# CONTROL OF THE PRIVATE LIFE
# AND CRIME PREVENTION IN SERBIA[*]

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*Governmental Control of the private life is a controversial topics in the world today, and the key problem is the conflict between security and the right to privacy. The right to privacy is a basic human right and an important pillar of democracy, and the control of the private sphere is necessary for maintaining security. While creating balance between the two conflicted interests seems to be inevitable in order to resolve current problems in the sphere of law and policy making, we must also raise a question on what is the public opinion in Serbia regarding governmental control of the private life. The question of public opinion on mass surveillance was raised in America and Europe after Edward Snowden revelations in 2013, and it is necessary to raise it in Serbia too, especially considering the heritage of socialist Yugoslavia.*

*It is important to question the role of governmental control over private life of citizens in crime prevention, and investigate to what extent are the citizens themselves willing to sacrifice the right to privacy for more security. The aim of this paper is to analyse the phaenomenon of controlling private life in the function of preventing crime and violence in Serbia.*

*KEYWORDS: the right to privacy / violence / crime / security / democracy*

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## INTRODUCTION

After Edward Snowden's revelations[1] the general public has become aware of the mass surveillance programs which led to raising new questions about privacy. As leaked NSA files show, surveillance is not limited to actual or potential terrorists and criminals, but extends to innocent people as well, and it is not just the US government that spies on its citizens.

Contemporary surveillance tends to be a total rather than targeted, and it leaves nothing and nobodyunobserved. The key argument which justifies surveillance says that an innocent person has nothing to hide and that privacy should be traded for security in a world constantly threatened by terrorism and crime. The "tradeoff" paradigm has been disputed by many academics including Daniel Solove (Solove, 2011), but most importantly, it has been proven to be against the opinion of the majority of European citizens. The key findings of the 'Prisms' survey conducted in 27 European countries (with 1000 people interviewed in every country) clearly show that people are not ready to give away their privacy for the sake of security. It seems that it is not a "natural" tradeoff (Friedewald, 2014). Europe's responses to Snowden revelations could bedescribed as efforts to dismiss the tradeoff discourse and offer solutions for protecting privacy while at the same time maintaining security by targeted surveillance.

Moreover, European Commission's IRISSproject conducted after Snowden's files leaked has showed that the impact of surveillance on terrorism and crime prevention is questionable, and that there is a lack of impact assessment, costs and benefits calculation, as well as an independent oversight of these practices (Wright, 2012).

The right to privacy is an important pillar of every democratic state and a basic human right protected by both international and national legislation, but the increasing spread of governmental surveillance justified by security issues tends to eradicate it. Raising the question of legitimacy of surveillance is especially important in countries which were previously under a totalitarian regime such as Serbia.

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[1]In June 2013 former NSA employee Edward Snowden started revealing confidential files taken from NSA databases including the information on mass surveillance programs such as the PRISM which were previously not known to the general public and even the USA government and some of the NSA officials. The files were initially published in the British newspaper Guardian after Snowden handed them to the journalist Glen Greenwald: http://www.theguardian.com/us-news/the-nsa-files

The case of Serbia is in many ways unique. As a country which kept the heritage from socialist Yugoslavia and then Milošević's Serbia, never conducted lustration and never opened its secret files, it's policing and surveillance practises are deeply rooted in the communist tradition.While it is essential that Serbia as a candidate for EU membership has legislation which is in line with recommendations provided by the European Commission, it is also important that it breaks away from its communist past which has major repercussions on surveillance and privacy protection. Some researches show that the general public in Serbia has the least trust in police than all other countries of the Western Balkans (Elek, Mihailović, 2015),and some studies show that the Ministry of Internal Affairs labels most of the records as 'classified' and they are not publically available which means that there is no transparency (Radovanović, 2015).

Considering that the government fails to provide adequate protection of personal data since the Personal Data Protection was adopted (Poverenik, 2015), despite recommendations provided by the European Commission, the legitimacy of governmental surveillance is questionable. The main purpose of surveillance is prevention of terrorism and crime, but while there is no proof of its efficiency it constantly increases the risks of abuse of personal data. The lack of government transparency and published crime statistics makes it impossible to make assessment of the impact of surveillance on crime prevention, and the government does not make an effort to find out what are the opinions of the general public on surveillance practises.

## THE SURVEILLANCE SOCIETIES AND RESPECTING PRIVACY

Contemporary society is frequently being called the surveillance society, but as Dandeker concludes, modern surveillance is simply larger in capacity, while it has been present in all previous types of societies and naturally stems from previous historic periods (Dandeker, 1994). Foucault showed how surveillance as a manifestation of power expandedto different centres of power in modernity, displaying its ability to grow and spread (Foucault, 1995), and Lyon and Bauman described contemporary surveillance as "liquid", and pointed out that Bentham's panopticon design which Foucault used to describe surveillance in the age of modernity is still operational today, even though the prison itself is now grown on the body like a snail's shell (Bauman, Lyon, 2013). The snail house metaphor refers to contemporary surveillance technologies which are in-built inside mobile devices such as cell phones or tablet and laptop computers which are literally carried around like a little house with all personal things in it.

As Dandeker sums up, contemporary ubiquitous surveillance was enabled by technology, but its principles were established in modernity with "rational, bureaucratic organisations" which he describes as "extremely durable structures" (Dandeker, 1994). Furthermore, he claims that the difference between surveillance in socialist and free market, capitalist societies is only very small because they both rely on bureaucracy (Dandeker, 1994).

While it is commonly thought that the term 'surveillance society' is new and relates to the 21st century, Murakami Wood points out that it was first used in 1970's when it appeared in the title of an article published in the *Los Angeles Times*, and it was also mentioned in a press release from the Congressional Committee followed by the US Congress of Technological Assessment report on workplace surveillance in 1987. He also stresses out that the term 'surveillance state' was often used to describe countries of the Soviet Bloc in the 1980's (Murakami Wood, 2009). Kenyon and Richardson also noted that "modern obsessions with privacy are deeply rooted in the twentieth century" when protection of human rights became an imperative after the Second World War (Kenyon, Richardson, 2006).

Contemporary surveillance is therefore rooted in the modernity even though new technologies took it to another level by rapidly increasing its scope. One of the major innovations in governmental surveillance occurred in the 1990's with CCTV cameras. They first appeared in the UK which remains to be the most surveilled country in the world with the highest level of CCTV coverage and world's largest DNA database (Barnard-Wills, 2012).

CCTV brought Bentham's prison keeper out in the streets, transforming entire cities into giant panopticons. After the initial criticism, street cameras were normalised and many British criminologists claim that they can contribute to crime prevention. However, this spread of surveillance onto the streets raised questions about privacy in public spaces (Moreham, 2006), and some researches even show that street cameras cause anxiety rather than the sense of safety (Minton, 2012).

And if we accept Foucault's definition of surveillance as a disciplinary practise, then it can be argued that CCTV had some consequences on behaviour on citizens. Kevin Walby's ethnographic research which analyses the impact of camera surveillance in public spaces shows how CCTV which he describes as a "distanciated form of governance" in fact changes "the mode of interaction between authorities and citizens". His research conducted in a shopping mall in Victoria BC shows that a CCTV operated shopping mall is in fact a highly controlled environment in which anyone who doesn't fit into an image of a prospective shopper is being monitored and labelled as potentially dangerous. As he found out that the Aboriginal

customer is always targeted as a "shopper-as-risk", he draws conclusion that there is a prevalence of "exclusionary, rather than inclusionary, forms of social control" (Walby, 2005). This research illustrates power relations between the watchers and the watched and shows that the one who operates the camera in fact decides who belongs to a particular environment and who does not fit in which implies stigmatisation of certain social groups. But it is not just individuals who belong to marginalised groups such as Aboriginals that can be stigmatised. A suspect can be anyone who stands out with a certain unconventional behaviour or looks which means that places like shopping malls prescribe a certain look and attitude and thereby mould individuals in a certain way.

While it is said that the UK is the most surveilled country in the world and has about 100,000 publicly operated cameras and about 6 million surveillance cameras nationwide (Weaver, 2015), Germany is one of the least surveilled countries with about 100 cameras in 15 cities, and Serbia does not have the data on either the number of cameras or how are the information being used, while some researchers suggest that there are about 200,000 cameras across the country, out of which only 60 of them are officially operated by the police as they are installed to monitor the traffic (Kovačević-Lepojević, Žunić-Pavlović, 2012a). However, apart from video surveillance, other key areas of surveillance include ID cards and biometrics, x-ray security screening and DNA databases, and all of them can be seen as threat to privacy which is why it is crucial to provide adequate legislation framework which would regulate these areas with respect to the right to privacy.

The main characteristics of the democratic policing as opposed to authoritarian policing is the principle of transparency and as many researches show it is not on a satisfactory level in Serbia (Radovanović, 2015).At the moment Serbia does not have any legislation which regulates video surveillance in public or private spaces such as buildings, however, the new Draft Law on Police includes an article that concerns filming in public places. It is stated that the police officer can use vehicles and other recording devices which do not have any visible signs that they belong to the police to secretly film citizens (Article 48). There is also a new Draft Law on Records and Personal Data which was publicly criticized by 20 non-governmental organisations in Serbia because in their opinion it breaches the right to privacy.

Moreover, as Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabic stresses, Serbia fails to provide proper protection of personal data for five years since the Personal Data Protection Strategy was adopted. By adopting the strategy, the government

obligated itself to form a special working body and adopt an Action Plan within 90 days and yet this has not happened after five years, despite the recommendations from the European Commission stated in progress reports (Poverenik, 2015).

Modern states use surveillance as a preventive measure and it is assumed that every citizen is a potential law breaker. Controlling techniques are being used to predict future risks before they even connect them to particular individuals (Newman, 2009). Surveillance is therefore a preventive measure which should ensure peace and security and tends to benefit to the society as a whole while privacy as an individual value is being traded off.

However, since Greek Polis, democratic states consider privacy as an important value. In ancient Greece private life of citizens was not of interest to the state itself simply because public business was conducted in the public and was completely transparent (Goldschmidt, 1954). Government itself was consisted of ordinary people and community was considered as more important than the individuals. Since there was no control, privacy wasn't even an issue.

Totalitarian regimes on the other hand have a completely different strategy and the principle of transparency is replaced by the principle of secrecy. As a contrast to democratic Athens, Sparta had no written laws, the work of government was confidential and privacy almost didn't exist (Goldschmidt, 1954).

It can be said that privacy is always in danger when government's work lacks transparency since in order to keep its secrets, it needs to control its citizens and their private lives. This repressive control is characteristic for communist countries including Serbia which had secret service military and ordinary police working for the government and conducted surveillance to deter any kind of disobedience to the regime. This type of control is extremely intrusive and oppressive, causing people to distrust the police.

Authoritarian policing is direct and hierarchical and people are not served but ordered. Police is a force which services the political structures and promote their ideologies, which means that it is not independent or friendly towards ordinary citizens (Uldriks, Van Reenen, 2003). The difference between the military, police and secret services seem to be one of degree. Both private and public space is under the censorship and the police is oppressive. It uses various methods of surveillance, open threats, violence and executes severe punishments, and there is usually no respect for human rights.

Serbia under socialism and later under the rule of Slobodan Milošević had authoritarian policing and kept secret files which were not opened to public even after the democratic changes in 2000. There was no lustration and the same structures continued to function under the new government, including police and military.

However, in contrast to the authoritarian policing, democratic societies aspire towards a police system which has a legal rather than political function (Uldriks, Van Reenan, 2003). Police itself should be a subject to law and therefore must respect human rights, including the right to privacy. In a consolidated democracy every use of force must be legal, whereas it is not always the case with authoritarian police. Every authoritarian regime tends to violate privacy simply because it must control its citizens in order to survive, and democracy needs some kind of supervision over police to avoid giving it too much credibility.

But even the democratic methods of policing can eventually become authoritarian which is why the border between justified and unjustified intervention must be questioned constantly. The first and most important prerequisite of democratic policing is that the police must be independent or non-political, while the second one is that it functions under the principle of transparency which enables people to have trust in it. Democratic police should service the community and not political parties (Uldriks, Van Reenan, 2003).

In order to be independent and work transparently, police itself must be controlled or monitored. This ensures protection of privacy and prevents the state from sliding into autocracy. Edward Snowden's revelations have shown how the American National Security Agency managed to pass "secret laws in secret courts" (TED, 2013) and thereby legitimise mass surveillance in a typically authoritarian manner. This caused various institutions across the EU and USA to question the 'trade-off' paradigm and conduct surveys to find out whether the people themselves were ready to exchange their privacy for security. According to the Prisms survey, the majority of interviewed European citizens confessed that they are not willing to trade their privacy because they are concerned for both of these two values (Friedewald, 2014).

Worryingly, some research show that the citizens of Serbia have very little respect for their police, and picture a typical policeman as a rude and corrupted person who lacks the level of education needed for his job. More than two thirds of people in the whole region of the Western Balkans see the police as the alienated instrument controlled by the government which serves the interests of certain political parties and not the people (Radovanović, 2015).

Considering these public opinions on Serbian police in general, the lack of transparency of its work and a very low level of protection of personal data, there certainly are reasons to doubt legitimacy of government's surveillance practises and the voices of ordinary people should be heard.

## SURVEILLANCE AND CRIME PREVENTION

Modern surveillance technologies are causing a shift from traditional policing to preventive policing, but the answer to a question whether these new methods are as efficient as they should be is not straight forward. The question is not simply whether surveillance contributes to preventing crimes in general, since not all surveillance technologies are used to prevent same crimes and they are not evenly applied in all cases, which means that it is very hard to get the bigger picture (Wright, 2012).

For example Welsh and Farringdon's research analyses the impact on CCTV in the UK and the main conclusion is that it has a 'modest but significant desirable effect on crime', and that it is most effective in reducing vehicle crimes (Welsh, Farringdon, 2009). However, independent researches analysing surveillance are rare and researchers face multiple problems which is why there simply isn't enough evidence of its effectiveness.

Surveillance methods are widespread and there is clearly a trend of their expansion,but it is however, very difficult to assess and justify them, and it almost seems that they are spinning out of control and progressing with the rapid development of technology, whereas analysing their impacts is in many ways problematic.

While some surveillance technologies are invented and used by police solely for the purpose of crime prevention (such as the biometrics), many other technologies stem from other branches and were developed for other purposes, but are used by both police and other institutions (this is the case with the mobile phones for example). And it is mostly the second type of technologies that leads to different abuses from illegitimate intrusion into private life to serious cyber-crime.

In this sense, surveillance technologies in general are not simply only used to prevent crime, but they are also used to perform various criminal activities. As Richard Hunter points out, surveillance technologies have in-built keys which can unlock valuable information instantaneously, and the majority of cyber-attacks are committed by companies' own employers (Hunter, 2002). From illegitimate spying on high school children in Philadelphia through the laptops provided by the school (Payton, Caypoole, 2014) to publishing a

pornographic video online which was made by one of the police cameras in Belgrade (B92, 2011), there are manyfamous cases of abusing surveillance systems in which the perpetrator was an insider who worked for the institutions that conducted surveillance.

Serbia's Commissioner for Information of Public Importance and Personal Data Protection regularly issues reports and press releases which clearlyshow that the surveillance practises are expanding, while very little has been done to protect privacy since the legal framework only formally regulates this area and there is no implementation (Poverenik, 2015).

In the Commissioner's annual report for 2014, it is estimated that there is over a million of databases containing personal data in Serbia and this includes various databases collected by both governmental institutions and companies, individuals and other stakeholders. It is stated in the report that there is a growing number of databases containing personal information which are not being reported to the Central Register despite the fact that every stakeholder who has such databases is bound by law to report them so that they can be included in this register. It is also stated in the report that the non-governmental institutions such as privately owned companies are more likely to report their databases than the governmental institutions which indicates the secrecy of the constant spread of governmental surveillance (Poverenik, 2015).

The increase of surveillance enhances the risks of illegal abuse of personal data such as selling the databases, identity theft and realisation of totalitarian concepts of control over citizens, and Commissioner's report stresses out that protection of personal data is still in its infancy and it does not comply with the EU standards. (Poverenik, 2015).

On the one hand, surveillance technologies are dangerous because they have backdoor entrances which can be used by third parties for criminal purposes, but they can also be abused by the authorities who own them. When Snowden files revealed shocking facts that the US government used surveillance technologies to spy on European politicians and oil companies (Wright, Kriessl, 2012) it was an alarm bell for the EU institutions to start questioning the legitimacy of mass surveillance, and one of the conclusions of the IRISS research was that surveillance practises generally lack oversight which is essential in every democratic society.

However, this is not the first time in history that secret services are abusing the surveillance systems and using security and crime prevention as a cover for action. In 1976 the Church Committee was established with the aim to investigate various abuses of surveillance by the American intelligence

services, and it was discovered that the NSA and the FBI targeted a large number of dissidents including celebrities like Jane Fonda and Dr Benjamin Spock (Murakami Wood, 2009).This type of abuse is typical for authoritarian governments rather than for consolidated democracies and it causes people to lose trust in governmental institutions and perceive the state as their enemy.

One of the problems with contemporary mass surveillance is that it actually is not targeting only criminals, terrorists or suspects, but also innocent people. Leaked NSA files provided by Edward Snowden clearly show that the so called 'bulk surveillance' targeted ordinary citizens for different reasons and solely for the purpose of preventing terrorism and crime (Wright, Kreissl, 2013). This type of surveillance ignores the presumption of innocence which should be acknowledged as an important legal safeguard in every democratic society.

Surveillance technologies are therefore a powerful method of control. If, as Foucault argues, surveillance is disciplinary in the sense that it controls people's behaviour, it is therefore by its definition oppressive as it is a demonstration of power. However, whether a certain technology will be used to control individuals in this way depends on the way it is being used (Kovačević-Lepojević, Žunić-Pavlović, 2012b). Many researches show that surveillance technologies can be more or less intrusive and can even be designed to protect privacy. For example video surveillance allows distinction between 'privacy intrusive' and 'privacy neutral' data (Senior, 2009).Surveillance technologies can therefore be developed to serve different interestsand hence the key question is how to modifythem in order to protect privacy.

In Serbia the main problem remains to be the lack of transparency in the work of governmental institutions. For example, the Ministry of Internal Affairs issues the annual report on the situation in public security in Serbia, but this document is not available to the general public and is only shared with the top leaders of the Ministry (Ljubičić, Stephenson, Murrill, Laličić, 2013). The fact such documents are not available to the general public makes it increasingly difficult if not impossible to make any assessments on the impact of surveillance on crime prevention. Other obstacles to assessing the effectiveness of surveillance systems include methodological problems such as the absence of control variables and combining different methods of crime prevention (Kovačević-Lepojević, Žunić-Pavlović, 2012b).

Researches on the impact of surveillance in other countries are rare and show mixed results (Wright, 2012), and Serbia currently does not even have the relevant institutions or regulations which would analyse the technological

development in the field of crime prevention, or the means to protect the citizens against abuse of surveillance mechanisms (Kovačević-Lepojević, Žunić-Pavlović, 2012b).

Moreover, citizens of Serbia are not involved in decision making regarding surveillance practises in any way. The introduction of electronic identity cards which include biometrics has not been publicly debated and technology was purchased before the general public was even notified on the new identification method (Poverenik, 2008). There was no debate on the DNA database in Serbia either despite the fact that this surveillance practice is extremely intrusive.

Not giving people the opportunity to express their opinions on surveillance shows the oppressive character of the Serbian government. It is interesting that there was no resistance among the citizens which maybe proving the continuity with the political past as people seem to be used to oppressive regimes. While the citizens of Serbia didn't protest against surveillance even in 2008 when the government imposed both passports and ID cards with biometric data, German citizens showed a massive rage against their government after it introduced biometric passportsonly, while ID cardsstill do not contain biometric data, and they continue to express their dissatisfaction with surveillance practices (Senker, 2012).

When calculating costs and benefits of surveillance it is also important to keep in mind that some of the surveillance technologies are very costly and are unable to completely replace the traditional policing, and this problem is particularly relevant for less developed countries such as Serbia. When calculating costs and benefits of surveillance this is one of the important issues which should be considered because it is questionable whether the efficiency in crime prevention and maintaining the security are really worth it.

Another problem is that contemporary surveillance technologies are not flawless and can lead to mistakes in the process of identification which can have serious repercussions on fighting crime. Some researches show that biometrics are the least reliable in face and iris recognition as well as signature, voice and palm print recognition, whereas it is the most reliable with finger prints. Additionally, biometrics can reveal some private information such as pregnancy, age or emotional state visible from the eye scan, or various information contained in the DNA (Kovačević-Lepojević, Žunić-Pavlović, 2012b).

However, in order to assess the impact of surveillance on crime prevention, the work of the police needs to be transparent and monitored by

independent bodies. Since governmental surveillance is a complex administrative mechanism, this assessment is inevitably complex too, but in the case of Serbia, the main problemsare the lack of transparency and oversight, but also the fact that people's opinions cannot be heard.

## CONCLUSION

Fast development and spread of surveillance technologies are inevitable, but they have dangerous potentials and possibly devastating consequences for privacy. Countries which have inadequate mechanisms for privacy protection and totalitarian past are especially vulnerable, and risks of abuse of surveillance systems arehigher. Remnants of previous regimes have strong influence on surveillance practises in Serbia today, and protection of privacy is still in its infancy, which is why the government is susceptible to crawling back to totalitarian surveillance practises. The Draft Law on Records and Personal Data is one of the signals that the governmental surveillance might be increasing and that the issue of privacy should be taken more seriously.

The main purpose of governmental surveillance should be fighting terrorism and crime, but abuse of the technology can result not only in violations of the right to privacy, but also in cyber-crime. In this way surveillance mechanisms have the potential to prevent crimes but also to generate crimes. The impact of governmental surveillance in Serbia on crime prevention is questionable because there are no sufficient analyses or published crime statistics and there is not enough transparency in the work of governmental institutions.

Moreover, Serbian government does not conduct opinion surveys in order to find out what the public thinks about the extent of surveillance, since hearing and respecting people's opinion is essential in a democratic society. Considering Serbia's strong connection to the past, it is even more important to raise the issue of governmental surveillance and allow citizens to express their opinions on this matter.

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# KONTROLISANJE PRIVATNOG ŽIVOTA I PREVENCIJA KRIMINALA U SRBIJI

*Državna kontrola privatnog života jedna je od najkontroverznijih tema u svetu danas, a kao ključni problem javlja se sukob između dva interesa - bezbednost i pravo na privatnost. Pravo na privatnost je osnovno ljudsko pravo i temelj demokratije, a kontrola privatne sfere se pokazuje kao neophodna za očuvanje bezbednosti. Dok je uspostavljanje neke vrste balansa između ova dva sukobljena interesa neophodno kako bi se rešili aktuelni problemi na nivou javnih politika i prava u Srbiji, postavlja se pitanje kakav stav državljani Srbije imaju prema kontroli privatnog života u cilju očuvanja bezbednosti. Pitanje izjašnjavanja građana u vezi sa masovnim nadzorom pokrenuto je u Americi i Evropi nakon otkrića Edvarda Snoudena 2013 godine, a ono je u Srbiji posebno značajno s obzirom na nasleđe iz perioda socijalističke Jugoslavije.*
*Sa jedne strane, potrebno je preispitati ulogu državne kontrole privatnog života u prevenciji kriminala, a sa druge strane značajno bi bilo postaviti pitanje u kojoj meri su sami građani voljni da žrtvuju privatnost zarad bezbednosti društva. Ovaj rad ima za cilj da doprinese rasvetljavanju fenomena kontrole privatnog života u funkciji prevencije nasilja i kriminala u Srbiji.*

*KLJUČNE REČI: pravo na privatnost / nasilje / kriminal / bezbednost / demokratija*