



Diploma Thesis Evaluation Form

Author: Alan Prijatel

Title: The Right to Privacy Deconstructed: International Law
in an Age of Virtual Surveillance

Programme/year: MAIN/2017

Author of Evaluation (supervisor): JUDr. Milan Lipovský, Ph.D.

Criteria	Definition	Maximum	Points
Major Criteria			
	Research question, definition of objectives	10	10
	Theoretical/conceptual framework	30	22
	Methodology, analysis, argument	40	20
<i>Total</i>		80	52
Minor Criteria			
	Sources	10	8
	Style	5	2
	Formal requirements	5	3
<i>Total</i>		20	13
TOTAL		100	65



Evaluation

Major criteria:

As the author himself puts it “this legal analysis assesses the status of the right to privacy in the digital age as it functions via international frameworks“ and asks himself whether the legal protection of privacy extends over the cyberspace. He also examines the issues of cyber surveillance that has recently been the topic of many legal and politological discussions. According to the author, the cyberspace is regulated but there is still a lot of “ground uncovered”.

Alan Prijatel has correctly indicated one of the most significant problems of any legal system – that the law is always slower than the reality, especially international law due to the process of its creation. The cyberspace is not inherently a new tool, however the legally binding regulations have not responded to its existence in a satisfactory way yet. The right to privacy in digital sphere is probably the most visible example. As such, the topic of the thesis is very much up to date and legally interesting.

By choosing mainly the ECtHR case-law accompanied with the interpretation of the ICCPR, the author is mainly focusing on the Council of Europe legal space. He mainly interprets the ECHR and asks himself whether the ECtHR approach to surveillance is the same as the approach of the Human Rights Committee (a body created for the supervision of compliance with the ICCPR). Surveillance and cyberspace are legal issues for the whole world to tackle however the choice of legal systems is understandable due to the fact that these issues are currently strongly debated in the so-called Western world.

It is worth mentioning, that despite not being a lawyer the author has identified many key legal issues and mostly interpreted the legal problems in a correct way. Notwithstanding many qualities of the work, it is also necessary to mention that it had much bigger potential and on many places seems to be unfinished (see e.g. page 39 and 40, footnote 131, page 45 etc.). This is partly due to the speed of author’s work and submission time of the thesis by the author which didn’t allow the supervisor to read and comment on the thesis before the author submitted it to the Faculty.

It was stressed to the author to be clear in referring to certain UN (and other) bodies in a precise way. Sometimes there are still misunderstandings, such as putting the Human Rights Council out of the sub-chapter on the United Nations, or referring to wrong bodies. On page 23 I am not entirely certain what the author discusses in the first half of the page and unfortunately that is not an exception.

When assessing whether the interpretation of various provisions of the ECHR would be the same as the possible interpretations of the HRC, the author could have referred more to the jurisprudence of the HRC and not limit himself to personal comments only.



From time to time it is also unclear why the author discusses certain issues (though relevant to cyberspace and the right to privacy) in chapters designated to other topics. For example the right to be forgotten, discussed in chapter 6, is not necessarily (and certainly not in the text of the thesis) related to extraterritorial application of human rights issues.

Minor criteria:

Alan Prijatel is using a representing amount of sources related to the topic. Given the fact that the cyberspace is not as regulated as “regular” space, the low number of legally binding sources is understandable. The available and used sources span from the General Assembly resolutions, documents of the Human Rights Council as well as decisions of various legal bodies, including courts, such as the European Court of Human Rights, Court of Justice of the European Union and others. Alan Prijatel has thus identified a representative example of relevant sources. Sometimes it would be advantageous though to go to deeper detail in order to enable the reader to understand why the particular body decided in a particular way rather than adding another source.

There is one more case, currently (possibly) short before announcement of a judgment, that might have been taken into account as well – The Big Brother Watch and others. v. UK in front of the ECtHR.

Advantage of the thesis is unified system of quotations and referencing system, keeping to one system and not changing it. On the other hand abbreviations should be introduced the first time they’re mentioned, not in further chapters.

From time to time there is a typo. It is unfortunately not an exception that sentences are incorrectly assembled and so their meaning is confusing. Occasional incorrect use of some legal terms is understandable due to the fact that the author is not a student of law but should also be avoided.

Overall evaluation:

While the thesis has some significant shortcomings, it has also presented some interesting points and proved that the author has dealt with the topic extensively. Due to these facts, I recommend it to defence and recommend further additional questions to be answered:

Author suggests that the International Covenant on Economic, Social and Cultural Rights might be also influenced by the cyberspace regulation or lack of it (page 4). Please elaborate on the topic. Which rights and how?

The author claims on page 21 his opinion that the ECtHR’s interpretation of the ECHR does not meet the necessary standards while the ICCPR does. Could he elaborate on the difference?



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What kind of text messages (page 13, footnote 45) may be understood as metadata?
And does the author consider it correct or are those rather data themselves?

If I understood correctly, on page 56 the author suggests that the ECHR is inapplicable extraterritorially. If that is the thing, how would the author cope with argument that “exercise of jurisdiction” includes control over cyber activities /surveillance (even when taking place e.g. on servers located within another state’s territory)?¹

Suggested grade:

3

Signature:

JUDr. Milan Lipovský, Ph.D.

¹ Just as a note: The application of the ICCPR is inherently wider than the application of the ECHR because it has more State Parties. The question of extraterritorial application of those treaties is another matter and they need to be distinguished.

Similarly another aspect needs to be clarified: Jurisdiction by State „A“ may be exercised within the territory of State „B“ even without B’s consent / acquiescence etc. The fact that it would violate international law doesn’t mean that it would be impossible to do it