

# REGULATORY FRAMEWORK IN THE FIELD OF DIGITAL RIGHTS

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COMPARATIVE ANALYSIS: ALBANIA, BOSNIA AND HERZEGOVINA,  
KOSOVO, MONTENEGRO, NORTH MACEDONIA, SERBIA



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# INTRODUCTION

Digital rights are not commonly regulated by national legislation, as the field is quite complex and ever growing. Thus, multiple aspects of the state system have a specific mandate that impacts the level of protection of digital rights a particular state guarantees. As a starting point we chose three pillars of digital rights which can be considered vital. How the state guarantees data protection and the right to privacy, cybersecurity standards and how it empowers and enables the freedom of media in the digital environment is the primary focus of this summary. For further details, you can refer to the comprehensive comparative study which served as a foundation for this baseline analysis.

EU Member states have a common ground in terms of legislation, as their national laws are quite strongly influenced by EU standards. However, the countries in the Western Balkans do not automatically align themselves with these standards, as they are not members of the EU yet. For this purpose, it was necessary to produce such a study which showcases, among other things, the alignment of the legislations of the WB6 with European standards and what further steps are needed to achieve full compliance.

# DATA PROTECTION

## CONVENTION 108+

The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108) of the Council of Europe was open for signature on 28 January 1981 and was the first legally binding international instrument in the data protection field.

While the core principles contained in Convention 108 have endured the test of time, because of their technologically neutral approach, the Council of Europe considered it necessary to modernize it. Thus, it was updated in 2018 in order to adapt to new realities of an increasingly connected world. The Protocol amending Convention 108 (CETS No. 223) was opened for signatures on October 10, 2018.

COUNTRY	CONVENTION NO.108		PROTOCOL NO.223	
	SIGNED	RATIFIED	SIGNED	RATIFIED
Albania	✓	✓	✗	✗
Bosnia and Herzegovina	✓	✓	✓	✗
Kosovo	✗	✗	✗	✗
Montenegro	✓	✓	✗	✗
North Macedonia	✓	✓	✓	✗
Serbia	✓	✓	✓	✓

## CONSTITUTIONAL GUARANTEES TO THE RIGHT TO PRIVACY AND RIGHT TO DATA PROTECTION

All countries' Constitutions guarantee the right to privacy in some aspects. Except for the Constitution of Bosnia and Herzegovina all other Constitutions guarantee the right to personal data protection.

COUNTRY	RIGHT TO PERSONAL DATA PROTECTION	RIGHT TO PRIVACY
Albania	Article 35	<ul style="list-style-type: none"> <li>• freedom and secrecy of communication</li> <li>• privacy and inviolability of one's home</li> </ul>
Bosnia and Herzegovina	Not guaranteed specifically	<ul style="list-style-type: none"> <li>• private and family life</li> <li>• privacy of home and correspondence</li> </ul>
Kosovo	Article 36	<ul style="list-style-type: none"> <li>• private and family life</li> <li>• inviolability of residence</li> <li>• confidentiality of communication</li> </ul>
Montenegro	Article 43	<ul style="list-style-type: none"> <li>• right to privacy and family life</li> <li>• person's dignity, safety</li> <li>• inviolability of the physical and psychological integrity</li> <li>• privacy and personal rights</li> <li>• inviolability of home</li> <li>• confidentiality of letters, telephone and other means of communication</li> </ul>
North Macedonia	Article 18	<ul style="list-style-type: none"> <li>• privacy of personal and family life</li> <li>• freedom and confidentiality of correspondence and other forms of communication</li> </ul>
Serbia	Article 42	<ul style="list-style-type: none"> <li>• inviolability of home</li> <li>• confidentiality of letters and other means of communication</li> </ul>

## DATA PROTECTION STRATEGIES

Currently, national data protection strategies are in force only in Albania (2021-2023 period) and North Macedonia ([2017-2022](#) period). The strategy adopted by Albania is not publicly available.

COUNTRY	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Strategy	✓*	✗	✗	✗	✓	✗

## PERSONAL DATA PROTECTION LAWS HARMONISATION WITH GDPR

General data protection regulation is the main legal instrument regarding protection of personal data in the EU. It is a gold standard for data protection which is why many countries around the world started harmonising their legal frameworks with GDPR. For Western Balkan countries this is also an important step in the accession process to the EU.

COUNTRY	Albania	Bosnia and Herzegovina	Kosovo	Montenegro	North Macedonia	Serbia
Harmonisation with GDPR	Partially	Not harmonised; a new draft law harmonised with GDPR is in procedure	Harmonised	Not harmonised; a new draft law harmonised with GDPR is in procedure	Harmonised	Harmonised

## NATIONAL DATA PROTECTION AUTHORITIES

All countries have their data protection authorities established as independent bodies which report to the National Assembly, often being in charge with both personal data protection and freedom of access to information.

COUNTRY	NAME OF INSTITUTION	MANDATE	NUMBER OF EMPLOYEES
Albania	Information and Data Protection Commissioner	Data Protection and Freedom of Information	44
Bosnia and Herzegovina	Agency for Personal Data Protection	Data Protection	26
Kosovo	Information and Privacy Agency	Data Protection and Freedom of Information	N/A
Montenegro	Agency for Personal Data Protection and Free Access to Information	Data Protection and Freedom of Information	30
North Macedonia	Personal Data Protection Agency	Data Protection	23
Serbia	Commissioner for Information of Public Importance and Personal Data Protection	Data Protection and Freedom of Information	104

## DATA RETENTION LEGISLATION

In all countries of the region, metadata about communications (call logs, IP addresses, location, etc.) are retained by Telecommunication service providers and stored for up to two years. These data can be later accessed by law enforcement agencies for various purposes related to crime investigations.

COUNTRY	DATA RETENTION PERIOD
Albania	24 months
Bosnia and Herzegovina	At least 12 months (no maximum limit defined)
Kosovo	At least 12 months (no maximum limit defined)
Montenegro	Maximum 24 months
North Macedonia	12 months (geolocation data for 72 hours)
Serbia	12 months

# DIGITAL SECURITY

## BUDAPEST CONVENTION

Council of Europe's Convention on Cybercrime (ETS No. 185), also known as the Budapest Convention, is the first international treaty seeking to address cybercrime by harmonising national laws, improving investigative techniques, and increasing cooperation among nations.

COUNTRY	BUDAPEST CONVENTION	
	SIGNED	RATIFIED
Albania	✓	✓
Bosnia and Herzegovina	✓	✓
Kosovo	✗	✗
Montenegro	✓	✓
North Macedonia	✓	✓
Serbia	✓	✓

## NIS DIRECTIVE

The Directive on Security of Network and Information Systems (NIS Directive) is the first piece of EU-wide legislation on cybersecurity. It provides legal measures to boost the overall level of cybersecurity in the EU. For Western Balkan countries this is an important step in the accession process to the EU.

COUNTRY	HARMONISATION WITH NIS DIRECTIVE	NATIONAL LEGISLATION
Albania	Mainly harmonised	Law on Cyber security (2017)
Bosnia and Herzegovina	Not harmonised	There is no law on information security on a national level. However, there is a draft Law on Information Security and Security of Network and Information Systems.
Kosovo	Not harmonised	There is no overarching cyber security law. However, there is the Law on Critical Infrastructure (2018). There are efforts to transpose NIS directive.
Montenegro	Mainly harmonised	There are: Law on Information Security (2010) amended in 2021, Law on Determining and Protecting the Critical Infrastructure (2019) and Law on Data Secrecy (2008) amended in 2020.
North Macedonia	Not harmonised	There is no overarching cyber security law. However, there have been three Draft Laws, with the latest being published in July 2021 and is in line with NIS directive.
Serbia	Mostly harmonised	Law on Information Security (2016) amended in 2019 to further harmonise with NIS directive.

## NATIONAL CERTS/CIRTS

A computer emergency response team (CERT) is an expert group that handles computer security incidents. Alternative names for such groups include computer incident response team (CIRT) and computer security incident response team (CSIRT).

The main goal of a national CERT is to handle incidents at a national level, identify incidents that could affect critical infrastructures, warn critical stakeholders about computer security threats, and help to build effective incident response across its constituency in both public and private sectors.

COUNTRY	CERT	PARENT INSTITUTION	MANDATES
Albania	National Authority for Electronic Certification and Cyber security (NAECCS)	National Authority for Electronic Certification and Cyber security (NAECCS)	National coordinating body for the reporting and management of cyber security incidents for important information infrastructures and critical information infrastructures operators.
Bosnia and Herzegovina	No national CERT/ CERT - RS (Republika Srpska)	Ministry for Scientific-Technological Development, Higher Education and Information Society of Republic of Srpska	Coordination and prevention of computer security incidents, to respond to incidents and to protect the cyberspace of the Republic of Srpska in general.
Kosovo	KOS-CERT	Kosovo's Regulatory Authority for Electronic and Postal Communications (ARKEP)	The National KOS-CERT Unit plays a key role in safeguarding of electronic communication networks and services and their users in the Republic of Kosovo. Its goal is to help them to effectively face security challenges, coordinate actions to solve the security incidents and effectively prevent them.
Montenegro	CIRT.ME	Ministry of Public Administration	CIRT is engaged in handling of information security incidents, if one party involved is within the jurisdiction (holds a .me domain or is within the Montenegrin IP address range).
North Macedonia	MKD CIRT	Agency for Electronic Communication	Responds to computer incidents and serves as a national point of contact, coordinating management of security incidents within information security systems.
Serbia	SRB-CERT	Serbian Regulatory Agency for Electronic Communications and Postal Services (RATEL)	SRB-CERT coordinates prevention and protection from security risks in ICT systems on the national level, advises and raises cyber security awareness in the Republic of Serbia.

## STATE AUTHORITIES FOR PROSECUTING CYBERCRIME

Apart from the mandate related to Cybersecurity, a separate sector is dedicated to combating Cybercrime. These institutions require specific knowledge and capacities in their operational activities and within the region are mostly based on the principles of the Budapest Convention on Cybercrime.

COUNTRY	PROSECUTION	LAW ENFORCEMENT
Albania	Cybercrime unit within the General prosecutor's office	Cybercrime Sector within the Organized Crime Investigation Directorate of Albanian police
Bosnia and Herzegovina	No special units on national level, Prosecuted by Prosecutor's office	Special unit for Cybercrime within Bosnian Federal Ministry of Interior
Kosovo	No special units, Prosecuted by Prosecutor's office	Section for Investigation of Cybercrimes within the Directorate for Investigation of Organized Crime of Ministry of interior
Montenegro	No special units, Prosecuted by Prosecutor's office	Special Unit for Prevention of Cybercrime offences within the Montenegrin Police's Department for Crime Prevention
North Macedonia	No special units, Prosecuted by Prosecutor's office	Cybercrime and Digital Forensics Department within Macedonian Ministry of Interior
Serbia	Special Prosecution Office for Cybercrime within Higher Public Prosecutor's office	Department for combating Cybercrime within Ministry of interior

## SPECIFIC CYBERCRIME OFFENCES

All countries in the region have introduced specific cybercrime offences in their national criminal codes. There are specific cybercrimes, and traditional criminal acts that become cybercrime once committed by digital means. Most commonly, the national Criminal Codes address issues related to computer fraud, unauthorised access to information systems and networks, damaging of infrastructure, and specific crimes related to child pornography and copyright.

# MEDIA REGULATION AND POLICY

Rules regulating the media are usually laid out in specific laws concerning the sector, but in some cases relevant norms are found in other laws. Countries in the region mostly opted for specific comprehensive law(s).

COUNTRY	COMPREHENSIVE MEDIA LAW(S)	REMARKS
Albania	✓	Law on Audiovisual Media and Law on Electronic Communications.
Bosnia and Herzegovina	✗	There is no state-wide media law. There are different media specific regulations such as Freedom of access to information acts, Public Service Broadcasting laws and Laws on protection against defamation of Bosnia and Herzegovina, of the Republika Srpska and of the Federation of BiH, including seven cantonal laws and Brčko district.
Kosovo	✗	The Civil Law against Defamation and Insult guarantees freedom of expression. There is no specific media law.
Montenegro	✓	The Law on Media and the Law on Electronic Media.
North Macedonia	✓	The Law on Media and the Law on Audio and Audiovisual Media Services.
Serbia	✓	The Law on Public Information and the Media and The Law on electronic media.

## DEFINITION OF JOURNALIST

Different challenges in the media sphere including social media, fake news, and financial hardships, gave rise to demands for a normative definition of a journalist. Meanwhile, broad descriptions given by the UN and other international bodies cover unprofessional, so-called citizen journalists and social media users, whereas countries are encouraged to refrain from imposing legal definitions that could limit free exchange of information and access to the role of a journalist. With the exception of North Macedonia, media laws in the Western Balkan countries do not define this role.

COUNTRY	DEFINITION OF JOURNALIST
Albania	✗
Bosnia and Herzegovina	✗
Kosovo	✗
Montenegro	✗
North Macedonia	✓
Serbia	✗

## SPECIAL REGULATORY PROVISIONS REGARDING ONLINE MEDIA

While the online media sphere expansion maintains its unprecedented speed, in most of the Western Balkan countries there are no legal provisions that control work of online media with the exception of Montenegro and (the draft law) in Albania. Thus, the entry level requirements are low and that has in turn provided a negative impetus for the rise of anonymous online media, which often disregard professional journalistic standards and tend to produce low quality journalism. However, even if there are no specific online media rules, this does not mean that the field is not subject to laws regulating the media as such, no matter the format and means.

COUNTRY	SPECIFIC ONLINE MEDIA REGULATION	REMARKS
Albania	✗	In December 2019, amendments to the Law on audio-video service media (AVMS) were proposed to increase AMA's (national regulatory authority - NRA) power to regulate and monitor online media.
Bosnia and Herzegovina	✗	—
Kosovo	✗	—
Montenegro	✓	Internet publication is defined as media that distribute content over the internet, and that does not have a form of electronic media. Comment is defined as content that is available on the internet platform that is created by the registered user of this platform. The law introduced a short-period (60 minutes) for the removal of unlawful content online. Failure to remove unlawful content and publish content moderation rules can be sanctioned with a monetary fine of between 1000-8000 EUR.
North Macedonia	✗	—
Serbia	✗	—

## REQUIREMENTS FOR ESTABLISHING AN ONLINE MEDIA PLATFORM

COUNTRY	SPECIFIC REQUIREMENTS FOR ESTABLISHING ONLINE MEDIA	REMARKS
Albania	✗	Online media outlets register their domains with the basic ownership information within the Postal Communication Authority. Other licensing and evidentiary procedures are not required. Data on media ownership is available through the National Business Center. If the publisher is a non-profit, they will have to register with the Tirana Judicial District Court.
Bosnia and Herzegovina	✗	There are no legal requirements for setting up online media platforms or online media outlets in general. The Press Council and the CRA manage two registers.
Kosovo	✗	There are no legal requirements for establishing online media.
Montenegro	✓	Online media platforms are required to register and submit required documentation to the Ministry of Culture, which runs the Register of media.
North Macedonia	✗	There are no legally required procedures and mandatory registration processes.
Serbia	✗	Registration of online media is voluntary while the register is run by the Business registry Agency.

## SELF-REGULATORY MEDIA BODIES

In all countries of the region, there are self-regulatory bodies, like press councils. Press councils are in charge of the print and online media and tasked with ensuring that the media conduct is in line with the journalistic professional standards, stipulated in the Journalistic Code of Conduct. Within the press councils, there are complaint commissions responsible for addressing individual complaints against the media content. In practice, the press councils are facing serious problems such as lack of resources (both human and financial), support of the media and other non-state actors, and need to strengthen their legitimacy, which also impinges upon the effectiveness of the Complaint Commissions.

COUNTRY	PRESS COUNCIL	LINK
Albania	✓	<a href="#"><u>The Alliance for Ethical Media</u></a>
Bosnia and Herzegovina	✓	<a href="#"><u>Press Council</u></a>
Kosovo	✓	<a href="#"><u>Press Council of Kosovo</u></a>
Montenegro	✓	<a href="#"><u>Media Council for Self-regulation</u></a>
North Macedonia	✓	<a href="#"><u>Council of Media Ethics of Macedonia</u></a>
Serbia	✓	<a href="#"><u>Press Council</u></a>

## HATE SPEECH

The Criminal codes are primary instruments to regulate and prohibit hate speech through the provisions that similarly address and prohibit incitement, hatred, discord or intolerance based on nationality, race, religion or ethnicity, including spreading ideas of the racial superiority and other forms of racial discrimination.

## DISINFORMATION

COUNTRY	DISINFORMATION REGULATION	REMARKS
Albania	✓	In 2019, the Parliament passed a resolution to combat fake news, including disinformation that affect the election and democratic processes in the country. The legislation also proposed a task force to deal with the spread of fake news.
Bosnia and Herzegovina	✗	In 2020, Republika Srpska adopted a legally binding Decree that prohibits the spread of violence and panic during the state of emergency, including the spread of fake news and statements on social media.
Kosovo	✗	—
Montenegro	✗	—
North Macedonia	✗	—
Serbia	✗	—

## MEDIA DIVERSITY AND ONLINE PLURALISM

Some countries (Montenegro, North Macedonia, Serbia) introduced legal mechanisms to support media diversity and production of content for and by marginalized communities. These funds are often prone to misuse (e.g Serbia) or lack effectiveness. In general, media diversity and support for the marginalized groups is substandard.

## CURRENT PRESSING ISSUES FOR FREEDOM OF EXPRESSION ONLINE

There are no laws and specific policies pertaining to regulating the internet directly. In that sense, the internet is (partly) controlled and an essential “free” space for public participation and democratic deliberation. As such, it is a crucial contributor to an enabling environment for freedom of expression in the Western Balkans. However, as the following examples and concerns illustrate, internet spaces are also shrinking and the internet infrastructure can and often is a tool to perpetuate and amplify inflammatory and hateful narratives.

COUNTRY	CURRENT PRESSING ISSUES
Albania	Removal of certain journalistic online content (e.g. Acromax Media, a Germany based company was involved in these practices by false copyright infringements and AMA requested the complete blocking of the platform Medium). A 25-year-old woman was arrested and held in custody for four days by the counter-terrorism police directorate.
Bosnia and Herzegovina	Explosion of troll farms and political party bots, content moderation on the major online portal (klix.ba) is weak and a lot of hate speech remains online, fostering hateful narratives. Several people were questioned by the police and detained based on the alleged spread of panic.
Kosovo	Floods of misinformation and ethnically hateful narratives combined with the low level of available independent media and no print media
Montenegro	Disinformation and hateful narratives in combination with strict removal practices.
North Macedonia	Ethnic divisions and hatred, fueled by disinformation and deployment of political party bots.
Serbia	Blocking of content online, attempts to take down content, polarisation and hate speech. Several people were questioned by the police and detained based on the alleged spread of panic.

## COOPERATION WITH GLOBAL SOCIAL MEDIA PLATFORMS

The major social media and other big tech companies do not have representatives in the countries of the Western Balkan. The exception is Serbia, where some companies established representatives in line with the provision of the Data Protection Law. As a rule, the Western Balkan region is invisible for the global tech business, and with no established channels access to protection of rights is significantly diminished.

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