders from the Milošević regime of the Federal Republic of Yugoslavia. SNS rose to power in 2012 when Tomislav Nikoic was elected president with the current president, Aleksandar Vučić, as the vice president of SNS²². SNS' rise to power in 2012, exacerbated by the election of Aleksandar Vučić to the presidency, has led to the continual undermining of independent institutions and restrictions on media freedom²³.

4.2. Opposition Parties

Serbia's party system has been plagued by an asymmetrical balance since the dissolution of left-leaning parties and coalitions in 2012. Without a majority party, the left is now only composed of new, independent actors that have been unable to consolidate in an effective way to combat the power of the right.

The right side of the political spectrum has been characterized by catch-all politics. The SNS party continues to dominate the right by running for elections in pre-election coalitions with members of smaller parties with slightly different right wing ideological orientations. By the end

²⁰ Vladislavjević, “Media Discourse and the Quality of Democracy in Serbia after Milošević.”, 14

²¹ Spasojević, “Riding the Wave of Distrust and Alienation – New Parties in Serbia after 2008.”, 147

²² Claudia Laštro and Florian Bieber, “The Performance of Opposition Parties in Competitive Authoritarian Regimes: Three Case Studies from the Western Balkans,” *European Political Science* 20, no. 4 (December 2021): 617–29, <https://doi.org/10.1057/s41304-021-00326-w>, 621

²³ Laštro and Bieber, “The Performance of Opposition Parties in Competitive Authoritarian Regimes.”, 618

of the 2016 elected parliament's mandate, 32 parties were represented in parliament; Only 10 of them, however, were considered part of the opposition²⁴.

New parties trying to fill in the ideological space on the left continue to present themselves and fizzle. They attempt to convince voters by adopting specific issues²⁵. Consequently, this has created many single-issue parties that have been unable to compete with the growing power and control of the SNS²⁶. Due to SNS positioning itself as a centrist party which adapts to take over issues as they become relevant, the ability of parties on the left to grow their base has been diminished. This method is seen in SNS' foreign policy. While promoting the pro-European course, SNS refuses to denounce Russia, maintains close ties to China, and repeatedly expresses opposition to joining NATO²⁷.

If the opposition does find themselves winning seats in parliament, however, they are systematically silenced and find that their vote has a negligible impact when compared to the power of the ruling coalition. As a result, opposition parties have begun to utilize other strategies, especially protests. Recent waves of protests in 2018, 2020, and 2020/21 were led by opposition coalitions focused on a particular issue, including COVID-19 restrictions, judicial failure, and environmental concerns²⁸.

4.3. 2020 Boycott

Due to frustration and the SNS overhaul of the National Assembly, many opposition MPs left parliament in early 2019. This resulted in an absence of opposition parties in the National Assembly, outside of a few MPs from national minority parties. From 2019 to 2021, several rounds of Inter-Party Dialogue (IPD) were held, organized, and moderated by CSOs and members of the European Parliament²⁹. The lack of results from the IPD, along with the continued build-up in the crisis of democratic institutions resulted in the opposition parties, the Democratic Party (DS), the People's Party (NS), the Party for Freedom and Justice (SSP), the Serbian Movement Dveri, and the Social Democratic Party (SDS), boycotting the 2020

²⁴ Ibid., 623

²⁵ Ibid., 619

²⁶ Spasojević, "Riding the Wave of Distrust and Alienation – New Parties in Serbia after 2008.", 157

²⁷ Laštro and Bieber, "The Performance of Opposition Parties in Competitive Authoritarian Regimes.", 622

²⁸ Laštro and Bieber, "The Performance of Opposition Parties in Competitive Authoritarian Regimes.", 624

²⁹ Vujo Ilic and Gazela Pudar Drasko, "2022 Elections in Serbia: The Return of the Opposition? : Election Analysis," *Contemporary Southeastern Europe*, 2022, <http://unipub.uni-graz.at/cse/8206596>, 2

parliamentary elections³⁰. Consequently, the parties belonging to the ruling coalition received 231 of the 250 parliament seats, with the remaining seats going to national minority parties³¹.

4.4. 2022 Election

Even though the opposition parties were unhappy with the results of the IPD, they participated in the 2022 elections. SNS, for the first time since 2014, did not receive enough votes to form a majority in the National Assembly by themselves³². As a result, the ruling majority has been weakened. The centrist/left-wing opposition blocks did not receive as much support as expected although they received the most votes since 2016³³. Three right-wing coalitions did win seats in the parliament with 13% of the combined votes, all with a pro-Russia orientation³⁴. In the presidential election, President Vučić of the SNS party won the vast majority of votes with 58.6% of the popular vote³⁵.

5. Branches of the Government

5.1. President

Aleksandar Vučić has been the President of Serbia since 2017. Before being elected president, he held many roles in the Serbian government. From 1998 to 2000, he was Milošević's Minister of Information and implemented some of the strictest media laws in Europe. He has also served as the Defense Minister from 2012 to 2013, the First Deputy of the Prime Minister of Serbia from 2012 to 2014, and the Prime Minister of Serbia from 2014 to 2017. Vučić has been the leader of the SNS party since 2012³⁶.

Since coming to power, especially in the presidential position, Vučić has successfully eroded a variety of democratic checks and balances throughout the three branches of government³⁷. This has been contradictory to his use of pro-Europe and pro-democracy rhetoric.

³⁰ Ilic and Pudar Drasko, "2022 Elections in Serbia.", 1

³¹ Ibid., 3

³² Ilic and Pudar Drasko, "2022 Elections in Serbia.", 9

³³ Ibid., 11

³⁴ Uroš Mišljenović, Interview on Serbia's Digitization Initiatives, interview by Emily Wright, February 24, 2023.

³⁵ Ilic and Pudar Drasko, "2022 Elections in Serbia.", 10

³⁶ Srdan Mladenov Jovanovic, "Confronting Recent History: Media in Serbia During Aleksandar Vučić's Ministry of Information in the Milošević Era (1998–1999)," *Hiperboreea Journal of History*, 2019, https://www.researchgate.net/publication/334614895_Confronting_Recent_History_Media_in_Serbia_During_Aleksandar_Vucic's_Ministry_of_Information_in_the_Milosevic_Era_1998-1999.

³⁷ The Guardian Staff, "Serbian President Aleksandar Vučić Wins New Term by Landslide," *The Guardian*, April 4, 2022, sec. World news, <https://www.theguardian.com/world/2022/apr/04/serbia-president-aleksandar-vucic-claims-election-victory-to-secure-second-term>.

He and his Prime Minister, Ana Brnabic, openly discuss intentions of guiding Serbia towards European Union membership and their willingness to negotiate terms of membership. This has elicited extreme responses from the public, primarily regarding the talks regarding the normalization of relations with Kosovo³⁸. The actions of his coalition government have not been consistent regarding progress toward EU membership; he is constantly criticized by international organizations and civil society for his autocratic leadership style and his efforts to concentrate executive control in the government³⁹.

5.2. Parliament

Since 2012 the Serbian National Assembly has been marginalized as an authority. It has been rendered ineffective in its role as a legislative body and does not adequately act as a system of checks and balances or as a method of horizontal accountability. MPs from opposition coalitions see their role as diminishing. For example, once the President or a member of a committee presents a proposal to the Assembly, the MPs are legally required to have 15 days to review it. However, it has often happened that if the government wants the law passed in a shorter period, the MPs are not afforded 15 days. If given the opportunity to suggest changes, MPs are afforded brief time to prepare amendments. When formal sittings to review proposals are scheduled, MPs are notified 24 hours in advance and are often overwhelmed with 25 to 45 items on the agenda. By inundating MPs with items to review, the issuing body, which is often the executive branch, forces the MPs to pick what they will focus on, a strategy that does not robs MPs of time to adequately review each of the proposals⁴⁰.

Once the proposal reaches Parliament, it is likely that it will be adopted. Often, the law is adopted in the format it was originally presented in because the comments from the opposition are rarely taken into consideration. Additionally, draft laws and other proposals are generally presented without budget considerations. Consequently, parliament is not where governmental decisions are taking place. If MPs want to make an impact, especially regarding personal data

³⁸ Perparim Isufi, "After Agreement, Kosovo and Serbia Argue Over Implementation," *Balkan Insight* (blog), March 21, 2023, <https://balkaninsight.com/2023/03/21/after-agreement-kosovo-and-serbia-argue-over-implementation/>.

³⁹ The Guardian Staff, "Serbian President Aleksandar Vučić Wins New Term by Landslide."

⁴⁰ Urszula Góral, Dragana Stojković, and Ana Toskić Cvetinović, Roundtable: PDP-related Initiatives in the National Assembly, interview by Nevena Ružić, January 24, 2023.

protection or human rights, it must be done before the legislation enters parliamentary procedure⁴¹.

5.3. Judiciary

Legally, the judiciary is independent from the parliament and executive branches of government. In reality, it is consistently compromised by political influence. Corruption and lack of capacity prevent effective functioning. A strong example of this lies within case assignments. The required random assignment of cases to judges and prosecutors is not regularly observed, especially when the case is considered ‘high profile.’ The compromise of the judiciary’s legitimacy can be seen through politicians’ comments on ongoing cases and investigations with state media⁴². The public prosecutor’s office faces some of the biggest criticisms⁴³. In 2021, Zagorka Dolovac was appointed for her third six-year mandate as the Public Prosecutor even though she is heavily criticized by civil society and international organizations.

The judiciary has been haunted by problems since the beginning of Serbia’s transition to democracy. Constitutional reform addressing these issues, as a requirement for EU accession, was restarted in 2021. Necessary changes emphasized by the EU included improving judicial independence from the executive and constitutional reform. Although the National Assembly adopted the documents necessary for the implementation and a referendum approved the constitutional amendment, CSOs still see the new provisions as problematic and as having potential for further polarization. As in other areas of the Serbian government, the functioning of the institution differs from its role on paper⁴⁴.

5.3.1. Public Prosecutors

Appointments in the judiciary are of concern, as representatives of the executive branch and National Assembly have a role in appointing and electing of judges in the High Judicial Council (HJC) and the State Prosecutorial Council (SPC), both of which are supposed to

⁴¹ Góral, Stojković, and Toskić Cvetinović, Roundtable: PDP-related Initiatives in the National Assembly.

⁴² Freedom House, “Serbia: Freedom in the World 2023 Country Report,” Freedom House, 2023, <https://freedomhouse.org/country/serbia/freedom-world/2023>.

⁴³ Mišljenović, Interview on Serbia’s Digitization Initiatives.

⁴⁴ Freedom House, “Serbia.”

guarantee the independence of the judiciary and the prosecution⁴⁵. In addition to this, the proposed candidates to both the HJC and the SPC have to be approved by the Serbian government⁴⁶.

The Minister of Justice and the President of the Parliamentary Judiciary Committee in particular have a concerning level of power when it comes to these appointments. The 2016 appointment of judges to the Commercial Court of Appeal exemplifies the pressure the Minister of Justice can exert. The Committee, established by the HJC, had picked six candidates. In addition to the six, two other candidates were proposed and dismissed for various reasons. The Minister of Justice challenged the second ranked candidate on the list and then suggested a judge not listed. The Council voted on the candidates, including the one proposed by the Minister, with the Minister's choice winning⁴⁷. When questioned, the Ministry of Justice said that the executive branch does not wield too much influence, as the Minister of Justice only has one vote.

In 2017, another case of concern arose within the SPC and the vote for the deputy of the Higher Prosecutor's Office in Užice. Although in this case, the Minister of Justice did not directly propose a candidate, the top ranked candidate was not chosen, instead, the one ranked seventh was unanimously voted in⁴⁸. When questioned about this, the Minister of Justice spoke about the chosen candidate's positive record in the Basic Prosecutor's Office in Prijepolje.

The National Assembly has the final say when it comes to candidates voted on by the SPC for public prosecutors. In 2018, the MPs elected public prosecutors for office, however, almost half of the prosecutor's offices were left without a prosecutor because the candidates did not receive a majority vote in parliament⁴⁹.

The pressure on prosecutors does not stop after they are elected. According to the commissioner for the independence of prosecutors and member of the SPC, members of parties from the ruling coalition put pressure on the prosecutor working on the case that involved the falsification of the electoral register. The prosecutor was informally sent messages to "Not go against "you know who"" and was met with complaints about her work. In another case, the

⁴⁵ Srdjan Cvijic, "When Law Doesn't Rule: State Capture in Serbia" (Open Society Foundation, 2018), <https://www.opensocietyfoundations.org/publications/when-law-doesn-t-rule-state-capture-judiciary-prosecution-police-serbia>.

⁴⁶ Cvijic, "When Law Doesn't Rule.", 49

⁴⁷ Cvijic, "When Law Doesn't Rule.", 50

⁴⁸ Ibid., 51

⁴⁹ Ibid.

commissioner found that other prosecutors have informally complained about pressure they are under and receive signals to stop working on certain cases⁵⁰.

5.3.2. Judicial Protection of Personal Data

In the area of personal data protection, the work of the judiciary has been inept and damaging. Serbian courts have very few sources of case law regarding personal data protection. Between 2015 and August 2020, there were only two convictions under Article 146 of the Criminal Code, which manages the unauthorized collection of personal data by an official person. Although the situation is improving with five cases between 2020 and August 2021, the number of cases resolved in court is exceedingly small with only seven convictions since 2015. Due to the minimal case law, the prosecutor must give the court unmistakable evidence that links the defendant's actions and must be interpreted in the context of unauthorized actions⁵¹. As a result, the judiciary branch in Serbia is perceived by civil society as especially ineffective when it comes to cases regarding personal data protection⁵². Even though there are laws that protect against privacy violations, however weak, the legal protection of that right is rarely enforced. At most, misdemeanor or civic lawsuits will oversee the largest cases of data breaches. This lack of case law and lack of precedence prevents the effective protection of personal data by the courts.

5.4. Ministry of Interior

The current and previous Ministers of Interior have been extremely consequential regarding the AI and biometric surveillance initiatives. The previous Minister, Aleksandar Vulin, was the Minister from 2020 to 2022. Vulin was notorious for bringing information from investigations to state-owned media sources to publish and for making offhand remarks that tagged him by civil society as a “loose cannon”⁵³. Vulin was also well known for his friendly relationship with China and has a suspected role in the procurement of the cameras in Belgrade from Huawei.

⁵⁰ Ibid., 53

⁵¹ Nina Nicović and Uroš Mišljenović, “Privacy and Personal Data Protection in Serbia: Serbian Case Law in the Field of Personal Data Protection” (Partners for Democratic Change Serbia, 2022), <https://www.partners-serbia.org/public/news/privatnost-i-zastita-podataka-eng.pdf>.

⁵² Nevena Ružić, Interview on LPDP, GDPR, and 108+ in light of Draft Law on Internal Affairs, interview by Emily Wright, March 2023.

⁵³ Bojan Elek, Interview on the State of Democracy in Serbia, interview by Emily Wright, March 16, 2023.

The current Minister, Bratislav Gašić, has been in office since October 2022. When the National Assembly appoints new Ministers, they bring with them their own personnel. Consequently, Gašić brought with him employees that worked with him in his former security agency. This has been very controversial, not only with Gašić's appointment but with other Ministers before him, as the bringing of personnel is not always done in a legal fashion. However, in the eyes of civil society, Gašić acts more in accordance with the law than Vulin. This contrast illustrates the law's lack of legitimacy; the only reason legal frameworks are followed is that the new minister chooses to do so, not because it is a legitimate requirement of his post⁵⁴.

5.4.1. Police

Since the fall of Milošević, the police, under the control of the Ministry of Interior, have been faced with constant reforms. The goal of the reform has been to depoliticize, decentralize, decriminalize, and demilitarize. Of these, the most successful endeavor has been demilitarization while the police are still heavily centralized and politicized. Political elites in Belgrade exert an astonishing amount of control over the inner workings of the police. Some elements of this were addressed in the Law on Police in 2016 and again in 2018 but are still not up to the standards required by Chapter 24 of the EU accession process.

As of April 2023, there is no Director of Police. The previous person in this position retired in December of 2021, and there is still not an open call for a new one. For civil society, this demonstrates the triviality of the role. In practice, the Minister of Interior performs many of the duties that would normally go to the Director of Police⁵⁵.

6. Media Freedom

The media in Serbia is dominated by state-controlled outlets that allow little room for dissenting views. Major state-controlled media sources include the newspaper *Informer* and radio broadcaster *Radio Television of Serbia* (RTS), and the dailies *Politika* and *Vecernje novosti*. While there are independent news sources, such as *Danas* and *NI*, the state continues to fund

⁵⁴ Elek, Interview on the State of Democracy in Serbia.

⁵⁵ Elek, Interview on the State of Democracy in Serbia.

pro-government media through co-funding schemes and promotional contracts through various government ministries⁵⁶.

According to numerous international NGOs, including Article 19 and Freedom House, the safety of journalists in Serbia is undoubtedly concerning. According to the Independent Journalists Association of Serbia, there were 151 attacks on journalists in 2021 and 189 in 2020⁵⁷. Incidents such as the arrest of Ana Lalic for reporting on inadequate medical equipment in hospitals, police brutality against demonstrators, and journalists during the July 2020 protests are not isolated events. Journalist intimidation, attacks, and open threats are consistent. The Crime and Corruption Reporting Network (KRIK) was accused, without proper evidence, of connections to organized crime groups by government officials and state-controlled media⁵⁸. Politicians and public officials will openly call journalists “enemies of the state” or “traitors” and will instigate online harassment and smear campaigns through the state-owned media.

Several media outlets were sued after reporting on relationships between companies and state officials. Strategic Lawsuits Against Public Participation (SLAPPs), are lawsuits used by politicians and businessmen to force their critics into legal proceedings. These lawsuits have resulted in the silencing of journalists and allowed politicians to avoid public scrutiny. Since the lawsuits are characteristically lengthy, it results in the silencing of critical journalists for long time periods⁵⁹. The defamation cases have yet to be resolved by the courts, and Freedom House cites that KRIK alone has 10 active lawsuits initiated by businessmen close to SNS⁶⁰. Due to the closeness of the ruling party, it is unlikely that the judicial branch or police adequately perform their duties. Jamie Wiseman, from the International Press Institute, said,

"There is a constant increase of attacks, death threats and defamatory campaigns against journalists... failure to solve those cases boosts a hostile and dangerous environment for journalists"⁶¹.

By creating an inhospitable environment for journalists, the government has systematically dismantled yet another check on its power.

⁵⁶ Freedom House, “Serbia.”

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Article 19, “Serbia: SLAPPs Used to Intimidate Journalists and Evade Public Scrutiny,” ARTICLE 19, February 23, 2022, <https://www.article19.org/resources/serbia-slapps-legal-harassment-against-journalists/>.

⁶⁰ Freedom House, “Serbia.”

⁶¹ Milan Nestic, “Threats Cast Chill Over Serbia’s Media,” VOA, August 5, 2022, <https://www.voanews.com/a/threats-cast-chill-over-serbia-s-media-/6689132.html>.

7. Independent Authorities

7.1. Commissioner of Public Importance and Personal Data Protection

The Commissioner for Information of Public Importance was established in 2004 with the implementation of the Access on Information Law. The office's purview in personal data protection expanded in 2008 when the first Law on Personal Data Protection was passed. The law established the office as the Commissioner of Public Importance and Personal Data Protection. The implementation of the Law on Personal Data Protection in 2019 further developed the office's role. Unfortunately, the role of the Commissioner as an authority to protect personal data has not been as effective as hoped. Since the office is mostly staffed by legal professionals, the office is plagued by a lack of understanding of AI and surveillance technology⁶². CSOs view the Commissioner as one of their biggest allies in the public sector when it comes to guarding the right to privacy. However, there is stark criticism of the authority's lack of proactivity and its preference for legislative reforms over effective implementation⁶³. Even though, since the passing of the Draft Law and the reaction from civil society and international organizations, the Commissioner has been more attentive to what CSOs are saying, its actions are hindered by concerns over public image. Although the office is mandated with protecting the public, the authority is still attempting to accommodate all interests, including that of the government⁶⁴.

7.2. Ombudsman

The Ombudsman is an independent state body tasked with protecting the rights of citizens by monitoring the legality of the administration's work. It provides a key role in monitoring democratic institutions and reporting to the EU, especially regarding Chapter 23 of the EU accession process. The Constitution of the Republic of Serbia protects its role⁶⁵. Annually, the Ombudsman submits reports to the National Assembly. This report contains information on the activities of the National Assembly and opinions on the work of the

⁶² Ružić, Interview on LPDP, GDPR, and 108+ in light of Draft Law on Internal Affairs.

⁶³ Filip Milošević, Interview on Belgrade Cameras, Draft Law on Internal Affairs, and the Role of CSOs, interview by Emily Wright, March 1, 2023.

⁶⁴ Ružić, Interview on LPDP, GDPR, and 108+ in light of Draft Law on Internal Affairs.

⁶⁵ Belgrade Center for Security Policy, "Report of the Ombudsman: A Mere Formality or a Contribution to the Rule of Law in the Process of European Integration," November 30, 2022, 3<https://bezbednost.org/en/publication/report-of-the-ombudsman-a-mere-formality-or-a-contribution-to-the-rule-of-law-in-the-process-of-european-integration/>, 3

Government, including proposals for improvement with a section on the success of recommendations from previous years⁶⁶.

After the report is submitted to the National Assembly by the Ombudsman, the appropriate parliamentary committee considers the report. This committee adopts the proposed conclusions, with recommendations, and submits them to the plenum. The National Assembly is then required to discuss the report in a plenary session. From 2014 to 2018, the National Assembly failed to discuss the annual reports. After comments from the European Commission, the reports were discussed in 2019. Since 2019, the discussions have been severely delayed, which has rendered the Ombudsman's reports almost ineffective⁶⁷.

Beginning in 2014, the National Assembly was tasked, by the Ombudsman, with monitoring executive bodies. By the 2015 report, the National Assembly had not complied. By 2016, the Ombudsman began to cite weakening cooperation between the National Assembly and the Government. In 2017, the report mentioned improved cooperation, but only with certain committees. In 2019, 2020, and 2021, the Ombudsman report did not mention the actions of the government. Instead, the report focused on the content of the conclusions and recommendations of the National Assembly⁶⁸.

After the dissolution of the National Assembly in February 2022 and its reconstitution in August 2022, the parliament did not adopt the report of the Ombudsman for 2022 or initiate the procedure for a new Ombudsman until October 2022. The previous Ombudsman's mandate ended in July 2022. Plenary sessions in 2021 did not allow enough time to discuss the report of the Ombudsman. The recommendations proposed by the appropriate committees in light of the report were deemed too general by civil society to have any impact⁶⁹. According to the Belgrade Center for Security Policy, the government only reports to and cooperates with the Ombudsman as a formality. Even with the New Law on the Ombudsman, passed in 2021, the reports are ineffective by the time they reach discussion in parliament⁷⁰ On April 20, 2023 Zoran Pašalić was re-appointed as the Ombudsman for Serbia by the Committee of the National Assembly on

⁶⁶ Belgrade Center for Security Policy, "Report of the Ombudsman.", 4

⁶⁷ Ibid.

⁶⁸ Belgrade Center for Security Policy, "Report of the Ombudsman.", 5

⁶⁹ Ibid.

⁷⁰ Ibid., 8

Constitutional and Legislative Issues⁷¹. Opposition parties in the parliament are not pleased with this re-election. The MP Jelena Jerinić cited his lack of a response to the violence at the July 2020 protests and other incidents shows that he is only interested in protecting the state, and not the people. Others mention that his rhetoric on the good human rights record of Serbia shows that he is ill suited for the position. Another MP, Boško Obradović, say that his hyperfocus on Belgrade, also known as the Belgradization of Serbia, is leaving other communities behind and that Pašalić does not have the interests of the most vulnerable in mind. SNS defends Pašalić position and continues to say that his track record proves that he is the best suited for the job⁷².

8. Civil Society

8.1. Dual narrative of the government

To fully understand the position of civil society in Serbia it is important to understand the government's rhetoric on the subject. There are two primary narratives when it comes to the government's rhetoric regarding civil society. First, high level officials, such as President Vučić and Prime Minister Ana Brnabić, often use pro-NGO and civil society rhetoric⁷³. The role of civil society is often discussed in the context of European integration. In PM Brnabić's inaugural speech, she said, "media and civil society are among the most important partners in all reform processes"⁷⁴. Critics of the government see this pro-CSO rhetoric as an attempt to legitimize the democratic backsliding of government institutions. One example is the creation of the Ministry of Human and Minority Rights and Social Dialogue. This Ministry was created to promote cooperation between the state and civil society; however, the actions of the ministry have so far been underwhelming⁷⁵.

⁷¹ Protector of Citizens Staff, "Zoran Pašalić Elected as the Protector of Citizens of the Republic of Serbia," Protector of Citizens: Ombudsman of Serbia, April 20, 2023, https://www.ombudsman.org.rs/index.php?option=com_content&view=article&id=745:zoran-pa%C5%A1ali%C4%87-elected-as-the-protector-of-citizens-of-the-republic-of-serbia&catid=44:opinions-and-views&Itemid=4.

⁷² MRM, "The Opposition Claims That Pašalić Is the Protector of the State, Not the Citizens - the Government Replies That the Protector Is Not a Superhero - Politics - Dnevni List Danas," *Danas*, April 19, 2023, sec. Politika, <https://www.danas.rs/vesti/politika/opozicija-tvr-di-da-je-pasalic-zastitnik-drzave-a-ne-gradjana-vlast-odgovara-da-zastitnik-nije-superheroj/>.

⁷³ Belgrade Center for Security Policy, "The (Un)Desirable Partner – Analysis of the Narrative on Civil Society as a Tool to Capture the State," May 9, 2022, 6

⁷⁴ *Ibid.*, 8

⁷⁵ *Ibid.*, 7

The second narrative, which is much more prominent in media and among senior and junior public officials in the ruling coalition, frames CSOs in a much more negative light⁷⁶. MPs, like Aleksandar Martinovic, attack CSOs like the Center for Research, Transparency and Accountability (CRTA), openly during parliamentary sessions⁷⁷. Other than officials, similar rhetoric is published in a variety of pro-government/state owned media and tabloids. CSOs trace this negative position back to the authoritarian regime of Milošević. These published attacks are often reactions to specific actions taken by a CSO or individual activists, especially in cases when political elites feel threatened⁷⁸.

8.2. 2020 Protests

One of the best examples of the role of civil society in encouraging public participation in Serbia is through their involvement in recent public protests. The protests in 2020 and 2021 show the ability of civil society to garner attention towards unfavorable government actions and promote large gatherings of citizens willing to criticize the government.

The announcement of reimposing a curfew after a rising number of COVID cases on July 7, 2020, was met with mass public protests. Two weeks before, SNS won the parliamentary elections in an election many perceived as undemocratic. In response to the protests, the police used excessive force including assaulting, arresting, and beating unarmed demonstrators and even bystanders.

Initially, many perceived the protests to be directly correlated with the increased COVID restrictions. However, it had more to do with the June elections. President Vučić lifted the lockdown in May of 2020 and proclaimed victory over the outbreak allowing for significant political gains. This lifting was quickly followed by an increase in COVID-19 deaths and cases as major sporting events and an election were held with few to no restrictions. The published statistics in that era are perceived by civil society to be falsified. Balkan Investigative Reporting Network (BIRN) reported that estimates of COVID-19 infections and mortality numbers were around three times higher than the numbers reported. In the election, SNS won by an extreme margin. The parliamentary boycott and belief that the vote would be undemocratically

⁷⁶ Ibid., 6

⁷⁷ Belgrade Center for Security Policy, “The (Un)Desirable Partner – Analysis of the Narrative on Civil Society as a Tool to Capture the State.” 10

⁷⁸ Ibid., 9

contributed to a voter turnout of less than 50%. Even though Vučić and the administration denied BIRN's accusations of falsified COVID data, the curfew was reinstated. Vučić claimed that this was due to citizens' irresponsible behavior overwhelming the health system. Citizens' anger about the disregard for safety and the government's ability to change the rules to suit their needs fueled the protests⁷⁹.

8.3. 2021 Protests

The protests at the end of 2021 were focused on environmental concerns and two new laws proposed by the government. Protests and activists claimed that the new laws would enable foreign companies to exploit local resources⁸⁰. Roadblocks were set up by protesters all over Serbia, including Belgrade, Novi Sad, and Nis. One of the key issues was the opposition to Rio Tinto's new lithium mine near Belgrade. The activists are fighting the new mine due to concerns that the mine could cause extensive damage to the area⁸¹. The activists say that the \$2.4 billion lithium mine would pollute drinking water⁸². The Serbian authorities who authorized the mine have agreed to withdraw two laws that the activists claim would allow the mining company to open more mines. Although this is a step forward, many environmentalists were calling for a complete ban on lithium mining in the country⁸³. The two laws that were proposed were withdrawn⁸⁴. In January 2022, the Serbian government dropped the plans for the lithium mine, and in February, a new protest demanded that the mining company's lithium licenses stay revoked and that exploration for lithium stop⁸⁵.

⁷⁹ Marija Pantelic, "What Were the Protests in Serbia Really About?," *Aljazeera*, July 21, 2020, <https://www.aljazeera.com/opinions/2020/7/21/what-were-the-protests-in-serbia-really-about>.

⁸⁰ Aleksandar Vasovic, "Thousands Block Roads across Serbia in Anti-Government Protest," *Reuters*, December 5, 2021, sec. Europe, <https://www.reuters.com/markets/commodities/thousands-block-roads-across-serbia-anti-government-protest-2021-12-04/>.

⁸¹ Associated Press, "Thousands of Serbians Block Roads to Protest Lithium Mine Project," *Aljazeera*, December 11, 2021, <https://www.aljazeera.com/news/2021/12/11/serbias-roads-blocked-for-third-weekend-of-lithium-mine-protest>.

⁸² Vasovic, "Thousands Block Roads across Serbia in Anti-Government Protest."

⁸³ Associated Press, "Thousands of Serbians Block Roads to Protest Lithium Mine Project."

⁸⁴ Vasovic, "Thousands Block Roads across Serbia in Anti-Government Protest."

⁸⁵ Business & Human Rights Resource Centre, "Serbia: Thousands Protest against Rio Tinto Lithium Mine Project and New Draft Laws Allegedly Designed to Benefit Business," Business & Human Rights Resource Centre, 2022, <https://www.business-humanrights.org/en/latest-news/serbians-are-protesting-against-lithium-mine-and-new-draft-laws-which-allegedly-benefit-business/>.

9. EU Accession Process

The current government, led by Aleksandar Vučić, remains pro-EU in its rhetoric but lacks determined action toward placating the EU's demands⁸⁶. Areas of controversy and disagreement lie within the agreement on the status of Kosovo and the Serbian government not meeting other obligations set within the EU negotiation process.

The European Commission's enlargement report on Serbia for 2022 cited many issues under Chapter 23 regarding Serbia's Law on Personal Data Protection (LPDP)⁸⁷. The LPDP does not completely align with the EU's GDPR or the Directive on Law Enforcement (LED). Although it does contain most of the provisions of GDPR and the LED, it is not properly implemented. The Commission recognizes that the process of harmonizing the laws relating to the process of personal data is ongoing, but it needs substantial improvement before being considered adequate. For example, the Serbian judiciary's enforcement of the LPDP is considered much too low and the number of staff in the office of the Commissioner is only 98, instead of the 129 required in the Chapter 23 action plan⁸⁸.

The report also cited concerns over the November/December 2021 environmental protests in Belgrade. Although the Ministry of Interior said that no biometric data processing would take place until the legal structures were in place, the Commission still questions how those charged with a misdemeanor were identified without ever having their ID checked⁸⁹.

The new Draft Law on Internal Affairs was mentioned multiple times throughout the report. The Commission highlights its concerns over the development and publication of the law without any assessment of the need for these new biometric surveillance mechanisms or the associated risks involved⁹⁰.

A letter from the European Parliament also addressed the new Draft Law, dated December 22, 2022. In the letter, the signed MPs state,

⁸⁶ Celso Cancela and Paula Lamoso, "Serbia's EU Membership, the Corner Stone of Western Balkans, into Question." 6, no. 2 (2020): 31, 14

⁸⁷ Directorate-General for Neighbourhood and Enlargement Negotiations, "Serbia Report 2022" (European Commission, 2022), 34 <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>.

⁸⁸ Directorate-General for Neighbourhood and Enlargement Negotiations, "Serbia Report 2022.", 37

⁸⁹ Ibid.

⁹⁰ Ibid., 51

“In the European Parliament, we the undersigned have made it clear that the surveillance of people in public spaces using biometric technologies is unacceptable. For the preservation of democratic rights and freedoms, it is vital that people can live their lives without fear of being tracked and profiled using their most sensitive data. We fear that these draft laws could legalize such practices in Serbia, despite their deep incompatibility with international human rights norms”⁹¹.

Although the European Parliament itself has not issued a statement, a collective letter from nine MEPs against the Draft Law was a strong signal to the Serbian government.

10. Relationship with the People’s Republic of China

Serbia’s partnership with the People’s Republic of China (PRC), either directly through the state government or through the Ministry of Interior and the Chinese technology company Huawei, has had a direct influence on Serbia’s push towards artificial intelligence. The partnership between the two countries can be traced back to 2008 and 2009 when the PRC cooperated with Serbia in two extremely important realms. The first was an agreement to not recognize Kosovo, leading to a partnership where the United Nations Security Council could protect Serbia’s interests. The second was economic assistance during the 2008 recession. Between the 2008 recession, and the beginning of EU accession talks, the Serbian elite looked to other countries, such as the PRC, for funding⁹². This, among other agreements, led to the Chinese-Serbian Partnership. The two countries agreed to cooperate in areas such as economic, technological, and infrastructure development, including using Serbia as a site for its Belt and Road Initiative⁹³. There has been increased bilateral cooperation between Serbia and the PRC since the SNS party took control in 2012. Since that time, civil society has noted several areas in

⁹¹ Gwendoline Delbos-Corfield et al., “Letter from MEPs on New Draft Laws on Internal Affairs & Biometric Surveillance in Serbia,” December 20, 2022, https://hiljade.kamera.rs/wp-content/uploads/Letter_from_MEPs_on_new_Draft_Laws_on_Internal_Affairs.pdf.

⁹² Vuk Vuksanović, “Russia and China, Friends and Brothers of the Captured State – Analysis of Narratives Used to Capture the State” (Belgrade Center for Security Policy, December 13, 2021), 5 <https://bezbednost.org/en/publication/russia-and-china-friends-and-brothers-of-the-captured-state-analysis-of-narratives-used-to-capture-the-state/>.

⁹³ Vuk Vuksanovic, “The Dragon Lands in Belgrade: The Drivers of Sino-Serbian Partnership,” Text, The National Interest (The Center for the National Interest, March 19, 2022), <https://nationalinterest.org/feature/dragon-lands-belgrade-drivers-sino-serbian-partnership-201294>.

which there is concern regarding this heightened cooperation, including rule of law and surveillance⁹⁴.

Along with the increase in foreign direct investments (FDI) from the PRC has come increased influence. The Serbian government continues to allow companies from the PRC to avoid legal procedures to ensure the implementation of their projects⁹⁵. The Linglong Factory is a compelling case study of this enabling environment. In 2018, after the introduction of the Linglong construction, Serbia signed an agreement with the PRC government, which was later ratified by the parliament, and allowed PRC employees not to pay pension and unemployment insurance contributions, effectively dismissing the Serbian Labor Law. The Serbian government also donated 96 hectares of land to Linglong and gave subsidies of around EUR 75.8 million. Construction of the factory began without suitable permits and had many violations of protocol⁹⁶. When violations and unlawful construction on almost 50,000 square meters of land were reported by a local construction inspector, the city government refused to act upon it. Since the Serbian government declared that the construction of Linglong is in favor of national interests, they have declined to release information and continue to allow the dismissal of legal requirements. According to the BCSP, this is just one example of how the government of Serbia shapes the legal environment to fit the needs of PRC investors⁹⁷.

Analysis of the relationship between the PRC and Serbia leads to the conclusion that cooperation regarding AI and surveillance began in 2014. That year, a seemingly non-consequential hit-and-run case shifted Serbia's relationship with the PRC and digitalization. When a young man was killed in a hit-and-run car accident in Serbia, the perpetrator, who was a Serbian citizen, fled to the PRC. The PRC used its facial recognition cameras to arrest him within three days. This case, according to civil society organizations in Serbia, was a catalyst for Serbia and China's partnership in Serbia's digitalization⁹⁸.

⁹⁴ Vuksanović, "Russia and China, Friends and Brothers of the Captured State – Analysis of Narratives Used to Capture the State, 5

⁹⁵ Ibid., 13

⁹⁶ Vuksanović, "Russia and China, Friends and Brothers of the Captured State – Analysis of Narratives Used to Capture the State, 13

⁹⁷ Ibid., 14

⁹⁸ Edited Ioannis Armakolas et al., "Western Balkans at the Crossroads: Ways Forward in Analyzing External Actors' Influence," 2021, 145.

Throughout 2016, there were new developments with Serbia and China, including official state visits and formal agreements to increase infrastructure projects. That same year, Huawei and Serbia's national telephone operator, Telekom Srbija, launched a new landline telephone network transformation project⁹⁹.

The relationship between Huawei and the government of Serbia became official when, in 2017, the government of Serbia signed a Strategic Partnership Agreement with Huawei. Huawei was chosen as a strategic partner of Serbia's Ministry of Interior. The Minister of Interior at the time, Stefanovic, agreed on the exchange of information between China and Serbia and the training of Serbian police officers by Chinese officials on the usage of AI¹⁰⁰. Additionally, Chinese police officers would now be present throughout the country¹⁰¹. Huawei also agreed to provide the Ministry of Interior with eLTE, an advanced wireless broadband system, for the project in Belgrade¹⁰².

2019 was a catalytic year for Serbia and China's relationship regarding artificial intelligence initiatives. It was announced that the Serbian government would cooperate with Huawei to implement the surveillance component of the "Safe City" project in Belgrade¹⁰³. That same year, the smart surveillance system was officially announced to begin implementation in Belgrade. This plan included the installation of over 1,000 new Huawei cameras that would have facial and license plate recognition at 800 locations throughout Belgrade. Additionally, it was announced that patrol officers and police cars would 'gradually' be equipped with cameras¹⁰⁴. The city of Nis would be implementing a similar "Smart City" project. 2019 also saw the initiation of Huawei's One Thousand Dreams Project, a plan to train 1,000 students from Central and Eastern Europe in information and communication technology¹⁰⁵.

⁹⁹ Snezana Bjelotomic, "Huawei and Telekom Serbia to Launch ALL-IP Project," *Serbian Monitor* (blog), October 6, 2016, <https://www.serbianmonitor.com/en/huawei-and-telekom-serbia-to-launch-all-ip-project/>.

¹⁰⁰ Armakolas et al., "Western Balkans at the Crossroads: Ways Forward in Analyzing External Actors' Influence.", 145

¹⁰¹ Sasa Dragojlo, "Serbia, Croatia, Deny Allowing Chinese Police Coercive Powers," *Balkan Insight* (blog), December 5, 2022, <https://balkaninsight.com/2022/12/05/serbia-croatia-deny-allowing-chinese-police-coercive-powers/>.

¹⁰² Vuksanovic, "The Dragon Lands in Belgrade."

¹⁰³ Armakolas et al., "Western Balkans at the Crossroads: Ways Forward in Analyzing External Actors' Influence.", 141

¹⁰⁴ Ibid., 146

¹⁰⁵ Vuksanovic, "The Dragon Lands in Belgrade."

In September of 2020, Huawei opened its Center for Innovation and Digital Development in Belgrade¹⁰⁶. In December 2020, Huawei became a commercial user of the state Data Center in Kragujevac. The data center stores data from city administrations, public companies, and institutions, and has connections to a variety of other national databases¹⁰⁷.

Although the relationship between the PRC and Serbia has impacted Serbia in many ways, it becomes clear in Serbia's acquisition of cameras, technology, and knowledge transfer regarding AI and surveillance mechanisms.

¹⁰⁶ Serbia Business, "Huawei Opens Center for Innovation and Digital Development in Belgrade," Serbia Business, 2020, <https://serbia-business.eu/huawei-opens-center-for-innovation-and-digital-development-in-belgrade/>.

¹⁰⁷ Armakolas et al., "Western Balkans at the Crossroads: Ways Forward in Analyzing External Actors' Influence.", 146

Section 2: State-Led Artificial Intelligence Initiatives

11. Introduction

In the realm of AI and biometric surveillance, Serbia has several existing laws that address the ability of the government to use such technologies. Serbia adopted Law on Personal Data Protection (LPDP) in 2018 in an attempt to align its legislation with the EU law in this area, specifically the General Data Protection Regulation (GDPR). As required by its membership to the Council of Europe, Serbia is also required to follow regulations from the European Court of Human Rights and Convention 108+. Convention 108+ is a data protection convention that was created to hold all members of the Council of Europe to a higher standard when it came to protecting their citizens data. Bound by these requirements, the Serbian government has proposed two versions of the Draft Law on Internal Affairs, of which contains many controversial aspects. However, in this paper the focus will be on the articles that attempt to introduce new measures of mass surveillance using AI and biometric technologies. The Draft Law was proposed in 2021 after new cameras were introduced throughout Belgrade, which already contain the new technology proposed in the law. However, it lacks sufficient clarity on whether the software that should enable facial recognition was ever procured by the Serbian government. At the moment, government agencies say the cameras' biometric capabilities are not being used. The Draft Law on Internal Affairs would legalize this technology and pave the way for further intrusive technology.

12. Relevant Laws

12.1. GDPR

Since Serbia is a candidate member of the European Union, it is required to harmonize its laws with the EU. One law from the EU that required extensive revision in Serbian law was the GDPR, which was passed in 2016 and went into effect in 2018. The GDPR is perceived as one of the strictest data privacy security laws in the world. Some of the law's main points include the requirement to enforce fines, the appointment of data protection officers (DPOs), and the establishment of country level Data Processing Authorities (DPAs). The GDPR also set seven protection and accountability principles for data collection and processing: lawfulness; fairness,

and transparency; purpose limitation; data minimization; accuracy; storage limitation; integrity and confidentiality; and accountability. All EU member states, and all candidate countries must apply all seven protections to all data processing¹⁰⁸.

12.2. LPDP

To align with the GDPR, Serbia passed the LPDP in 2018 and implemented the law only nine months later. This was a very short time frame, especially since the EU member states were given two years to prepare for implementation. As previously stated, the LPDP was intended to align Serbian law with the GDPR. However, Serbia, as a candidate country, lacks enforcement capabilities that exist in the EU, such as the European Data Protection Board, rendering some provisions ineffective. The LPDP expanded the role of the Commissioner for Information of Public Importance and Data Protection, which acts as Serbia's country-level data protection authority. This role is meant to enforce its decisions through misdemeanor procedures and fines. However, convictions are rarely handed out and the corresponding fines are low¹⁰⁹. Consequently, the LPDP is not perceived as an effective attempt to harmonize Serbia's national laws with the EU's.

12.3. Requirements under the Council of Europe

As a member of the Council of Europe (CoE), Serbia is required to comply with the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR), and the 108+ Convention. The ECHR, enforced by the ECtHR, guarantees the protection of the right to privacy under Article 8, which is harder for the state to guarantee under increased surveillance. This right is primarily protected by the ECtHR through case law, as the laws and articles have not been updated as technology has changed¹¹⁰. However, even with the case laws, a majority of the CoE's data privacy protections fall under the 108+ Convention.

The 108+ Convention was adopted by the CoE in 2018 as an amendment to the 1981 Convention 108. The 2018 version expanded the 1981 version to include current issues related to the increasing role of technology in society. This legal instrument was adopted to 'raise the bar'

¹⁰⁸ European Union, "What Is GDPR, the EU's New Data Protection Law?," GDPR.eu, November 7, 2018, <https://gdpr.eu/what-is-gdpr/>.

¹⁰⁹ Ružić, Interview on LPDP, GDPR, and 108+ in light of Draft Law on Internal Affairs.

¹¹⁰ ECHR Press Unit, "Personal Data Protection Fact Sheet," *European Court of Human Rights*, December 2022, https://www.echr.coe.int/Documents/FS_Data_ENG.pdf.

when it came to the protection of data privacy on the legal stage. The idea of the 108+ Convention involved a consultative committee that would be able to implement the agreement, however, there are currently no funds to support such a monitoring committee¹¹¹. Consequently, the CoE only acts upon 108+ when there is a request to do so¹¹².

The 108+ Convention was adopted by the CoE before the GDPR was by the EU. Compared to Convention 108+, the “GDPR is a golden standard, 108+ is the global standard”. Compared to the GDPR, which deals in a single market and within a more consolidated legal framework, Convention 108+ can handle different legal systems and accommodate different interests. However, this inclusivity of all legal systems and frameworks has made the law much less effective, especially when compared to the GDPR¹¹³.

13. Belgrade Cameras

In January 2019, the Serbian Minister of Interior announced, to the surprise of the public and many parts of the government, a new “Safe City” project¹¹⁴. He announced that in Belgrade, “There will be no significant streets, entrances or passages between buildings that will not be covered by cameras. We will know from which entrance and building the perpetrator came, from which car...” It was later discovered that the Ministry had purchased, or was given, thousands of cameras from Huawei that were accompanied by guidance from the PRC government¹¹⁵.

In response to this, the SHARE Foundation, a CSO focused on digital rights, sent a Freedom of Information (FOI) request to the MoI. The MoI denied the FOI request due to the confidential nature of the documents and because the equipment was not obtained through a public procurement process but acquired from a foreign government, so they were not required to release information¹¹⁶. This denial indicated to civil society that the government was hiding something they did not want to be released to the public.

¹¹¹ Ibid.

¹¹² Ružić, Interview on LPDP, GDPR, and 108+ in light of Draft Law on Internal Affairs.

¹¹³ Ružić, Interview on LPDP, GDPR, and 108+ in light of Draft Law on Internal Affairs.

¹¹⁴ Kristina Kalajdzic, “Video Surveillance - A Means to Improve Security or Violate Citizens’ Privacy,” *Partners for Democratic Change Serbia*, 2020, <https://www.partners-serbia.org/post/details?id=314>, 13.

¹¹⁵ Filip Milošević, “The Making of an Anti-Biometric Mass Surveillance Campaign,” *Exposing the Invisible: The Kit* (blog), November 2022.

¹¹⁶ Milošević, Interview on Belgrade Cameras, Draft Law on Internal Affairs, and the Role of CSOs.

In early 2022, the Ministry of Interior did perform the required Data Protection Impact Assessment (DPIA) on the project. Even though, the Commissioner on Personal Data Protection deemed it grossly inadequate, the DPIA did reveal information that confirmed CSOs suspicions including the nature of some of the devices and the number of cameras¹¹⁷. This DPIA concluded that the cameras did not meet the legal or material requirements of the LPDP. The former Commissioner on Personal Data Protection, Rodoljub Šabić said, “In the existing conditions, a system capable of rapid, automatic identification of each individual whose photograph exists in Mol’s database can be used, for example, to track political opponents, rather than to combat crime”¹¹⁸.

After the DPIA assessment, CSOs continued to speak out against the cameras. One of the most successful campaigns involved citizens reporting where they saw cameras to help create a database and map that contained all the known cameras in Belgrade¹¹⁹. In response to civil society’s growing publicity surrounding the cameras, in May 2021, a Ministry representative, at a public hearing in the National Assembly said,

“We are aware that citizens are concerned about this issue, and we have witnessed over 200 articles during the last year about biometric surveillance in Belgrade. I can assure you that, even if some people from the Ministry of Interior think that it is possible by current law until there is a public debate until there is consent and the Assembly vote, we will not employ software for facial recognition.”

Three months later, the Ministry of Interior released the new Draft Law on Internal Affairs that contained provisions for legalizing a massive biometric surveillance system¹²⁰.

14. Draft Law on Internal Affairs

The Draft Law on Internal Affairs allows for, what CSOs such as the SHARE Foundation call, “mass, indiscriminate processing of citizens’ biometric data through a smart video-surveillance system”¹²¹. Although the law was posted on the government website with no warning, there are some speculations about the origins of the law.

¹¹⁷ Ibid.

¹¹⁸ Kalajdzic, “Video Surveillance - A Means to Improve Security or Violate Citizens’ Privacy.”, 15

¹¹⁹ Milošević, “The Making of an Anti-Biometric Mass Surveillance Campaign.”

¹²⁰ Ibid.

¹²¹ Share Foundation, “Round Two of the Battle against Mass Biometric Surveillance,” *SHARE Foundation* (blog), January 9, 2023, <https://www.sharefoundation.info/en/round-two-of-the-battle-against-mass-biometric-surveillance/>.

In August 2021, the Ministry of Interior (MoI) published the Draft Law on Internal Affairs on its website without a public announcement¹²². Legally, when a new law is proposed, there is a mandatory 20-day public comment period. Within the twenty-day period after the law was proposed, one CSO noticed the new law and brought it to attention and garnered support of other CSOs throughout the country¹²³. A few days after the end of the public debate period, the MoI announced that President Vučić asked him to withdraw the Draft Law¹²⁴. After the withdrawal, the Ministry reached out to CSOs who submitted public comments to participate in seven consultative meetings. In this time, the MoI presented two draft versions of the Data Protection Impact Assessment, which is required under the Law on Personal Data Protection (2018)¹²⁵.

On December 8, 2022, the MoI published a new Draft Law on Internal Affairs, which was now accompanied by the Draft Law on Data Processing and Records in Internal Affairs and several other draft laws¹²⁶. The new law reflected some changes and narrowed the scope for the use of biometric surveillance. However, CSOs still saw this law as an egregious assault on the right to privacy and called for a complete moratorium on biometric surveillance, which echoed the opinions of some MEPs. Following the announcement of the second draft, the outcry from civil society was accompanied by a much larger international response from major NGOs such as Amnesty International and international bodies like the European Commission. As a result, the MoI withdrew the law for the second time¹²⁷. This withdrawal was primarily related to controversial provisions of the law unrelated to the increased surveillance measures. These included the addition of legal grounds for breaking and entering homes and the use of combat-like equipment against protestors¹²⁸.

¹²² Milica Tošić and Ana Toskić Cvetinović, “Including Video Surveillance with Facial Recognition Technology in the Legal Framework,” *Reform and Implementation of the Legal Framework in the Selected Sectors (2021 -2022)*, 2022, <https://www.partners-serbia.org/public/news/privatnost-i-zastita-podataka-eng.pdf>.

¹²³ Milica Tošić, Interview on Consultative Meetings between the Ministry of the Interior and Civil Society Organizations in Serbia on the Draft Law on Internal Affairs, interview by Emily Wright, February 21, 2023.

¹²⁴ Tošić and Toskić Cvetinović, “Including Video Surveillance with Facial Recognition Technology in the Legal Framework.”, 16

¹²⁵ Share Foundation, “Biometric Surveillance of Public Spaces in Serbia: SHARE Foundation’s Position After the Proposed Draft Laws,” December 12, 2022, https://www.sharefoundation.info/wp-content/uploads/SHARE_Position_Paper_BMS.pdf.

¹²⁶ Ibid.

¹²⁷ Share Foundation, “Round Two of the Battle against Mass Biometric Surveillance.”

¹²⁸ Mišljenović, Interview on Serbia’s Digitization Initiatives.

Although there were many concerns with the Draft Law, organizations still highlighted problems with the increased surveillance measures. Amnesty International said they were concerned with Articles 12, 13, 44, and 68 of the Draft Law, all regarding the attempt to legalize the use of biometric mass surveillance in public areas and the processing of this data. Additionally, they stated that the law was incompatible with Article 8 of the ECHR and Article 17 of the International Covenant on Civil and Political Rights¹²⁹.

Individual members of EU bodies have also issued responses. In April 2021, several Members of the European Parliament sent a letter to the Ministry of Interior regarding the new biometric surveillance equipment. Ana Pisonero, the spokesperson for the European Commission, called for Serbia to suspend any biometric data processing. Additionally, the European Commission's progress reports for Serbia from 2021 and 2022 state their concern about the proportionality and necessity of the proposed surveillance¹³⁰. The government of Serbia has not yet responded to this letter.

Although the law has been withdrawn, the Serbian government continues to push rhetoric that the Draft Law on Internal Affairs will increase the safety and security of Serbian citizens. It will allow the police to fight crime more efficiently and provide a better quality of life to the people of Serbia (Beta 2023). When the first draft was withdrawn, former Ministry of Interior Aleksandar Vulin, who is now the head of Serbia's Security Information Agency, had a particularly inflammatory response. He was cited as saying, "By fighting against everything new in the security sector, murderers and thieves will be a little safer, and the police and citizens will be much more insecure." Additionally, he has repeatedly blamed 'Western agents' for making a big deal out of an inconsequential law and accused them of inciting violence. He said, "The draft law on internal affairs has been withdrawn, you will have to look for some other reason for the blood on the streets of Belgrade," (Beta 2021). Despite this response, the Ministry of Interior still held consultative meetings with CSOs. At the first round of consultative meetings, the discussion focused on the biometric surveillance measures introduced in the draft. At the meetings, the CSOs who participated were told that the Ministry of Interior was changing the proposed law,

¹²⁹ Amnesty International, "Serbia: Amnesty International's Comments on the Draft Law on Internal Affairs of Republic of Serbia," Amnesty International, January 27, 2023, 1 <https://www.amnesty.org/en/documents/eur70/6388/2023/en/>.

¹³⁰ Share Foundation, "Biometric Surveillance of Public Spaces in Serbia: SHARE Foundation's Position After the Proposed Draft Laws," December 12, 2022, https://www.sharefoundation.info/wp-content/uploads/SHARE_Position_Paper_BMS.pdf.

but they were never presented with new text to review. In December 2021, the participating CSOs were told that the new Draft would be finished soon. Two days after this meeting, the Ministry published the new Draft Law and included five other new draft laws. In the new proposal, the biometric allowances were still present but were less extreme than in the first draft. Immediately following the new Draft, CSOs began to alert the public through an extensive media campaign.

When the drafts were withdrawn for the second time in December 2022, the Prime Minister called CSOs that were a part of the EU Convent to return to the consultative meeting process. At the time this paper was written, the consultation and draft process was still ongoing¹³¹.

¹³¹ Tošić, Interview on Consultative Meetings between the Ministry of the Interior and Civil Society Organizations in Serbia on the Draft Law on Internal Affairs.

Section 3: Impact on Democracy

15. Introduction

Section 3 utilizes the contextualization of Serbia's state of democracy presented in Section 1 and the presentation of the Draft Law on Internal Affairs in Section 2 to analyze civil society's concerns regarding the technology introduced in the Draft Law and its potential implications on Serbia's democratization. It will expand on the fact that while other countries have implemented new technologies like the ones under consideration in Belgrade without outcry from civil society, this is not relevant to Serbia's situation despite the government's attempts to use it to legitimize their proposals; Serbian civil society rightly points out that this approach ignores the political context of Serbia. By pushing laws that enable the use of surveillance technology Serbian CSOs fear that their space for functioning in Serbia will shrink, and they will no longer be able to perform their role as a check on government power. This expected weakening of democratic accountability is seen as a precursor for halting the democratic progress and even reversing it.

16. Return to State Capture Argument

By utilizing David-Barrett's conception of state capture and analyzing it against the state of democracy in Section 1, it becomes clear that SNS and its leaders have effectively led Serbia to be a captured state. David-Barnett's state capture analysis has three areas of mechanisms that measure the impact of state capture. Area One, the formation of constitution, law, and policy, is where the party has "secure control over the means of violence, shaping the rules of the game as they apply"¹³². Since coming to power, the SNS and Vucic administration have taken control of military and police, have limited parliamentary scrutiny, and blocked efforts to establish whistleblower protection. Furthermore, the government has taken control of the police through attempts to change the laws. These changes and more would be solidified by the Draft Law on Internal Affairs due to the new proposals on police introduced in the second round of drafts. It has limited parliamentary scrutiny of law, not necessarily through the changing of laws as

¹³² David-Barrett, "State Capture and Inequality | CIC.", 12

suggested in the David-Barnett framework but through influencing MP behavior. The frustration by the opposition was exemplified in the parliamentary walk out in 2019 and the 2020 parliament election boycott. The role of the media is especially important as whistleblower protection is ensured legally but is not enforced, a precedent set repeatedly through the government's treatment of investigative journalists. Additionally, due to the state control of most of the media outlets, opposition groups are unable to raise money to the same extent as the ruling coalition due to limited available exposure.

Area Two, refers to the government's implementation policy from government bodies/civil service. In this section of the framework, it is clear that the Serbian government "influences administrative procedures to benefit captor networks and disadvantage opponents"¹³³. Serbia aligns with the state capture framework in Area Two through the appointment of SNS party allies to key decision-making roles, such as in the Ministry of Interior and in the public prosecutor's office. There is also a strong influence over public procurement and issues with the privatization process, that although not explored in this paper, have been prevalent throughout the transition process and should be considered in future research.

In Area Three of the framework, the lack of accountability of institutions gives the strongest evidence for state capture in Serbia¹³⁴. The rule of law, legislation, law enforcement, and media have all been challenged since SNS came to power. SNS has systematically disabled all checks and balances within the government. A variety of vertical, horizontal, and diagonal forms of accountability have been disassembled. The judiciary is filled with questionable appointments and haunted by a lack of capacity, especially in the prosecutor's office, which is affiliated with the ruling coalition. Journalists continue to be intimidated, and the privatization of the media has resulted in even fewer voices. Furthermore, although the Commissioner for Public Information is a functioning office, the Commissioner is not always perceived as a legitimate force in the government, as can be seen with the Draft Law and the Impact Assessments. In the same regard, the Ombudsman issues statements and opinions, but as the European Commission has regularly cited, the National Assembly does not seriously consider its recommendations. Although the analysis of Area Three shows that the accountability system for the government of Serbia has been effectively dismantled, it is important to highlight that Serbia has a vibrant and

¹³³ David-Barrett, "State Capture and Inequality | CIC.", 12

¹³⁴ Ibid.

functioning civil society despite intimidation from the government as discussed in section 1. As in the case with independent media, the precedent has been set for increased intimidation and political backlash towards civil society. CSOs fear that if the government implements the Draft Law, their ability to function as a watchdog over the government will vanish.

17. Increased Surveillance Impacts on Civil Society

The primary concern of Serbian CSOs is that the new technology proposed will allow the authoritarian tendencies of the current and future administrations to flourish. This will ultimately result in the closing of civic space and the removal of the last strand of horizontal accountability. This impact of increased surveillance in a country leaning towards authoritarianism is well illustrated in a quote by Alan Westin, one of the pioneers of modern data privacy principles:

“No society with a reputation for providing liberty in its own time failed to provide limits on the surveillance power to authorities. The modern totalitarian state relies on secrecy for the regime, but high surveillance and disclosure for all other groups. The democratic society relies on the publicity as a control over government, and on privacy as a shield for group and individual life”¹³⁵.

As Westin writes, the captured state relies on secrecy for itself and surveillance of its citizens. Those against the state lose the right to secrecy. However, when it comes to indiscriminate surveillance, every person in society will come under the scrutiny of artificial intelligence and surveillance. If the government increases its ability to surveil its critics, there are concerns for safety and civil society’s ability to function. By legalizing biometric surveillance, the government’s ability to exert control over the citizens will increase exponentially, which will be used against those who speak out about unsavory government practices¹³⁶.

The significance that this measure to increase surveillance takes place in a society that is both post-socialist and post-authoritarian cannot be overstated as both environments were characterized by surveillance. Biometric surveillance in particular puts the body under the direct eye of the authorities. This linkage of surveillance to the body takes the concept of bodily integrity and problematizes its connection to consciousness. By introducing technology that uses

¹³⁵ Alan F. Westin, “Science, Privacy, and Freedom: Issues and Proposals for the 1970’s. Part I--The Current Impact of Surveillance on Privacy,” *Columbia Law Review* 66, no. 6 (1966): 1003–50, <https://doi.org/10.2307/1120997>.

¹³⁶ Ana Toskic Cvetinovic, Interview of Draft Law of Internal Affairs Impact on Civil Society Organizations, interview by Emily Wright, March 15, 2023.

the body as an authenticator of identity, it changes the concept of the body into an observable social object that can be used against the persons¹³⁷. Facial expressions, movements, reactions, and more can be interpreted in many ways. By including AI in this discussion, a computer will now be doing the interpretation, allowing computerized mechanisms to assign identities from digitized body measurements and other data collected.

Consequently, it is a logical concern of those in civil society that by introducing this technology, surveillance will be used to enhance the ability of the government to target and intimidate those who speak out against it. Threats by those with relation to the administration and the SNS party towards activists, civil society workers, and investigative journalists in Serbia are common. This trend dates to Yugoslav times and was heightened, especially concerning journalists, during the Milošević era of the 1990s. The current President of Serbia, while he was the Minister of Information, helped draft the notorious Law on Public Information passed in 1998¹³⁸. The implementation of this law saw media outlets shut down and journalists detained, intimidated, sued, and more. Although this law has been replaced, the precedent for the mistreatment of opponents is already in place.

Within the Balkan region, Serbia has had the highest number of cases recorded by Balkan Investigative Reporting Network (BIRN) of digital rights abuses in the past year¹³⁹. There have been several recent cases of those against the Vučić government facing threats. On January 16, 2023, Biljana Stojkovic, the co-president of the Zajedno party, received a threatening message on Twitter and reported it to the police. The same day, the president of the Citizens' Association, a CSO, was detained, questioned, and released by the Service for Combating Organized Crime for criticizing President Vučić on social media. These instances will only increase with the implementation of surveillance technology.

¹³⁷ Maria Los, "A Trans-Systemic Surveillance: The Legacy of Communist Surveillance in the Digital Age," in *Surveillance and Democracy*, ed. Kevin D. Haggerty and Minas Samatas (London, UNITED KINGDOM: Taylor & Francis Group, 2010), 186 <http://ebookcentral.proquest.com/lib/newschool/detail.action?docID=537878>.

¹³⁸ Jovanovic, "Confronting Recent History: Media in Serbia During Aleksandar Vučić's Ministry of Information in the Milošević Era (1998–1999)."

¹³⁹ Matteo Mastracci, "Hate Speech and Disinformation Fuel Digital Rights Abuses in Balkans," *Balkan Insight* (blog), March 30, 2023, <https://balkaninsight.com/2023/03/30/hate-speech-and-disinformation-fuel-digital-rights-abuses-in-balkans/>; Matteo Mastracci, "Politicians and Public Targeted in Online Intimidation Cases," *Balkan Insight* (blog), April 11, 2023, <https://balkaninsight.com/2023/04/11/politicians-and-public-targeted-in-online-intimidation-cases/>.

According to Los, fear of retribution from the government using their ability to identify through the physical body and interpretation of movements could result in “self-manipulation, repression, and deception that in themselves prove detrimental to one’s sense of freedom and integrity”¹⁴⁰. Taken in the context of Serbia’s civil society, this form of government censorship could affect the sector in several ways. First, the functioning of existing CSOs and civil society actors could be at risk. Activities, programs, campaigns, and other functions of CSOs in Serbia could come to a halt due to workers and participants being afraid of repercussions from the government. Without the activities of civil society organizations, assuming independent media would be facing similar obstacles, the government could overstep its boundaries without any retaliation. There are strong examples of data leaks and retaliation in the media sector which has resulted in threats and misuse of power, as referenced in Section 1. The threat of data leaks could also threaten media freedom by revealing journalists’ sources. This could endanger the source and make informants less likely to come forward. Vulnerable groups, such as minorities and members of LGBTQ+ groups, are at an extremely elevated risk of facing further discrimination or having their security threatened under increased surveillance. Because of this, it is likely that the surveillance proposed in the Draft Law will work against civil society and other groups¹⁴¹.

Second, fear of surveillance could result in self-censorship. For those already participating in the sector, it could result in unsafe working conditions that lead them to seek employment in other sectors, leaving gaps in CSOs and the sector in general. Fear of intimidation could also prevent new actors from joining the civil space. For a civil society to effectively function, there must continually be new participants, from all age groups, ethnicities, and cultural backgrounds. If people are afraid of government intimidation, they might avoid joining the civil sector altogether. This could result in an increasingly small group of people willing to face the risks. Due to the increased levels of risks, it is logical that more people would rather withdraw and limit engagement than face potential ramifications.

Finally, the levels of technology being introduced are above the general public’s understanding. Consequently, they are not able to effectively manipulate or know how to protect themselves against the risks of surveillance¹⁴². Even though it is repeatedly pushed to protect

¹⁴⁰ Los, “A Trans-Systemic Surveillance: The Legacy of Communist Surveillance in the Digital Age.”, 186

¹⁴¹ Toskic Cvetinovic, Interview of Draft Law of Internal Affairs Impact on Civil Society Organizations.

¹⁴² Los, “A Trans-Systemic Surveillance: The Legacy of Communist Surveillance in the Digital Age.”, 187

personal data, the technology introduced in the Draft Law would eliminate any autonomy the Serbian public had over their own data, which would be collected through invasive methods. The inability to understand the system, but an understanding of the consequences, could easily result in a form of self-censorship that is fatal to the future of civil society and all forms of horizontal accountability.

These surveillance measures threaten the plurality of the civil society sector. If there are fewer CSOs, workers, and participants, civil society's ability to play a watchdog over government activities will be negatively impacted. As examined in Section 1, several of the government branches and independent institutions have been rendered ineffective, which has resulted in the administration acting with impunity. At the moment, civil society and the goal of EU membership are the two strongest checks on government work. If authoritarian practices increase with AI and biometric surveillance aiding it, civil society or potential EU membership will no longer be a safeguard for democracy.

18. Future of Democracy

18.1. Civil Society and Democracy

The role of civil society in democracies has long been debated. Its role in the emergence of democratization, as a propeller of democratic revolutions, or in stabilizing democracies varies between countries, hindering it from achieving an agreed-upon role¹⁴³. Civil society in Eastern Europe, especially by the 1980s, was seen as a space for civilians outside the sectors of government and the economy where “democracy could be worked out” and a place for finding the new social transformation¹⁴⁴.

Although civil society can be understood as a third sector, separate from the state and the economy, it should not be understood as independent from the functioning of the state. As Amoor and Langley write, “the state and other institutions of governance, in particular, provide the political and legal framework that institutionalizes civil society's normative prerequisites”¹⁴⁵. The autonomy of civil society will always be bound by the over-encompassing state that it exists

¹⁴³ Agnes Kover, “Captured by State and Church: Concerns about Civil Society in Democratic Hungary,” *Nonprofit Policy Forum* 6, no. 2 (2015): 187–212, <https://doi.org/10.1515/npf-2014-0010>.

¹⁴⁴ Louise Amoor and Paul Langley, “Ambiguities of Global Civil Society,” *Review of International Studies* 30, no. 1 (2004): 89–110.

¹⁴⁵ Amoor and Langley, “Ambiguities of Global Civil Society.”, 93.

within. The inability of CSOs to function within Serbia under the proposed Draft Law provides a prime example of the sector's dependency on existing with a functioning democracy.

In many countries, there is a reliance on civil society as a space for legitimate forms of politics or a space that provides accountability for the government and a method for challenging and transforming current practices¹⁴⁶. Civil society works as an “agent of empowerment” in two ways. One, it enables the political participation of the public. Two, it both authorizes and legitimizes the practices of the state¹⁴⁷. Scholte writes, “authority is legitimate when stakeholders feel that governors have a right to govern over them and that they, as citizens, have a duty to submit to the established rules”¹⁴⁸. For those that look to civil society as a valid voice, the sector can affirm the actions of the state to the public, and to a broader global audience, when they feel that the state has validated itself as a democratic actor. In this way, the CSOs and a variety of actors go beyond legitimizing the actions of the government. If civil society is held in higher regard by sections of the public than the state government, their opinion can potentially hold more authority than those elected to office.

Without civil society, in a functioning democracy, there are other checks and balances on the role of government. The legislative branch should represent the public and pass laws that uphold the needs of its constituents. The judicial branch should hold the executive branch accountable and enforce the laws passed by the legislature. Independent media is another essential element of a democratic society that also plays a significant role in holding the government accountable. However, in the case of Serbia, civil society plays one of the last roles as a check on government power.

The countries in the Western Balkans had a specific experience with socialism that has led to unique experiences in their transitions to democracy. For purposes of this paper, the existence of civil society in Yugoslavia, which is a unique factor that was not present in FSU states or satellite states, has allowed civil society to play a unique role in the Western Balkan's democratization process.

With all other checks on the government hindered or eliminated in their entirety, civil society is one of the last places in Serbia for citizens to exercise agency and experience

¹⁴⁶ Ibid., 94.

¹⁴⁷ Ibid., 97.

¹⁴⁸ Ibid., 98.

empowerment in relation to the government's actions. This is not to assume that all CSOs and other actors in civil society are collectively working towards dislodging the current government or are even pro-democracy or pro-EU in Serbia. What is assumed is the necessity of a plurality of voices in a democracy. The technology introduced in the Draft Law on Internal Affairs paves the way for the multiplicity of voices to become singularized to a pro-government voice. By silencing the last method of empowerment available to the citizens of Serbia, the captured state will consolidate and continue to shed any cloak of perceived democracy still attributed to it.

Conclusion

The likelihood of governments turning away from AI and biometric surveillance is becoming increasingly less likely. Technology has been expanding government capacity for years, and these methods of surveillance are another tool that has the potential to positively impact the functioning of government by increasing efficiency and decreasing human error. However, increasing surveillance in society cannot be done in broad strokes that do not take into consideration each country's political situation. The state of democracy and the functioning of political institutions influence the role the surveillance mechanisms play. They could improve safety; however, they could also restrict the functioning of democratic institutions and civil society. Serbia's Draft Law on Internal Affairs is being introduced in a country in state capture. Its democratic institutions lack capacity or have been corrupted. This law would legalize the use of AI and biometric technologies which would hinder the abilities of civil society, either through actual censorship or self-censorship.

As this report is being finalized, the meetings between civil society actors and the Ministry of Interior are coming to a conclusion. Although the new version of the draft law has not been yet presented, it is suspected that several of civil society's concerns will be taken into consideration. However, members from the Ministry of Interior have made it clear that elements of biometric and artificial intelligence surveillance will remain in the draft law. It is presumed that the government will be introducing the new law in the very near future, which will again be subject to a public discussion.

By introducing and examining the political context of Serbia in a position of state capture, this paper argues that the state led AI and biometric surveillance initiatives introduced in the Draft Law on Internal Affairs will negatively impact Serbia's civil society and will affect the country's transition to democracy. The Draft Law on Internal Affairs and other attempts to introduce similar technologies that will disable discretion-limiting institutions demonstrate that democratic transitions are not linear processes. Serbia's circuitous route towards democracy since the fall of Milošević in the early 2000s does not mean there is no democratic future for the country, just as the straightforward routes of CEE countries have not guaranteed stable democracies. In the same light, the passage of the Draft Law and implementation of related technologies does not equal a death sentence for democracy in Serbia. If this law is to be passed

and if the government continues pursuing democracy the undermining of discretion limiting institutions must be addressed. If the government continues to dismantle accountability measures, the democratic future of Serbia will be endangered.

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