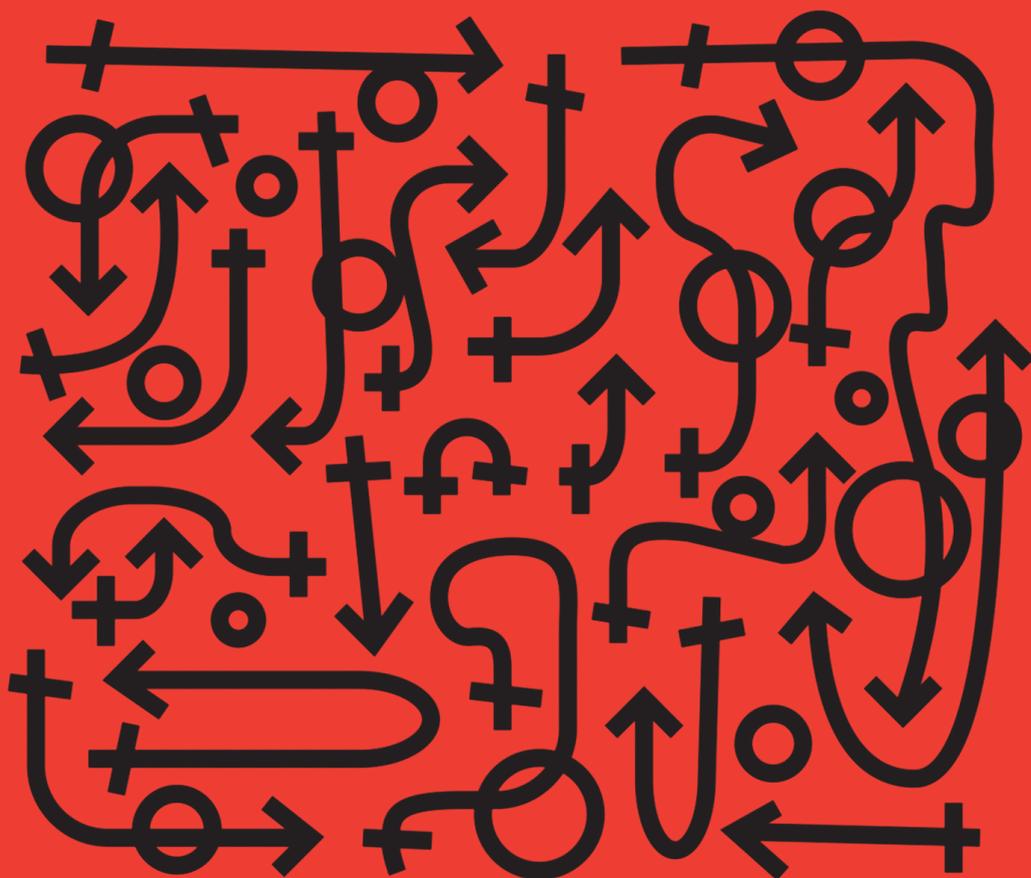


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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Share Foundation

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Introduction

This report focuses on online hate speech targeted at the lesbian, gay, bisexual and transgender (LGBT) community in Serbia. According to the European Commission, the general situation regarding the rights of LGBT persons is something that the Serbian government needs to work on. Nevertheless, the successful staging of the Pride Parade in September 2014 without major violent incidents marked an important step towards the effective exercise of LGBT rights.¹ At the same time, the legislative and institutional framework for the protection of minority rights in Serbia, as will be discussed later, is comprehensive and in line with the international standards. Given this, the main problem with the online abuse of LGBT persons and other minorities targeted by hate speech seems to be the ineffective enforcement of legal provisions. Another issue that presents an obstacle for a more tolerant society is the attitude of the general population towards the LGBT community, seen during the annual hosting of the Pride Parade. This event still divides the population of Serbia on whether or not it should be held – a division that has resulted in violent confrontations in Belgrade in the past and numerous examples of hate speech on social media platforms and news portals.

Policy and political background

In the Serbian legal framework, hate speech and discrimination are prohibited by the provisions of several regulations, including the Constitution,² the Criminal Code,³ the Law on Public Information and

Media⁴ and the Law on Electronic Media.⁵ There is also a Law on the Prohibition of Discrimination, which prohibits the expression of “ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.”⁶ It should be noted that even though the legal framework in Serbia prohibits any kind of discrimination, there have been cases of public officials discriminating against the LGBT population. In 2011, Belgrade City Assembly Councillor Nebojša Bakarec authored an article on the website *vidovdan.org* in which he stated that homosexuality “is not normal” and should be “treated by psychiatrists and psychologists.”⁷ Serbian LGBT rights organisation Gay Straight Alliance (GSA - *Gej strejt alijansa*) filed a lawsuit against Bakarec, and in 2012 a First Basic Court in Belgrade ruling that his article was indeed discriminatory became final as he had not appealed in time.⁸

Offering some measure of protection

Hate speech is not only forbidden by law – it also creates an atmosphere of intolerance, which cannot be the foundation to a fully democratic society. With the growth in internet access in Serbia, and web 2.0 platforms that allow peer-to-peer communication and user comments on online content, various kinds of hate speech and inflammatory expressions have

1 European Commission. (2014). *Serbia 2014 Progress Report*. Brussels: European Union. www.ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

2 Republic of Serbia. (2006). Constitution of the Republic of Serbia. Official Gazette of the Republic of Serbia, no. 98/2006. Available in Serbian at: www.paragraf.rs/propisi/ustav_republike_srbije.html

3 Republic of Serbia. (2014). Criminal Code (last amended in 2014). Official Gazette of the Republic of Serbia, nos. 85/2005, 88/2005 - correction, 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014. Available in Serbian at: www.paragraf.rs/propisi/krivichni_zakonik.html

4 Republic of Serbia. (2014). Law on Public Information and Media. Official Gazette of the Republic of Serbia”, nos. 83/2014 and 58/2015. Available in Serbian at: www.paragraf.rs/propisi/zakon_o_javnom_informisanju_i_medijima.html

5 Republic of Serbia. (2014). Law on Electronic Media. Official Gazette of the Republic of Serbia, no. 83/2014. Available in Serbian at: www.paragraf.rs/propisi/zakon_o_elektronskim_medijima.html

6 See Article 11 of the Law on the Prohibition of Discrimination (2009), available in English at: www.ravnopravnost.gov.rs/images/files/Zakon_o_zabrani_diskriminacije_i_prevodi.pdf

7 Bakarec, N. (2011, 16 September). “Second October 2011”, *Vidovdan Magazine*. www.vidovdan.org/index.php?option=com_content&view=article&id=18284;drugi-oktobar-2001-godine&catid=39:drustvo&Itemid=66

8 Gay Straight Alliance. (2012, 23 October). Verdict on Nebojša Bakarec for severe discrimination of LGBT population became final www.en.gsa.org.rs/2012/10/verdict-on-nebojsa-bakarec-for-severe-discrimination-of-lgbt-population-became-final

appeared more frequently online. Much of this is directed at the LGBT community in the country.

Although there are mechanisms to report this kind of content, the questions of who created the content and who should be held responsible for it remain. The general rule is that in cases where it amounts to hate speech or is otherwise illegal, the user should be responsible for the content he or she posted. However, several years ago, the GSA filed a lawsuit against Press Online (“*Pres onlajn*”),⁹ the news portal for the daily newspaper *Press*, because of reader comments. Press Online published a story about a young man openly expressing his homosexuality on a TV show.¹⁰ Soon after the story was published, most of the 85 reader comments that were posted in reaction to the story contained insults and threats aimed at LGBT persons. The High Court in Belgrade, in its first ruling in 2011, explained that these comments instigated hatred, violence and discrimination against the LGBT population and represented hate speech, as prescribed by the Law on the Prohibition of Discrimination and the Law on Public Information (which was then in force). Also, there was a notice on Press Online’s website that hate speech is forbidden and that comments containing hate speech will not be published, which was not the case.¹¹

In a second ruling, the Court of Appeals in Belgrade confirmed the initial ruling. The court’s opinion was that the prohibition of hate speech does not represent censorship, because the goal of the prohibition on hate speech is to prevent the dissemination of ideas that can have unimaginable negative consequences on the democratic process and the development of the society as a whole. The hateful comments were removed from the Press Online website after the GSA filed the lawsuit, but were nevertheless available for more than 10 days on the website.¹² This case has shown that although the internet enables relatively free communication between people, and allows users to engage with media platforms, there are legally established limitations on the kinds of content that can be posted, which need to be respected. In addition, the com-

munity guidelines of almost all news portals prohibit hate speech, so both users and publishers must be very careful when it comes to issues such as LGBT rights.

We had an opportunity to talk to GSA attorney Aleksandar Olenik about this. He told us that in the past year they had started one civil court proceeding for a case that was not related to the internet. We also wanted to know what the most common examples of online hate speech directed at the LGBT population are. According to Olenik, there are a wide variety of messages that discriminate and endanger LGBT persons, from serious ones such as death threats to disparaging statements such as LGBT people need medical treatment.¹³

While we already knew that the judicial system in Serbia was inefficient, we did not realise the extent of inefficiency in cases where the rights of the LGBT population must be protected. “The judiciary is very slow, and in 70% of the cases the outcome is negative for LGBT persons,” said Olenik.¹⁴ It means that our system does not recognise the importance of online hate speech, and how this can influence the safety of the LGBT community. GSA President Lazar Pavlović also said that at first the authorities did not know how to manage cases involving LGBT persons. “Later they found ways to use the Criminal Code and prosecute the offenders. There were some mistakes in the beginning – the defence could find ways to bring down the charges through ‘holes’ in indictments. It does not function perfectly, but the situation is much better,” he added.¹⁵

According to Pavlović, online threats against the LGBT community intensify between the announcement of the Pride Parade and the event itself and slowly fade away afterwards. “People who make threats on the internet are mostly around 18 years old, while those who do it in the street are older, between 25 and 30,” Pavlović explained.¹⁶ This can lead us to a conclusion that “millennials” are more comfortable using the online environment to make threats and post hateful content because they feel protected.

Every year the GSA publishes a report on the state of human rights for LGBT persons in Serbia. In the report for 2014, it is stated that there were several first and final judgements before the High Court in Belgrade against people who made death threats and threatened violence against members of the LGBT community on social networks. The indictments and prosecution were led by a special department of the

9 www.pressonline.rs

10 D.M. (2009, 2 July). “I will be a gay icon”. *Press Online*. www.pressonline.rs/zabava/dzet-set/70974/bicu-gej-ikona.html

11 Gay Straight Alliance. (2011, 7 June). First verdict for hate speech against the LGBT population in Serbia - verdict to “Press” daily newspaper after GSA’s claim. www.en.gsa.org.rs/2011/06/first-verdict-for-hate-speech-against-lgbt-population-in-serbia-verdict-to-press-daily-newspaper-after-gsas-claim

12 Gay Straight Alliance. (2012, 16 February). Court of Appeals in Belgrade confirmed that hate speech against LGBT persons cannot be justified by freedom of speech and information. www.en.gsa.org.rs/2012/02/court-of-appeal-in-belgrade-confirmed-that-hate-speech-against-lgbt-population-can-not-be-justified-by-freedom-of-speech-and-information

13 Email correspondence with GSA attorney Aleksandar Olenik, 24 June 2015.

14 *Ibid.*

15 Interview with GSA President Lazar Pavlović, 26 June 2015.

16 *Ibid.*

High Prosecution Office for Cybercrime in Belgrade. All accused persons were sentenced for the criminal offence of “endangering security”. They received suspended prison sentences of varying lengths, ranging from three to six months, which will be executed if they commit a new criminal offence within one to two years from the time of final judgement. Penalties were imposed after a trial or after a guilty plea was entered by the accused, and GSA activists have appeared before the court as witnesses for the victims.¹⁷

According to our research, the first case that involved hate speech on Facebook was against Simo Vladičić. He was the first person prosecuted and convicted for threats directed at members of the LGBT community on a Facebook group called “500,000 Serbs against Gay Pride”. In the first court ruling, Vladičić was sentenced to three months imprisonment, suspended conditionally for two years, also for the criminal offence of endangering security. Unfortunately, we do not have more information about this proceeding and whether there was a final judgement in this case.¹⁸

Conclusions

As we can see from these examples of cases that were settled in court, the internet in Serbia is often used to discriminate against persons with different sexual orientation. The situation therefore cannot be considered satisfactory: Serbia is still a highly polarised society, especially when it comes to the right of LGBT persons to freely express their sexual identity without being targeted with hate messages and threats. Although we presented the most notable examples where the courts offered members of the LGBT community some measure of redress, these are all situations when the damage was already done.

Another issue is that state bodies in Serbia (e.g. courts, prosecutors and the police) in most cases do not understand how the online environment works and how to efficiently deal with cases of online hate speech. What needs to be taken into account are the prevention and reporting mechanisms (e.g. the “Report” button of Facebook or blocking users on Twitter) on online communication platforms. User-generated and third-party content is the driving force behind today’s digital communication, but it is important to strike the right balance between allowing expression that is critical and thought provoking and banning or at least reducing the amount of content that clearly represents hate speech and other forms of expression

forbidden by the law. What is also problematic is that the persons responsible for publishing this content are given a heavy burden to decide what is legal and what is not, especially as they are usually not competent enough to make that decision.

It is also important to note that an awareness of the impact that people’s actions online can have is not very high in Serbia. Most people do not think that what they do or say on the internet can influence their own and other people’s lives. But this influence is growing, as more people come online. A scenario where someone actually decides to physically harm an LGBT person after writing or reading hateful content on the internet is not hard to imagine, particularly in a society such as Serbia.

Still, whenever there is a proposal for measures that could hinder legitimate free speech on the internet, policy makers, civil society, internet content providers and other relevant actors need to look out that they do not fall into a trap of over-regulating a free and open information space such as the internet. Any kind of automatic filtering or blocking of content to prevent hate speech would surely be a disproportionate measure. The results would also be questionable, as there are ways to circumvent these kinds of technical filtering tools.

Action steps

In order to provide a space for free debate on matters of public interest without hate speech, discrimination and threats – not just to protect the LGBT community, but all internet users in Serbia – we can offer a set of recommendations to make online communication more civil and acceptable:

- Online platforms should create short, clear and straightforward rules and guidelines for commenting and posting content and notify users if content is pre-moderated (everything is checked by moderators before publishing online) or post-moderated (everything is published instantly, only reported posts are removed upon notice).
- Online platforms should give clear explanations of what is considered hate speech under the law and demonstrate through a few obvious examples.
- Content moderators need to be educated to recognise hate speech and find the balance between legitimate and damaging speech.
- Activists and internet users in general should be encouraged to report hate speech on social media and other platforms and immediately contact the relevant authorities if the violations are serious.
- Better cooperation between advocacy groups, state bodies and internet content providers through meetings, campaigns and joint policies against hate speech should be encouraged.

17 Gay Straight Alliance. (2015). *Yearly report on the state of human rights of LGBT persons in Serbia for 2014*. Belgrade: Gay Straight Alliance. www.gsa.org.rs/wp-content/uploads/2015/03/GSA-izvestaj-2014.pdf

18 Gay Straight Alliance. (2013). *Yearly report on the state of human rights of LGBT persons in Serbia for 2012*. Belgrade: Gay Straight Alliance. www.gsa.org.rs/izvestaji/GSA-izvestaj-2012.pdf

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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