GLOBAL INFORMATION SOCIETY WATCH 2009

Focus on access to online information and knowledge
– advancing human rights and democracy

Global Information Society Watch 2009

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*Dedicated to A.K. Mahan - an activist who valued
intellectual rigour and concrete outcomes.*

BULGARIA

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Introduction

Since 2008, the Bulgarian public has been increasingly alarmed by persistent legislative and policy pressures to impose restrictions on privacy in online communications. While access to information and communications technologies (ICTs) is on the rise – with a quarter of households accessing the internet in 2008 and a 6% increase in the personal use of ICTs[1] – the past year has been marked by instances of infringements on both online and traditional media freedoms. New regulations aimed at establishing rules for retaining electronic traffic data for security reasons, and a lack of transparency in the digitalisation process, suggest increasing state control over electronic communications and freedom of speech. Concerns over censorship of electronic communication and information have been expressed by foreign observers;[2] but on a more positive note these issues have also triggered widespread public reaction[3] and debate in Bulgaria's parliament, the mass media and the blogosphere. As a result, some drastic legislative changes intended to limit privacy and other online communication rights have been stopped. At the same time, a newly formed political party, rooted in a re-emergence of green activism, has embraced internet rights as a core part of its campaigning.[4]

Policy and legislative environment

The year 2008 marked the start of implementing European Union (EU) Directive 2006/24/EC on data retention in Bulgarian legislation. This Directive serves "the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law"[5] and "respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union."[6] Allegedly in order to implement Directive 2006/24/EC on data retention, in January 2008 State Regulation 40 gave the Ministry of Interior (MVR) direct access to all electronic communications (i.e., mobile and internet) data, except for the content of messages.

After wide public opposition, and a court trial initiated by the civil society Access to Information Programme (PDI),

a court decision was issued to the effect that the regulation contradicts both the Bulgarian Constitution and the European Convention on Human Rights. An amendment to the law was made, stipulating that access to the data is subject to a court warrant, and only to be used for investigating capital offences and cyber crime.

Meanwhile, 2009 saw improvement with regard to access to public information. In 2008, 95.1% of all administrative bodies maintained their own websites.[7] However, documents provided online do not fully meet the demand for information, especially those related to government contracts with private companies. To partially respond to this problem, amendments were made to the Access to Public Information Act in December 2008 which obliged public bodies to publish information online.

Official statistics show that 38% of administrative bodies handle electronic requests.[8] However, a survey by the PDI in February 2009 showed that only 34.3% of all 399 public bodies included in the survey responded to electronic requests promptly. Another 7% delayed their replies, whereas 58.4% did not respond at all.[9] The range of e-government services are reported by the National Statistical Institute to have increased since 2007, so that the share of companies who used the services in 2008 showed a 13% increase from the previous year.[10]

In line with fostering access to online information, the Ministry of Education and Science (MON) has continued its National Strategy (2005-2007) for introducing ICTs into Bulgarian schools with a new national programme called ICTs at School.[11] This programme aims at providing access to information and developing teachers' and students' skills. The ministry has also been a partner in Microsoft's Partners in Knowledge initiative, which includes the Network of Innovative Teachers,[12] a portal offering a forum and electronic educational content, amongst other content.

The official website of the State Agency for Information Technologies (DAITS) has announced a draft policy document on electronic communication[13] and a draft for a National Programme on Developing Broadband Access,[14] the latter having been offered to the NGO sector for feedback. Both

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1   www.nsi.bg/IKT/ICT2008.pdf

2   Such as the Bulgarian Helsinki Committee (www.bghelsinki.org/index. php?module=news&lg=en&id=2224), Reporters without Borders (www.rsf. org/IMG/pdf/rsf_rep_bulgaria_en.pdf), and US Department of State (www. state.gov/g/drl/rls/hrrpt/2008/eur/119072.htm).

3   NGO actions include various petitions by Electronic Frontier Bulgaria (e.g., efb.bg/images/b/b3/Zes_251.pdf) and a court trial against the regulations filed by the Access to Information Programme (www.aip-bg.org/documents/ data_retention_campaign_11122008eng.htm).

4   www.zelenite.bg/517; www.zelenite.bg/wordpress/wp-content/ uploads/2009/06/internet.pdf

5   www.ispai.ie/DR%20as%20published%20OJ%2013-04-06.pdf

6   Ibid.

7   Ministry of State Administration and Administrative Reform (2008) *State of Administration* Report 2008, p. 143. www.mdaar.government.bg/docs/ Annual%20Report%20%202008.pdf

8   Ibid., p. 44.

9   See the survey results at: www.aip-bg.org/e_register.php and analytical report at: www.aip-bg.org/l_reports.htm

10 www.nsi.bg/IKT/ICT2008.pdf

11 www.minedu.government.bg/opencms/export/sites/mon/left_menu/jointprojects/ national_programs/2009-05_IKT.pdf

12 www.teacher.bg

13 daits.government.bg/upl/docbg20090331172918.doc

14 daits.government.bg/upl/docbg20090319170346.doc

documents emphasise the priority of establishing broadband infrastructure and adopting new regulatory policies in line with the ongoing EU revision of directives on internet control. The respective new legislative initiatives have concentrated on control over mobile and online communication.

Access to government-held information is regulated by the Access to Public Information Act adopted in June 2000.[15] Since its amendment in December 2008, the Act obliges public authorities to publish on their websites information including details about their organisation and its functions, a list of administrative documents issued, and contacts in the unit responsible for the Access to Public Information Act. Moreover, they have to provide their procedures for granting access to information and public registers (Article 15a). Requests for access to public information may be submitted by email. These requests are regarded as written and handled in a way defined by the respective public institution (Article 24, paragraph 2). Any citizen has the right of access without demonstrating any legal interest. The 2008 amendments require the authorities to take into account the public interest in information disclosure.

Restrictions on the right to access public information may be imposed only if provided for by law. In any case, when possible, at least partial access should be provided. Bulgarian legislation also establishes the possibility of limiting access to information to protect certain interests, such as state secrets, business confidentiality, protection of deliberations before final decisions, negotiations, and third party interests (personal data and trade secrets).

Uneasy passage for rights-based legislation

Even after the court decision to repeal State Regulation 40, five more amendments to the Law on Electronic Communication were proposed by the Ministry of Interior, using similar formulations to those that had already been rejected, but again granting the ministry the same broad rights to access traffic data without court permission and without clearly saying what the data would be used for. The last formal attempt to make this amendment was in June 2009, just three working days before of the end of the incumbent parliament's term. It was therefore not discussed before the July parliamentary elections.

The insistent interest in government control over electronic communication is a serious threat to privacy and freedom of expression and has provoked broad civil society criticism. The new parliament will need to face the same threat, and either finally deny these attempts at control, or allow for state intrusion on civil rights in the sphere of internet and mobile communications. However, because these attempts have evoked serious discussions in parliament, and broad opposition by the public, with NGOs and media participating actively in the debate, it is unlikely that the latter will be the case.

Another issue provoking intense public debate is the February 2009 amendment to the Law for Radio and Television (ZRT), which formally kick-started the first round of competition amongst media houses wishing to access digital transmission spectrum as part of the process of the digitalisation of the Bulgarian TV sector. However positive the start of the process was, there has been serious public criticism of the lack of transparency in criteria for spectrum allocation, wilful interpretation of the Law for Radio and Television and the Law on Electronic Communication, and the delaying of required procedures by the Council of Electronic Media (SEM) and the Commission for the Regulation of Communications (KRS), which are the state bodies responsible for the selection and evaluation of digital media holdings. All of this has resulted in an advantage for certain media companies owned by businesspeople who had previously been favoured in profitable deals with the government, often to the detriment of the national budget.

Mass media and civil society analysts[16] argue that the amendments to the legislation on the digitalisation of electronic media and the way these amendments have been interpreted by KRS favour specific media houses. These companies have a close relationship with the current government – a relationship that is likely to give them a monopolistic position in the media sector and can also lead to political influence over content and control over public speech. An independent peer-reviewed report defines the biggest challenge in the field as stemming from "the locus of political and business interests" and concludes that the government-imposed method of implementing European-level legislation amounts to a "top-down" process that "links directly to a very powerful group of media business entities, whose political and economic clout is powerful enough to sway political and regulatory decisions in their favour. These trends are even more alarming in view of the increasing media ownership concentration which inevitably leads to the elimination of a pluralism of opinions, leads not only to a civil society that lacks diverse public fora, but also results in the hyper-commercialisation of TV programming, where profit overtakes public interest, and where only a few players will make it to the finish line of the digital conversion marathon."[17]

Besides the monopolisation of the media, the current political majority in parliament has been accused of suppressing independent traditional and electronic media. The Bulgarian Helsinki Committee (BHC) argues in its Annual Human Rights Report that the ownership of the Bulgarian media is unclear, and the media are subjected to political pressure from the state and political parties.[18]

The year 2008 was marked by incidents like the physical attack on Ognyan Stefanov, editor-in-chief of the independent website Frognews,[19] and the arrest and interrogation

15 www.aip-bg.org/library/laws/apia.htm

16 For example, www.capital.bg/show.php?storyid=734948 and nellyo.wordpress.com/2009/04/24/cem-13

17 Ibroscheva, E., and Raicheva-Stover, M. (2009) Development of Digital TV in Bulgaria: Opportunities and Problems, *International Journal of Communication*, 3, p. 104. http://ijoc.org/ojs/index.php/ijoc/article/viewFile/402/295

18 www.bghelsinki.org/index.php?module=resources&lg=en&cat_id=24

19 Leviev-Sawyer, C. (2008) Bulgarian Parliament, journalists condemn assault on website editor, *The Sofia Echo*, 24 September. sofiaecho.com/2008/09/24/661145_bulgarian-parliament-journalists-condemn-assault-on-website-editor

of the website's administrator, Yorgo Petsdas, by the State Agency for National Security (DANS).[20]

Police and state security agencies have also monitored telephone calls and examined telephone records. All these incidents demonstrate the strong culture of suppression of freedom of speech and privacy rights which has been inherent to Bulgarian state authority since the times of the socialist regime of 1944-1989. The United States (US) Department of State's 2008 Human Rights Report on Bulgaria also stressed an increase in "self-censorship due to pressure by political and business leaders and organised crime" and "increased political influence over media, pressure from powerful economic interests and attacks against journalists."[21]

In spite of the oppressive political status quo, it can be argued that as ICTs develop in Bulgaria, the state will be torn between a conservative tendency to control their potential, and a progressive pressure towards information and internet freedoms. This latter pressure will largely be driven by the EU and growing domestic pressure from an active and critical civil society.

New trends

The issues of online access to information, internet and communication rights, and online privacy have gained prominence and are likely to dominate the public agenda going forward.

The civil society sector focused on access to information and human rights has been working in two main policy areas:

- Access to online communication, which is in line with the official policy on strengthening internet infrastructure and is supported by the government.

- Digital rights, which in general needs to be defended against the government-proposed legislation.

An example of the former is the United Nations Development Programme (UNDP) project called Bulgarian Libraries, funded by the Bill and Melinda Gates Foundation and institutionally hosted by the Bulgarian Ministry of Culture.[22] The project's full name is Bulgarian Libraries – Access Points to Information and Communication for All, and its strategic objective is to provide easy and equitable access to information, knowledge, communications and electronic services in public libraries via the free use of the internet and access to educational training.

The latter field of civil society action can be exemplified by the statements of protest and civil society discussions initiated by Electronic Frontier Bulgaria,[23] a Bulgarian NGO advocating for online communication rights. Civil society actions have included campaigns for public debate on the relevant issues (e.g., online discussions, a Facebook information campaign, policy proposals and meetings with

government institutions), and the Access to Information Programme,[24] active in monitoring and policy analysis in the field.

In general, further public involvement is expected in the following areas:

- Opposition against infringements of internet and communication rights, including privacy and freedom of speech, that have typically been part of the Bulgarian authority's oppressive culture. State control over internet and mobile communications and the electronic media is in the limelight and is likely to remain a hot topic in the online public sphere. Bloggers writing on these developments[25] are consistently ranking among the most popular according to statistics.[26]

- The re-emergence of green and other activism, primarily using internet-based communications. This form of activism challenges the present political culture and demands more transparency and citizen participation.

- Lack of public respect for intellectual property rights, broadly perceived as "imposed" on Bulgaria as part of the EU accession process. This is likely to lead to various forms of resistance, and potentially give rise to political representation via a non-registered "Internet Pirates" party.

Action steps

- A general direction for action, embraced by BlueLink, involves support for individuals' involvement in policy making and advocacy for participatory policy-making processes. This is seen as a primary driver for securing internet rights, transparency, public participation and good governance.

- With regard to access to public information, more action needs to be taken in order to ensure that state authorities effectively provide access to public registers and databases, especially with regard to state-private ownership deals affecting public property.

- With regard to data retention and control over electronic communication, civil society needs to keep up the pressure to ensure basic human rights legislation in line with freedom of expression and the right to privacy. Data from online and mobile communications must only be provided for serious crimes.

- With regard to the transition from analogue to digital media, public and parliamentary control over the actions of KRS need to be strengthened, especially regarding competition criteria for media companies.

- In order to minimise political influence and the monopolisation of both electronic and traditional media, there needs to be clearer media ownership regulations, and competition rules need to be revised and more strictly defined. ■

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20 Reporters Without Borders (2008) Security agency closes corruption whistle-blower website, 15 September. www.rsf.org/Security-agency-closes-corruption.html

21 www.state.gov/g/drl/rls/hrrpt/2008/eur/119072.htm

22   www.glbulgaria.bg/en/

23 efb.bg/index.php?title=Aboutus

24 www.aip-bg.org/index_bg.htm

25 For example, nellyo.wordpress.com, www.bogomil.info and www.eenk.com

26 topbloglog.com

GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels

- **Encouraging** critical debate

- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy.* It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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2009 Report
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