

Speaker's Address
**6th Congress of the World Conference on Constitutional Justice
on “Human Rights of Future Generations”**

**Madrid, Spain
28-30 October 2025**

Section III. Access to scientific knowledge and new technologies

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Mr President of the Constitutional Court of the Republic of Colombia,
Madam President of the Constitutional Court of Latvia;
Madam President of the Constitutional Court of Mozambique,
Mr President of the Constitutional Court of South Korea,

Dear guests,
Ladies and gentlemen,

First of all, I would like to thank the organisers of this World Congress on Constitutional Justice for inviting me to address such distinguished participants in my capacity as a commentator.

The theme of this World Conference on Constitutional Justice is highly topical. The rapid advancement of technology and the proliferation of big data are having a substantial impact on individual freedoms and state action, calling into question the traditional concepts of constitutional law with which constitutional judges must work.

Once described as a “legal haven”¹, the information landscape –driven by the technological advances characteristic of the new digital world– has gradually transformed into “an information chaos, characterised by the speed at which data is

¹ Carmen Monica Cercelescu, *Regimul juridic al presei. Drepturile și obligațiile jurnalistilor*. Teora, București, 2002, p.60.

disseminated, its global reach, and the complexity and diversity of the communication platforms available on the Internet”². Consequently, the interaction between digital technologies and constitutional principles remains a new frontier for innovation, to the extent that the vocabulary of constitutional law has taken on a new concept: “digital constitutionalism”.

The concept of “digital constitutionalism” was first used to refer to the need to apply constitutional standards to private actors across national borders, moving beyond the traditional scope of constitutional law within the state. Subsequently, research has turned its attention to normative sources, which are no longer limited to constitutional law but also include private law, as well as forms of normativity that emerge from political debates or within civil society (*soft law*), the legal and/or binding nature of which is often contested³.

Since the academic literature had already done so previously, I also took the liberty of consulting various large-scale language models to ascertain the exact meaning of the new concept, and the results were interesting. Some have firmly sided with the digital sector, referring to “the evolving establishment of constitutional rules governing the use, protection and regulation of digital technologies”. Others were more candid and admitted that “the term ‘digital constitutionalism’ has no widely recognised or standardised definition. Rather, it is a concept that is still evolving and is the subject of debate in academic, legal and political circles.” »

However, it seems to me that national reports point to such rapid change that it risks becoming a cause for concern regarding the use and regulation of digital technologies within contemporary societies. Just as traditional constitutions enshrine

² Irene Khan, Disinformation and Freedom of Opinion and Expression: Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. A/HRC/47/25 (Geneva: United Nations Human Rights Council, 13 April 2021), <https://digitallibrary.un.org/record/3925306?ln=en&v=pdf>. See: Konrad Niklewicz, “Weeding out Fake News: An Approach to Social Media Regulation,” *European View*, vol. 16, no. 2, 2017. Cited in: Kachelmann, Matthias et al. “The European Union’s governance approach to tackling disinformation – protecting democracy, countering foreign influence, and the quest for digital sovereignty”. *L’Europe en Formation*, 2023/1 No 396, 2023. p.11-36. CAIRN.INFO, shs.cairn.info/journal-l-europe-en-formation-2023-1-page-11?lang=en.

³ Edoardo Celeste, Constitutionnalisme numérique : théories et approches critiques, *Revue des droits et libertés fondamentales* n° 33.

fundamental rights and set out the responsibilities and structure of a country's government, digital constitutionalism seeks to provide a framework for how digital technologies are managed and integrated into various aspects of society, whether in politics, the economy, culture or individual rights. Digital constitutionalism thus recognises the transformative and evolving impact of digital technologies on modern society. The dichotomy between promoting innovation and safeguarding rights in digitalised social and economic spheres raises fundamental dilemmas. And almost all fundamental rights are affected by the opportunities offered by digitalisation.

Although the national reports do not explicitly mention the broader context in which this rapid transformation is taking place, it is clear that over the last (ten? twenty?) years we have witnessed what is known as a genuine 'democratic regression' – a phenomenon characterised, amongst other things, by a weakening of the unifying effect of the constitutions that constitutional judges are tasked with upholding. Under these circumstances, the use of disinformation techniques – some of which are quite sophisticated – spread across borders via social media is a cause for concern and calls for intervention by a state that is increasingly weakened by the constant provocations it faces. The established legal concepts and the often implicit prerequisites on which modern constitutions are based are being called into question. People's legitimate trust in public institutions in general is often shaken. What should be done?

At regional level, a supranational body such as the European Union has sought to provide some solutions through the "EU Digital Agenda", which includes, amongst other things, the General Data Protection Regulation, the Digital Markets Regulation, the Digital Services Regulation, the Artificial Intelligence Regulation and the Regulation on Data Governance.

However, the questionnaire sent to all constitutional courts is intended to prompt reflection primarily at national level. From this perspective, the national reports provided the only possible answers under the current circumstances. A careful reading of these responses also reveals questions that still need answering.

I would like to group these questions into two main categories:

I. The right to digital connectivity

The **right to digital connectivity** is an emerging right that enshrines everyone's right to effective, affordable and high-quality access to digital networks and services, regardless of where they live or their social circumstances. Is it perhaps a giant right, from the fourth generation? Is it already subject to legal proceedings?

The main challenge in this regard remains its **enshrinement in the Constitution**, which involves incorporating principles such as Internet access, net neutrality, the security of personal data and the absence of censorship into the Constitution.

Very few countries have incorporated it into their **Constitution** as it stands (such as Georgia or Indonesia), whereas the Belgian report outlines considerations regarding a possible constitutional review to achieve this. Several countries have opted to enshrine it at the **infra-constitutional level** (Albania, Angola, Brazil, Chad, Egypt, Cyprus, France, Italy, Kazakhstan, Kosovo, Morocco, Mauritania, Mauritius, Monaco, the Netherlands, Poland, Slovakia, Spain), often in direct connection with other **related rights** such as freedom of expression (Andorra, Moldova, Peru, Turkey), the right to information (Belarus, Madagascar), the protection of personal data (Mali) or the freedom to conduct scientific and technological research (Suriname).

Finally, there are also countries where this right is recognised only by **case-law**:

- In *Douez v. Facebook* (2017 SCC 33), the Supreme Court of Canada emphasised that Internet access is essential to the exercise of fundamental rights, in particular the right to privacy and the right to information.
- The Turkish Constitutional Court has ruled against blanket blocks on platforms such as Twitter and YouTube, finding such measures to be incompatible with freedom of expression, freedom of the press, and the right to an effective remedy, whilst implicitly recognising the right to be forgotten and the need for greater tolerance towards public figures (Hayko Bağdat, Bekir Coşkun).

- The Constitutional Court of the Czech Republic (judgment no. I. ÚS 22/10) recognised access to digital networks as an essential component of the right to privacy.
- The Slovenian court emphasised the importance of Internet access and digital equipment, whilst also highlighting journalists' responsibility to disseminate accurate information.

II. Protection against digital misuse

1. Online misinformation

This brings us to the delicate question of what safeguards can be put in place to ensure that citizens receive accurate information via social media.

In this context, it is worth noting that, when it comes to information disseminated by digital media, the literature traditionally draws a three-way distinction between disinformation, misinformation and malinformation⁴. Whilst this classification retains undeniable heuristic value, it now appears insufficient to capture the intrinsic complexity of the concept of disinformation, which is continually being redefined and sometimes blurred by the use of terms such as “fake news”, “misinformation” or “propaganda”.

Added to this issue are emerging practices directly linked to technological innovations and sophisticated digital communication strategies, such as deepface and astroturfing⁵. This term refers to the practice of publishing opinions or comments online or in the media that appear to come from ordinary members of the public, but which in fact originate from a particular company or political group, in order to give the impression that a product, policy, opinion, etc. is very popular or enjoys

⁴ Julien Giry, « Les fake news comme concept de sciences sociales : Essai de cadrage à partir de notions connexes : rumeurs, théories du complot, propagande et désinformation », *Questions de communication*, no. 38 (2020): 371-94, CAIRN.INFO, <https://shs.cairn.info/revue-questions-de-communication-2020-2-page-371?lang=fr> (accessed on 7 September 2025)

⁵ Cambridge University Press. “Astroturfing.” *Cambridge Dictionary*, accessed on 26 September 2025. <https://dictionary.cambridge.org/dictionary/english/astroturfing>

widespread public support. Furthermore, this concept has been applied, in particular, in connection with the Romanian Constitutional Court's decision in December 2024 to annul the presidential elections due to serious breaches of the rules governing the conduct and financing of election campaigns.

But there is cause for optimism, as there are also countries where such incidents can be prevented by constitutional (more rarely) or legislative (more often) frameworks designed to ensure that citizens have access to information shared on social media, whilst guaranteeing its accuracy and reliability. For example, national reports from certain countries in Latin America (such as Brazil and Mexico) and Africa (such as Angola, Egypt and Ethiopia) highlight the existence of regulatory frameworks that explicitly combat disinformation and require the ongoing updating of digital content. To give another example, in Asia, South Korea uses its Criminal Code to crack down on the dissemination of false information and digital manipulation.

However, there are more and more countries that do not have a specific mechanism in place to ensure the accuracy of content posted on social media.

This overall picture raises a number of questions that are still waiting to be answered:

- Are current concepts of the state and the constitution sufficient to define fundamental rights and the state's obligations in the dynamic and pervasive context of digital services and products, given the shifts in power and the diffusion of responsibilities inherent in them?
- How can we redefine the role of digital networks and platforms in relation to fundamental rights, so as to reflect both their importance and their vulnerabilities ?

2. Artificial intelligence

Moreover, any formulation of rights in the digital age raises questions regarding *trust in a digitalised state*. And all these questions remain relevant when it comes to artificial intelligence as well.

3. Mass surveillance technologies

Finally, the ever-increasing use of surveillance measures is contributing to tensions between security and the freedom that is essential in a democratic and constitutional state.

In Europe, the fate of the *Directive 2006/24/EC on the retention of data* is well known; it required Internet service providers and telephone operators to retain data relating to Internet access, and stipulated that such data should be accessible only to national law enforcement authorities. A number of constitutional courts, starting with the Romanian court in 2009 and followed by the German court in 2010, the Czech court in 2011, and so on, have struck down the laws transposing this directive. In 2014, the Court of Justice of the European Union also ruled that the directive itself was invalid in light of the fundamental rights recognised for European citizens at the supranational level.

The national reports as a whole paint a relatively positive picture regarding the protection of privacy, as well as the institutional mechanisms and legal precedents relating to the necessary balance between national security and the protection of fundamental human rights.

However, questions remain:

- How can we adapt our conceptual framework for legitimising and resolving conflicts to an ever-changing digital landscape?
- How can trust be built in new services and technologies when traditional legal mechanisms no longer seem effective in an analogue world where transparency and individual or state oversight are lacking?

Or, more generally, what would be the best ways to reconcile digital innovation with the protection of fundamental rights in a digital environment, given that the very definition of these rights in the digital age remains open to debate?

To **conclude**, I cannot claim to have all the answers.

However, one option would be to formulate specific and/or new digital fundamental rights and no longer simply observe how traditional rights are being shaped by the digital world.

Another possible response would be to continually adapt constitutional principles to the digital transformation, potentially by developing a rights-based approach to digital governance, including at the transnational level, where the most dynamic developments are taking place.

What is certain is that the interaction between digital technology and constitutions remains an area of innovation. Constitutional judges must approach all these new developments with an open mind and an open heart.

Thank you for your attention!