

Surveillance and Democratic Supervision —Reflections on Tendencies in Developments in Europe and the United States

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Abstract

Pursuing an inquiry into how a democratic society is supposed to monitor government surveillance, this essay examines the attitude of the European Court of Human Rights (ECtHR) towards litigation derived from laws on surveillance in European nations, and juxtaposes the findings with relevant disputes in the United States; the purpose of this inquiry is to explore how these traditions might shed light on the situation in Taiwan and how the landscape of democratic supervision is to be shaped under modern surveillance law. This essay argues that the European judiciary is well-experienced in the realm of informational privacy, and that reforms to surveillance law in European nations is generally determined by ECtHR case-law. Of particular significance is the emphasis that the ECtHR lays on the interpretation and analysis of Article 8 of the European Convention on Human Rights (ECHR), specifically the focus on the notion “in accordance with the law” rather than “necessary in a democratic society.” Such tendency might lead to the fact that the State Parties to the ECHR are merely willing to introduce domestic legislation. Accordingly, there is still plenty of room for improvement in the protective framework of informational privacy essential for a democratic society.

Key Words: surveillance, informational privacy, European Court of Human Rights, metadata, big data