

VI CONGRESS OF THE WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE

Session C “Access to Scientific Knowledge and new technologies”

Speaker 1: Assoc. Prof., Dr. iur. Irēna Kucina

President of the Constitutional Court of the Republic of Latvia

Introduction

Dear Colleagues,

It is true that digital technologies are transforming the traditional work of the Courts. In this context, I would like to propose the method of three A's – Accountability, Awareness and Advancement. These principles serve as a measure of whether such disruption should be welcomed or regarded as a potential threat to the judiciary.

First, Accountability. It reminds us that our only legitimate course is to continue to abide by the law. Accordingly, we must insist on strict compliance with pre-established standards of the rule of law and human rights before the new technologies are introduced into judicial practice.

Second, Awareness. The courts operate within a society of living, striving and often suffering individuals. The courts must remain apprised of social reality, including hidden forms of discrimination and inequality.

Third, Advancement. Technologies, when used wisely, can become a powerful instrument for promoting justice and peace worldwide. The progress of digital technology can directly support and accelerate the achievement of each of the 17 Sustainable Development Goals of the United Nations.

I Human-rights based approach in providing access to the Internet – a tool for Promoting an Inclusive Society

Accessing public, financial, medical, or even judicial services – as well as the secure exchange of personal information – now takes place almost online. The digital future, once anticipated, has already arrived and it is here to stay. This is why I invite us to reflect why the universal right to access to the Internet is an urgent necessity. Recent international developments confirm the emerging

negative legal reality of this right – the growing recognition that states must not intentionally disrupt access to information online, as affirmed by the 2025 United Nations Human Rights Council Resolution.

The Constitutional Court of Latvia has recognised that access to the Internet directly affects the exercise of other fundamental rights – property, education, and the freedom to work. A vivid example is when schools shifted to remote learning and technologies became the new classroom. The Court reminded us that the Constitution requires the State to build an education system that ensures every child an equal opportunity to learn. Likewise, in its case law, the Court has recognised that the use of a computer, as well as controlled Internet access in a detention facility, also fall within the scope of the right to education. The inability to access the Internet – whether because the State intentionally prevents it or due to a lack of resources or opportunities – would go against the standard of human dignity. Ultimately, the State must guarantee every person the possibility to participate in social, political, and cultural life, thus, ensuring to every person the status of a full-fledged member of society.

It is true that not everything lies in the hands of the State. The growing role of digital technologies in all spheres of life is deepening the digital divide, which is caused less by lack of material resources such as ensuring a computer or the Internet connection, it becomes more and more linked to different sociological realities such as age, gender, place of residency, level of education and income – which all affect the overall Internet-literacy. Hence, a new task stands before us. I suppose most of us would agree that there is a right to access to the Internet – at least as a progressive development of law. Yet, we must acknowledge an older reality of every human right – not everyone begins from the same factual starting point to benefit from this right.

This becomes especially important as the States move rapidly towards digitisation of public administration and the courts. If our court is to receive a digital application, I must be confident that every person within its jurisdiction enjoys equal opportunity to draft and submit it. Human-rights based approach to Internet access in my view should follow a two-step path, first, the formal and binding definition of the right to access to the Internet; and second, effective measures to ensure equality before this new right.

I would like to emphasize that ensuring access to the Internet in communication with public authorities means more than simply providing an official website – it requires that such portals meet standards of clarity and usability. If citizens cannot understand or navigate them, digital communication effectively becomes a new form of exclusion.

The courts of the future will operate in the e-Case environment. Yet we must be clear – the mere exchange of electronic documents is not a digitalization. It is only a basic administrative organization, an important step, but far from transformation. Courts must work on secure, fully functional digital platforms that mirror real proceedings.

II Universal roadmap on digital accessibility

With regard to the approach to digital technologies, for example, the Venice Commission has also taken significant steps forward. At its most recent plenary session, special attention was devoted to the updating of the Rule of Law Checklist. This universal tool serves as a roadmap for every country, helping to assess the rule of law within its institutional framework.

The revised Checklist will include a new section on digital accessibility, emphasizing the importance of monitoring how digitalization affects fair access to justice, especially for those who lack proper digital skills. Public and private institutions using automated decision-making systems must not operate beyond the control of the rule of law, and individuals must have the opportunity to understand, challenge, and influence the decisions made by such systems.

Furthermore, a new section will be introduced on the digital transparency of constitutional courts, covering the accessibility of rulings, clarity of reasoning, and public awareness of judicial decisions. This section will require constitutional courts to provide a searchable and comprehensive database of their judgments, as well as clear and publicly available explanations of their content and significance. Such measures strengthen public trust and the legitimacy of judicial work.

III AI in the Courts – possible applications in the judiciary or by the judiciary

Internet is not exempt from the destiny shared by every human invention – it is in a state of constant transformation. While the processors are manufacturing the general intelligence, allow me to offer a few reflections on the current work of the courts and the extent to what degree they may be compatible with artificial

intelligence. In our Constitutional Court, we are aware that pre-procedural AI assistance would allow the applicant to evaluate the outcome of the application. The whole case-law of our court is available on-line, thus in principle, the algorithm could theoretically estimate the probability of success in a given case. This raises an important question: what will be the impact on judicial security?

Could a court itself rely on an algorithm, for instance, to determine the admissibility? The European Court of Human Rights has given a following definition of what are the prerequisites for a Court. Although it operates on a regional level, there are little doubts that these characteristics are mirrored in every legal system. As the European Court of Human Rights explained in *Coëme and Others v. Belgium*, a tribunal is defined by its judicial function, namely, determining matters within its competence based on rules of law and after proceedings conducted in a prescribed manner. It must also satisfy a series of other conditions, including the independence of its members and the length of their terms of office, impartiality, and the existence of procedural safeguards.

From this follows that any automated decision-making should be questioned from the point of view of the right to effective remedy. Especially when the algorithm would reject the case, we must be able to verify, what is the legal basis of the rejection. Moreover, there is growing evidence that algorithms, if based on data that is not sufficiently diverse, can reproduce or even amplify human and systemic bias. A risk of biased algorithm directly or indirectly discriminating a group or a span of society must be considered.

This means that the use of artificial intelligence within the Courts must be sectioned. There must be a clear divide between acceptable use of algorithm and unacceptable use of it. On the one hand, the acceptable use means that technology would perform assisting duties, mainly compiling general information of the case, select previous decisions of the court and statistics of the outcomes the cases. On the other hand, the unacceptable use arises where the technology is used to replace the decision of a judge, it would be clearly in contradiction with the objectivity, and independence of the court, as well as the right to an effective remedy.

Conclusion

To conclude, I am inclined to recognise that the use of artificial intelligence can indeed improve the efficiency of court work. There is no doubt that technological

innovations have brought – and continue to bring – progress to humanity, including in the field of justice and the court system. It offers accessibility, speed, and efficiency. Yet, we must not turn a blind eye to its potential dangers.

Every step toward digitalisation creates a kind of “digital shadow” within our legal reality. If that shadow is not regulated in a timely and proper manner, it will inevitably influence the functioning of the justice. When technology assists us, it is our ally; when it begins to decide in place of the human, it becomes a threat to the rule of law!

At the same time, new technologies should not be feared; they should be used to simplify the resolution of technical issues. This is the right time to achieve that, as they are already part of our lives, and their further development is only natural. Artificial intelligence is not a decision-maker – it is an analytical tool in the hands of wise practitioners!