

Rapporteur's Report — Session C (revised)

KIM Hyungdu, Justice of the Constitutional Court of the Republic of Korea

Madam Chair, distinguished colleagues.

Good morning. I am honored to present the rapporteur's report for Session C, "Access to Scientific Knowledge and New Technologies," at the Sixth Congress of the World Conference on Constitutional Justice in Madrid. Our chair was His Excellency Mr. Jorge Ibañez Najar, President of the Constitutional Court of Colombia. We heard keynote remarks from Her Excellency Ms. Irēna Kucina, President of the Constitutional Court of Latvia, and Her Excellency Ms. Lúcia da Luz Ribeiro, President of the Constitutional Court of Mozambique. The discussant was Her Excellency Ms. Elena-Simina Tănăsescu, President of the Constitutional Court of Romania. I report as Mr. Hyungdu Kim, Justice of the Constitutional Court of Korea.

I will speak in 5 parts:

1. the main ideas from the speakers,
2. what the survey of member courts shows,
3. the discussant's perspective,
4. what we learned from questions and floor interventions, and
5. practical steps that courts can take.

1) Courts in a fast-changing digital world

President Kucina gave a simple and strong message: courts should be calm and careful, but they must not be slow. Digital technologies now shape how people learn, work, communicate, and find justice. Courts need to adapt while keeping the rule of law and human rights at the center.

She shared a clear guide called the "three A's."

- Accountability: Use new technologies only inside the limits of the rule of law and human rights. Check that a tool follows the rules before it is used.
- Awareness: Look closely at real-world effects. Digital systems can hide bias and can make inequality worse if no one is watching.

- Advancement: Use technologies to open doors to justice and to support the United Nations Sustainable Development Goals.

She also made two concrete points.

First, access to the Internet is close to a universal right, because many other rights now depend on it: education, work, public participation, and access to courts. During the COVID 19 pandemic period in Latvia, poor Internet access quickly became poor education and harm to human dignity.

Second, artificial intelligence can help, but artificial intelligence must not decide. Artificial intelligence can search case law, summarize records, and draft neutral background text. However, decisions about admissibility and outcomes must be made by a human judge. Every person has the right to a human decision maker, to clear reasons, and to a path to appeal.

Finally, she reminded us that real digital justice is more than sending portable document format files by email. Courts need secure, end-to-end electronic case platforms that follow the steps of real procedure. Courts should also be transparent: publish searchable decisions with plain-language explanations. The European Commission for Democracy through Law, the Venice Commission, is updating the Rule of Law Checklist to cover digital accessibility and court transparency. This is practical guidance that can build public trust.

2) What our courts report (survey highlights)

President Ribeiro presented a complementary view from Mozambique and from a broad survey of member courts. She emphasized that technology can widen rights only if basic conditions exist: connectivity, devices, electricity, and digital skills. Without these foundations, digital reforms risk excluding those who are already vulnerable. She also cautioned that the right to education and the right to equal access to public services suffered during the Covid 19 pandemic period where connectivity was weak. For that reason, she urged a realistic, step-by-step approach that matches each country's stage of development, and she welcomed regional and international cooperation to share tools, training, and model rules.

President Ribeiro shared results from 68 of 124 member courts of the World Conference on Constitutional Justice. Here are the main points.

- Right to digital connectivity

- 18 jurisdictions have an explicit constitutional or legal rule that protects access to the Internet.
 - 35 jurisdictions protect access indirectly through other rights, such as freedom of expression and access to information, often supported by measures of the European Union.
 - Several courts (for example, Slovenia, India, and Turkey) have struck down blanket Internet shutdowns and broad platform bans.
 - 15 jurisdictions have no clear legal rule; access to the Internet is treated mainly as public policy.
 - Accurate information on social media platforms
About three-quarters have some legal tools at the constitutional, statutory, or European Union level. One-quarter have none, which leaves a serious gap when facing fast online disinformation.
 - Surveillance and data collection
Out of 69 replies, about half rely on constitutional privacy protections, and about half rely on specific laws and independent regulators such as data protection authorities. 7 report no clear framework.
 - Guardrails for artificial intelligence
Out of 65 replies: about half manage risks with existing laws (including constitutional rights, data protection, cybercrime rules, and administrative oversight); about one-quarter rely strongly on European Union rules plus domestic law; and about one-fifth have no mechanisms yet, although many are drafting new laws and national cyber security policies.
 - Case law
21 jurisdictions reported important decisions: limits on platform bans and shutdowns; protection of informational self-determination; and recognition of the right to be forgotten. Other decisions address the use of telecommunications data in criminal justice, penalties for misuse of data, and limits on state power in the digital space.
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3) The discussant's perspective: digital constitutionalism

President Tănăsescu placed these results in the wider idea of **digital constitutionalism**. This idea means that constitutional principles should apply not only to states, but also to powerful private digital actors that operate across borders. It also means that binding law can work together with **soft law** to create a rights-based digital order.

She described two strong pressures today.

First, democratic backsliding has weakened trust in constitutions and in public institutions.

Second, transnational disinformation, including deep fakes and astroturfing (organized campaigns that look like real grassroots opinion), has damaged the quality of public debate. She pointed to the European Union digital package on data protection, digital markets and digital services, artificial intelligence, and data governance as one model. At the same time, national constitutional courts remain central in balancing innovation with rights. The path of data retention laws in Europe—first limited by national constitutional courts and later rejected by the Court of Justice of the European Union—shows courts adjusting the balance between security and liberty.

On connectivity as a right, she noted that few countries name it in their constitutions, although some are discussing it and Belgium is considering reform. Many countries protect it below the constitutional level by linking it to freedom of expression, access to information, data protection, or scientific freedom. Courts in Canada, Turkey, the Czech Republic, and Slovenia have recognized important parts of this right through case law.

She left three clear questions for future work:

- (1) Are state-centered ideas of rights enough for a platform-driven and borderless Internet?
- (2) Should we create new digital rights, or adapt existing rights more boldly?
- (3) How can we rebuild trust when digital technologies reduce transparency and human control?

4) Questions and discussion: key lessons from the floor

Our floor discussion was rich and practical. Four exchanges stand out.

A. Indonesia on the digital gap

Indonesia said access to science and technology is a basic human right, but a large digital gap remains. Many people—especially on islands and in remote areas—still lack stable Internet, and money for infrastructure is limited. So, we need stronger international cooperation so no one is left behind.

Lesson:

When courts review universal service or school connectivity plans, look at real impact on excluded groups. Support clear, time-bound plans. Apply strict scrutiny to blanket shutdowns and unequal access rules.

B. The African Court on Human and Peoples' Rights on beneficiaries and mechanisms

A question from the African Court on Human and Peoples' Rights (AfCHPR) reminded us that, under the African Charter, the bearers of rights include both individuals and peoples. The Court asked: through what mechanisms can constitutional courts help expand human rights in this broader sense?

President Kucina replied that digital access links directly to constitutionally protected rights, with the right to education as a central example. In practice, that means no one should be excluded from technology access. Ensuring digital access supports real participation in democratic life.

President Ribeiro added that development stages differ across countries of Africa, and that these differences matter for both technology policy and education. During COVID-19 pandemic period, remote learning exposed deep inequalities: many children could not reach teachers or tools, so their right to education suffered.

Lesson for courts: Courts can use equality and education clauses to require minimum connectivity standards for public schools, to monitor delivery through evidence-based remedies, and to invite periodic reporting by education and telecommunications authorities.

C. Peru on hate speech, peace, and freedom of expression online

Justice Lucy Pacheco of the Constitutional Court of Peru asked how courts should advance peace while guaranteeing freedom of expression, including moral and linguistic dimensions, given the rise of hate speech on social media platforms.

President Tănăsescu responded that we often do not need an entirely new framework called “digital constitutionalism” to address online harms. Existing tools for expression can apply in digital spaces—for example, defamation law, incitement standards, due process, and proportionality—. Social media speech can be treated as public speech, with appropriate context. The difficulty is application, not authority.

D. The President of the Constitutional Court of Palestine on community, sovereignty, and human dignity

The President of the Constitutional Court of Palestine stressed that individual rights cannot be real if community rights are denied. He asked whether we can meaningfully discuss constitutionality, labor rights, or human rights where houses of worship, children, and women are bombed; where international law is violated every day.

President Kucina answered that this is why courts exist. Even in hard times, courts must hold the line on law at home and in the world. In the digital age, everyone has a “digital shadow.” Courts should limit harms from these shadows so they do not twist facts or erode trust.

5) Practical steps for courts (seven takeaways)

Here are seven practical steps for courts, refined by our discussion.

First, treat connectivity as an enabler right and act against unjustified shutdowns; work with partners to close the digital gap, especially in island and remote areas, so that no one is left behind.

Second, move beyond sending portable document format files by email and build secure, end-to-end electronic case platforms; publish searchable decisions with short, plain-language summaries.

Third, use artificial intelligence only as an assistant; keep a human judge for every decision that affects rights, give clear reasons, provide a way to challenge the outcome, and publish a simple court policy on the use of artificial intelligence.

Fourth, strengthen privacy and surveillance safeguards by combining constitutional tests with clear statutes, independent regulators, and effective remedies, so that data collection remains necessary, proportionate, and lawful.

Fifth, target online disinformation and hate speech with narrow, evidence-based tools; act against coordinated manipulation and unlawful content while protecting freedom of expression and due process.

Sixth, bridge national and international law in this field; draw on regional standards, share case law, and remember that the African Court on Human and Peoples’ Rights reminds us to protect both individuals and peoples.

Seventh, keep learning together through the World Conference on Constitutional Justice; track new risks such as deep fakes and fake grassroots campaigns that are coordinated to look like public opinion, compare what works, and update shared checklists and model rules.

Closing

Colleagues, Session C shows that courts can be both guardians and innovators. Courts can be calm in judgment and active in design. If we base change on Accountability, Awareness, and Advancement, and if we listen to real life from Indonesia to Mozambique, from Latvia to Romania, from Peru to Palestine, we can widen access to justice, protect both individual and community rights, and uphold the rule of law in the digital age. Our task is to ensure that no one is left behind, that human dignity is protected both online and offline, and that today's choices make tomorrow's freedoms larger, not smaller.

Thank you for listening.

Respectfully submitted,

His Excellency Mr. Hyungdu Kim

Justice, Constitutional Court of Korea — Rapporteur, Session C