

GLOBAL INFORMATION SOCIETY WATCH 2016

*Economic, social and cultural rights
and the internet*



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SERBIA

DIGITAL RIGHTS IN THE WORKPLACE



KEYWORDS: labour, digital rights, workplace

SHARE Foundation

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Introduction

As technology is increasingly playing an important role in our everyday lives, using information and communications technologies (ICTs) at work has also become almost mandatory for most office jobs. Most people spend eight or more hours each day in their workplace, sending and receiving emails, posting on social media, updating website content and so on. According to the Statistics Office of the Republic of Serbia, in 2015, 100% of surveyed enterprises used computers,¹ while 99% of them used the internet for conducting their business.² The statistical data also shows that almost 95% of companies surveyed by the Statistics Office used e-government services in 2015.³ But how are our basic human rights, such as freedom of expression and privacy, as well as employment rights, affected when we use technology at work?

Recent developments involving workers' rights and the use of ICTs have shown that these issues are yet to be discussed at the policy level. However, some countries in Europe, such as France, have already taken steps in order to define the relationship between employers and employees with regards to use of technology. For example, labour law reform in France included banning work-related emails

outside of working hours.⁴ This is a particularly interesting example, since these legal provisions actually do not allow employers to put more work-related obligations on their employees outside working hours with regards to online communications, which is not a common thing in most countries.

Policy background

The Constitution of Serbia⁵ (Article 46) guarantees freedom of expression, i.e. the freedom to impart and receive ideas and information through speech, writing, images or in other ways. Article 60 of the Constitution (Right to work) prescribes that everyone has the right to the protection of their personal dignity in the workplace – which means they cannot be subjected to degrading treatment at work – as well as the right to safe and healthy working conditions.

According to the provisions on workers' rights in the Serbian Law on Labour,⁶ rights such as personal integrity and dignity are guaranteed (Article 12), as well as the rights of workers to express their opinions and be informed on matters important for their work, directly or through their representatives (Article 13). The protection of personal data of employees is also prescribed in Article 83 of the Law on Labour, which is quite important for different aspects of data collection in the workplace.

A lot of questions regarding workers' digital rights are still left to interpretation in general legal provisions, as well as their employment contracts. This opens space for different kinds of endangerment of employees' rights in Serbia in relation to their online behaviour, such as the cases of Radovan Nenadić, a former court trainee, and Jasminka Kocijan, a journalist, who have had problems with employers because of what they published on the internet.

1 Statistics Office of the Republic of Serbia. (2015). Enterprises using a computer for their business. Available in Serbian at: webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d270301IND01%262%3d%23All%23%2635%3d6%2c7%2c00%2c8%265AreaId%3d270301%26dType%3dName%26lType%3dSerbianCyrillic

2 Statistics Office of the Republic of Serbia. (2015). Enterprises using the internet for their business. Available in Serbian at: webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d270301IND02%262%3d%23All%23%2635%3d6%2c7%2c00%2c8%265AreaId%3d270301%26dType%3dName%26lType%3dSerbianCyrillic

3 Statistics Office of the Republic of Serbia. (2015). Use of e-government services by enterprises. Available in Serbian at: webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d270304IND01%262%3d%23All%23%2635%3d6%265AreaId%3d270304%26dType%3dName%26lType%3dSerbianCyrillic

4 Stump, S. (2016, 26 May). French law makes weekend work emails illegal, grants the 'right to disconnect'. *Today.com*. www.today.com/money/french-law-makes-weekend-work-emails-illegal-grants-right-disconnect-t94886

5 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

6 Republic of Serbia. (2014). Law on Labor. Official Gazette of the Republic of Serbia, nos. 24/2005, 61/2005, 54/2009, 32/2013 and 75/2014. Available in Serbian at: www.paragraf.rs/propisi/zakon_o_radu

What are the limits to free expression in the workplace?

SHARE Foundation has observed a number of cases where people of different professions have had trouble at their workplace – ranging from mobbing⁷ to dismissals – because of their activity online, including social media posts and blogging. In Serbia, the examples that caught the public's attention the most were related to state institutions or state-run companies. Such was the case of Branislav Mihajlović, an engineer who tweeted critically and wrote blog posts about the situation in the state-owned Mining and Smelting Combine in Bor, a small city in eastern Serbia. Mihajlović's employment contract was cancelled in the summer of 2015 because he had criticised the way the company was managed, but the court in Bor ordered that he should return to work shortly after that.⁸

A slightly different situation happened to Kocijan, a journalist working in the state news agency Tanjug,⁹ which was formally shut down by the government, but still operates under dubious circumstances. In February 2014, while on sick leave, Kocijan wrote about the staged rescuing of citizens from a blizzard near Feketić, a small town in the northern part of Serbia, on her personal Facebook profile and in a personal capacity. In her Facebook post she stated that the responsible authorities at the site "prepared" everything for the arrival of then Deputy Prime Minister of Serbia Aleksandar Vučić, so he could be filmed while rescuing people, and prevented the well-equipped and experienced Red Cross personnel from acting before Vučić arrived.¹⁰ The campaign for the 2014 parliamentary elections had just started, and the event in Feketić was also highly controversial because a parody video of the deputy prime minister's "rescue mission" with satirical subtitles was removed from video-sharing

platforms for alleged copyright infringement. SHARE Foundation filed a criminal complaint against a representative of the company that removed the parody video, but there is still no official reaction from the responsible authorities.¹¹

When Kocijan returned to work from sick leave, she suffered pressures at her workplace, such as not being allowed to use her vacation days, monetary fines and moving her to a lower work position that required lower qualifications and knowledge than those she had. In March 2014, shortly after these incidents at Tanjug, Kocijan decided to take the news agency to court because of mistreatment at work.¹² The court proceeding is still ongoing – at the last hearing held in late June 2016, the judge fined the director of Tanjug, Branka Djukić, for failing to come to the hearing for the second time because of health problems. The next hearing was scheduled for 12 September 2016 at the High Court in Belgrade.¹³ Even though Kocijan reported on social media and acted as a responsible and informed citizen and in a personal capacity, she was still treated unfairly by her employer. She also did not cause direct damage of any kind to the news agency that employed her, and even if she did, her employer would have to prove that the actual damage occurred, as well as the extent of the damage. It would then have to start a disciplinary proceeding in accordance with Kocijan's employment contract, internal company regulations and relevant legislation.

The next example – involving Nenadić – is also interesting, but instead of involving workers' rights in state media, it shows the situation in the judicial system of Serbia. In July 2015, Nenadić, then a young court trainee in the High Court in Belgrade, wrote on his blog and on social media about the action of one of the judges working in that court. In a rehabilitation¹⁴ case, Aleksandar Karadjordjević, a member of the former Serbian royal family, was

7 "Mobbing" is any active or passive behaviour towards an employee or group of employees that is repeated, and which aims to undermine the dignity, reputation, personal and professional integrity, health, and position of the employee and which causes fear or creates a hostile, humiliating or offensive environment, deteriorates working conditions or results in the isolation of the employee or causes them to terminate their employment contract. See Article 6 of the Law on the Prevention of Abuse at Work, Official Gazette of the Republic of Serbia, no. 36/2010. Available in Serbian at: www.paragraf.rs/propsi/zakon_o_sprecanvanju_zlostavljanja_na_radu

8 S.L. (2015, 14 July). MSC Bor: The court orders engineers dismissed for tweeting to return to work. *Blic.rs*. www.blic.rs/vesti/ekonomija/rtb-bor-sud-vratio-na-posao-inzenjere-koji-su-otpusteni-zbog-tvitovanja/p7n8r3r

9 www.tanjug.rs

10 Vesti Online. (2014, 6 February). Red Cross barred from rescuing until Vučić comes. *Vesti Online*. www.vesti-online.com/Vesti/Srbija/380126/Crvenom-krstu-zabranili-spasavanje-dok-ne-dode-Vucic

11 SHARE Foundation. (2014, 5 February). Serbian Internet wars: fighting memes with copyright. www.shareconference.net/en/defense/serbian-internet-wars-fighting-memes-copyright

12 Independent Journalists' Association of Serbia (IJAS). (2015, 22 September). Jasminka Kocijan versus Tanjug. www.nuns.rs/info/news/24922/jasminka-kocijan-protiv-tanjug

13 Journalists' Association of Serbia (JAS). (2016, 21 June). Judge fines Branka Djukić 30,000 dinars for not coming to the hearing for a lawsuit by Jasminka Kocijan. www.uns.org.rs/sr/desk/UNS-news/40063/sudija-kaznila-branku-djukic-sa-30000-dinara-zbog-nedolaska-na-rociste-po-tuzbi-jasminke-kocijan

14 Rehabilitation means that if someone has been deprived of certain rights in the past (life, property, etc.) because of political, ideological, religious or any other reasons in accordance with previous regulations, this person can ask for these decisions to be annulled (e.g. a court decision) and for compensation for the consequences of these decisions. In Serbia, these cases are related to decisions of post-World War II state bodies in communist Yugoslavia, which sentenced the former royal family and others associated with it as traitors and took away their rights.

visited by Predrag Vasić, the judge who decided in the case. The judge had brought a framed copy of the court decision to rehabilitate Karadjordjević as a gift on his birthday. After that, Nenadić explained on his personal Facebook and Twitter profiles that the described action of judge Vasić was “shameful” and “unworthy of a judge”.¹⁵ Only a few days after his social media posts, Nenadić wrote a post on his blog in which he informed the public that his contract had been terminated by the president of the High Court in Belgrade. The court president’s decision, which Nenadić also published with the blog post but refused to sign, contained no explanation for Nenadić’s dismissal from the position of a court trainee.¹⁶ “Honestly, I didn’t expect these consequences to occur, as I have already been in conflict with Stepanović [the court’s president] over some more serious matters,” said Nenadić. He added that he was put under different kinds of pressure to stop writing about the judiciary. “I accepted to work for the court driven by two motives: to try to make the court a better place than it was, and to point out to the public and society what our judiciary is like.”¹⁷ Nenadić has been writing about the problems with the judicial system in Serbia, and this time he was trying to alert the public that Vasić’s action was contrary to the Law on Judges, which regulates the behaviour of judges in proceedings and in general. Nenadić explained this in detail in a disciplinary complaint against Vasić he filed to the High Council of Judiciary in late July 2015,¹⁸ but the complaint was rejected.

Nenadić has confirmed that he filed a lawsuit against his dismissal according to the Law on the Protection of Whistleblowers.¹⁹ As we can see, Nenadić only tried to act in the public interest and let the public in Serbia know that this kind of action was unacceptable for a judge. Instead of a positive approach and an acknowledgement of respect for his reaction as a lawyer and an employee in the judicial system of Serbia, he was removed from his position without any formal explanation. This attitude towards employees, especially in the judicial

system, causes a “chilling effect” for reporting future irregularities to the public using social media, blogs and other online communication channels, having in mind that most traditional media often do not report on these problems.

The only example we are aware of that explicitly involves the right to use the internet in the workplace involved the blocking of access to websites in the Administration of the Municipality of Bujanovac, a small town in the south of Serbia. According to media reports, the administration prevented employees from accessing social networking platforms such as Facebook or YouTube in their offices, and also blocked access to an independent local news portal called Titulli.com. The editor of Titulli.com, Argjent Goga, explained that this was clearly a case of pressure from the local authorities.²⁰ This shows us that the blocking of access to the internet in the workplace does happen, but unfortunately we are not aware of the scale on which it happens in Serbia. The reasons for blocking internet access at work might relate to workers’ lack of knowledge of their rights or unwillingness to challenge their employers, or a complete disregard by employers of the right of workers to receive and impart information.

Conclusions

These are only a few cases that we have noted that have taken place in Serbia, but we have seen similar examples related to digital rights in the workplace around the world in the last couple of years as well, with really unfair and illegal consequences. Employers must be aware that their internal procedures, policies, employee contracts and all other documents in relation to employment must be in compliance with all relevant legislation. In Serbia, this is the Constitution and the Law on Labour. In addition, an important international legal instrument is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified in 1971 by the former Socialist Federative Republic of Yugoslavia, which Serbia was a part of. In 2001, the Federal Republic of Yugoslavia, which consisted of Serbia and Montenegro, gave a successor statement to the United Nations in relation to joining the ICESCR once again.²¹

¹⁵ See Radovan Nenadić’s tweet from 20 July 2015, which also includes a screenshot of his Facebook post. www.twitter.com/RadovanN87/status/623116482654904320

¹⁶ Nenadić, R. (2015, 23 July). I will not be silent even after my dismissal. *radovannenadic87*. www.radovannenadic87.blogspot.rs/2015/07/necu-da-cutim

¹⁷ Interview with Radovan Nenadić, 27 July 2016.

¹⁸ Nenadić, R. (2015, 27 July). Disciplinary complaint. *radovannenadic87*. www.radovannenadic87.blogspot.rs/2015/07/disciplinska-prijava

¹⁹ Interview with Radovan Nenadić, 27 July 2016.

²⁰ Cenzolovka. (2015, 20 March). Municipality of Bujanovac blocks access to Titulli portal. www.cenzolovka.rs/vesti/opstina-bujanovac-blokirala-zaposlenima-korisnjenje-portala-titulli

²¹ Office for Human Rights and Minority Rights of the Government of the Republic of Serbia. (2014, 18 July). International Covenant on Economic, Social and Cultural Rights. www.ljudskaprava.gov.rs/index.php/yy/ljudska-prava/konvencije/54-pakt-o-ekonomskim-socijalnim-kulturnim-pravima

All guaranteed rights must also be protected in the workplace, including the civil and political rights of freedom of expression, privacy, and protection of personal data. Access to the internet in the workplace in fact highlights the close link between civil and political rights and ESCRs. While the Covenant in Article 7 defines the “the right of everyone to the enjoyment of just and favourable conditions of work”, this should include the freedom to speak one’s mind in the workplace, as well as reasonable periods of rest and private time during the workday. During these periods of private time, is it reasonable that employees cannot update their private blogs, send personal emails or comment on Facebook? Given that these are private online platforms, the employee has the right to say whatever he or she wants. And should these comments bring the employer into disrepute, proper processes – rather than ad hoc processes – need to be put in place for a fair hearing on how this impacts on the employee’s job.

Vip mobile,²² a mobile network operator in Serbia, offers an example of a good social media policy within a private company. Employees are free to use social media both during working hours and in their free time. There is one condition, however: the employees are not allowed to share confidential work-related information on social media. In case the employees have any doubts regarding social media posts, company staff are there to assist them.²³

However, as we have seen from the above cases, because of the internet, employers are now more “visible” when they behave in a way that is unethical or wrong. In the absence of clear guidelines that moderate both their behaviour and employees’

behaviour, and a lack of understanding of the digital environment and human rights, employers take hasty steps, which can be unfair and frequently even illegal. But as it stands, the “chilling effect” of possible consequences if employees publish something online greatly affects the enjoyment of their rights in the workplace.

Action steps

In the end, we propose several recommendations on how to improve the protection of workers’ rights in the digital environment in Serbia:

- Amendments to the Law on Labour, which need to be adopted in consultation with trade unions and civil society. Amendments should address workers’ digital rights in a manner that would reduce the problem of legal uncertainty and would protect workers from the arbitrariness of the employers.
- The improvement of company policies, employment contracts, employment rule books, etc. in favour of better protection of digital rights for workers in the workplace. These need to be aligned with legal obligations and human rights standards.
- Better court protection of workers’ rights can be accomplished through education and development of manuals for judicial actors on how to ensure the respect of human rights in the digital environment. None of the aforementioned cases has been finalised in court, so strategic litigation that results in a positive outcome for workers can serve as a judicial cornerstone.

²² www.vipmobile.rs

²³ Terzić, J. (2016, 29 July). Privacy on the internet in the employer’s network. *Radio-Television of Serbia*. www.rts.rs/page/stories/sr/story/125/drustvo/2402884/privatnost-na-internetu-u-mrezi-poslodavca

Economic, social and cultural rights and the internet

The 45 country reports gathered here illustrate the link between the internet and economic, social and cultural rights (ESCRs). Some of the topics will be familiar to information and communications technology for development (ICT4D) activists: the right to health, education and culture; the socioeconomic empowerment of women using the internet; the inclusion of rural and indigenous communities in the information society; and the use of ICT to combat the marginalisation of local languages. Others deal with relatively new areas of exploration, such as using 3D printing technology to preserve cultural heritage, creating participatory community networks to capture an “inventory of things” that enables socioeconomic rights, crowdfunding rights, or the negative impact of algorithms on calculating social benefits. Workers’ rights receive some attention, as does the use of the internet during natural disasters.

Ten thematic reports frame the country reports. These deal both with overarching concerns when it comes to ESCRs and the internet – such as institutional frameworks and policy considerations – as well as more specific issues that impact on our rights: the legal justification for online education resources, the plight of migrant domestic workers, the use of digital databases to protect traditional knowledge from biopiracy, digital archiving, and the impact of multilateral trade deals on the international human rights framework.

The reports highlight the institutional and country-level possibilities and challenges that civil society faces in using the internet to enable ESCRs. They also suggest that in a number of instances, individuals, groups and communities are using the internet to enact their socioeconomic and cultural rights in the face of disinterest, inaction or censure by the state.

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