

Comments on the Draft Law on Internal Affairs

[The Comments were officially submitted on September 18, 2021]

On the occasion of the public debate on the Draft Law on Internal Affairs (Draft Law), we hereby submit comments on the provisions regulating the use of mass biometric surveillance in the Republic of Serbia, specifically Articles 44, 68, 71, 72 and 156-158 of the Draft Law.

These provisions **introduce mass biometric surveillance** using advanced technologies for facial detection and recognition. The mere automatic facial detection, proposed in the Draft Law, represent a mass processing of biometric data in public spaces, as the Law on Personal Data Protection ("[ZZPL](#)") defines personal data as those related to an identified or **identifiable** natural person. It is important to clarify that such a system **cannot function without mass collection of biometric data in public space**.

In this way, **the rights to privacy and protection of personal data of all citizens and visitors of the Republic of Serbia are indiscriminately violated**, without previously determining that such conduct is proportional and necessary in a democratic society, which is a standard established by international conventions and laws that are an integral part of our legal system.

The application of such technology would have **unforeseeable consequences** for a democratic society, the rights and freedoms of citizens, which is why the United Nations High Commissioner for Human Rights [recommended](#) introducing a moratorium on the use of remote biometric recognition technologies in public spaces. Also, a [joint statement](#) of the European Data Protection Commissioner (EDPS) and the European Data Protection Board (EDPB) called for a general ban on use of AI for automated recognition of human features in publicly accessible spaces. In addition, it should be noted that the use of biometric surveillance in public spaces is already prohibited in [a number of cities](#) in the United States.

Introduction of mass biometric surveillance is treated as a technical issue in the Draft Law, although it represents **a drastic intervention in the fundamental rights and freedoms of citizens**. An innovation like this, which interferes with the civilization's definition of a community of free citizens, requires **a broad public debate**, including all relevant actors in society, a detailed impact assessment particularly concerning vulnerable social groups, and an **analysis of the risks and possible consequences** of mass biometric surveillance in society. We believe that the **extremely short timeline** of the program of public debate on the Draft Law does not meet any of these needs.

The domestic public has been rightly upset since the [early 2019](#) announcements of the introduction of total, indiscriminate surveillance of the streets of Belgrade. **Over 17,000 citizens** [signed a petition](#) to ban mass biometric surveillance. Also, [members of the European](#)

[Parliament](#), EU representatives and other international actors **have repeatedly expressed concern** over the introduction of mass biometric surveillance in Serbia.

Every step towards a deeper control of society, restriction of citizens' rights and violation of the principles of democratic society, has **far-reaching consequences** for the life of all citizens, quality and structure of the entire society, but also for Serbia's position in the international community, its EU accession process and other important aspects of engagement of Serbia in the world.

In the following paragraphs, we present **specific legal arguments** enforcing our belief that the provisions on biometric surveillance are contrary to the domestic legal framework:

- **Mandatory necessity** - Regarding the relevant impact assessment and implementation of obligations as prescribed by the Personal Data Protection Law, [Convention 108+](#) and the European Convention on Human Rights, by the time we submit these comments on the Draft Law it has yet not been determined that the use of this system is **necessary** for the work of competent authorities, which is a condition for the processing of data to be lawful (Article 13 of the Personal Data Protection Law, Article 5 of the Convention 108+ and Article 8 of the European Convention on Human Rights).
- **Mandatory proportionality** - The positive impact on crime reduction through the use of this technology is overestimated, and its use **is not proportionate nor adequate** to the risks to the rights and freedoms of citizens. Proportionality in relation to the goal is, in addition to necessity, a condition for the lawfulness of processing (Article 14, paragraph 3, of the Personal Data Protection Law, and Article 5, paragraph 1, of the Convention 108+). The problem of proportionality exists because mass automated processing in this way may involve the processing of data from [indiscriminate and disproportionate](#) number of citizens in order to identify only a few individuals.
- **Mandatory impact assessment** - Since both facial detection and recognition activities necessarily involve mass processing of biometric personal data by using advanced technologies, which can cause a high risk for the rights and freedoms of individuals, it is necessary to make an assessment of impact on the protection of personal data in accordance with Article 54 of the Personal Data Protection Law. The two impact assessments previously made by the Ministry (on [September 23](#), 2019, and on [April 23](#), 2020) were not approved by the Commissioner for Information of Public Importance and Personal Data Protection. Therefore, a new impact assessment, in addition to the mandatory elements prescribed the Personal Data Protection Law, should be made while taking into account all the remarks and comments that the [Commissioner](#) has already pointed out in his [opinions](#).
- **Mass processing** - Mass processing of such particularly sensitive personal data within the Draft Law is based on the fact that it can cover an unlimited number of persons

within the execution of “police and other tasks” (Article 72 of the Draft Law). Namely, although Article 71 of the Draft Law states that identification on the basis of biometric facial features is performed in three cases listed in that article (which are already set too broad), in the following Article 72, paragraph 4, a significantly wider circle of persons is listed whose data are processed through a data processing system, which includes systems for biometric identification / facial detection according to the definition of “data processing system” in Article 44, paragraphs 2 and 3 of the Draft Law. Finally, despite the intention to use biometric data to **identify** a limited number of persons (which, again, is certainly too broadly defined because it includes all persons in Article 72, paragraph 4), we emphasize that the **collection** of biometric data (i.e. automatic facial detection, which is necessary for this data processing system to function) in itself represents the processing of particularly sensitive personal data. Therefore, mass processing already exists before the very act of concrete identification of a specific person.

- **Violation of the right to privacy** - Remote biometric facial recognition [dramatically increases](#) the ability of state authorities to systematically identify and monitor individuals in public spaces, endangering the right of individuals to lead their lives freely, which is the essence of the right to privacy the state is obliged to provide to its citizens, as stipulated by the Article 8 of the [European Convention on Human Rights](#). Namely, the very fact that they move in public spaces that are under video surveillance, threatens the privacy of citizens (and their personal data, i.e. their facial features are processed) because it enables to determine where they were moving based on video recordings. The possibility that citizens can be monitored in real time (which is enabled by the data processing system introduced by the Draft Law) based on their unique and unchanging biometric features, increases the risk to privacy more than significantly.
- **Violation of other rights** - In addition to the right to privacy, mass processing of biometric data through technologies for facial recognition in public places causes serious and somewhat irreversible risks to other rights and freedoms of citizens. Since the processing in question may have an irreversible and detrimental effect on the reasonable expectations of citizens to be anonymous in public spaces, or may cause [justified fear](#) of constant monitoring and surveillance by the state, the result is an immediate [deterrent effect](#) on freedoms of expression, assembly, association, as well as on free movement.
- **Sensitive data** - The Draft Law introduces mass processing of biometric data by facial detection and recognition based on biometric features. Due to their sensitivity to the privacy of persons, biometric data fall into the category of a [special type](#) of personal data, as prescribed in Article 18 of the Personal Data Protection Law and represent one of the key immutable attributes of each person on the basis of which a person can be uniquely identified. For this reason, the Personal Data Protection Law provides additional protection to this type of data.

- **Unclear manner of processing** - The terminology used in the Draft Law is inconsistent, without definitions of important concepts on which applying the law depends - for example, what is meant by "detection" and what by "recognizing" a face when using a data processing system.

In line with the above, we demand from the Government of the Republic of Serbia and the relevant Ministry that **Articles 44, 68, 71, 72 and 156-158 of the Draft Law be removed from the final text of the law, in the parts that regulate biometric surveillance, and to introduce a moratorium** on the use of the mass biometric surveillance technologies and systems, in accordance with the examples and recommendations of the United Nations and the authorized bodies of the European Union.