

**PRESENTATION BY THE PRESIDENT OF THE IBERO-AMERICAN
CONFERENCE AND JUSTICE OF THE CONSTITUTIONAL COURT OF
SPAIN, H.E. MR. ENRIQUE ARNALDO ALCUBILLA, ON THE OCCASION OF
HIS ATTENDANCE AT THE 7TH CONGRESS OF THE ASSOCIATION OF
ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS
CONSTITUTIONAL JUSTICE IN THE CONTEXT OF DIGITALISATION AND
ARTIFICIAL INTELLIGENCE**

Introduction

The digital transformation alters profoundly the modes of exercising public power, social relations, and the mechanisms for guaranteeing fundamental rights. A new legal environment has emerged that challenges the traditional categories of constitutionalism. These new realities demand a reinterpretation of the rights and freedoms recognised in constitutional and international instruments. The Constitutional Courts are an essential actor in ensuring that technological development takes place in accordance with the values of a social and democratic State under the rule of law.

I shall limit myself to a brief regarding two issues of particular interest due to their influence on fundamental rights.

First.— Digitalisation and fundamental rights

Digitalisation constitutes a tool of extraordinary potential for the effectiveness of fundamental rights: it facilitates access to information, strengthens civic participation, improves the delivery of public services, and expands the scope for exercising essential freedoms such as freedom of expression, the right of assembly, or access to justice.

However, it presents significant risks to the sphere of individual autonomy, particularly in areas such as personal data protection, privacy, equality and non-discrimination, freedom of information, and procedural guarantees.

A couple of everyday examples will serve to, at least, introduce the subject and offer a glimpse of the new issues that Constitutional Courts will have to face.

a) Firstly, in the digital reality we have all become journalists; we are no longer considered mere consumers or passive subjects of information. We are also active

subjects who create, modify, store, and share information. Although it is true that, as the ponenciaSpanish Constitutional Court has recently stated in Judgment STC 52/2026 of 8 July, the duty of diligence in verifying news is less stringent for ordinary citizens, as they cannot be subjected to “the standards of professional journalism”. That duty is diminished, yet it does not disappear.

b) In a society that has normalized the constant exhibition of daily life, whether public or private, many users share their travels, activities, or purchases on social networks. Furthermore, photographs of family members—frequently minors—are often shared on social networks.

This phenomenon is known as *sharenting*, and it poses major risks to the fundamental rights of minors, particularly privacy, the right to one’s own image, honor [reputation], and data protection.

Secondly.— Artificial intelligence

The greatest challenge for the constitutional State today is the integration of artificial intelligence. Two main issues arise:

a) How we integrate artificial intelligence into our courts. The response may vary, but in my view, there are two essential principles that must govern such integration: 1. Prudence (that is to say, to what extent it can serve as a useful tool or pose a threat to both constitutional and ordinary jurisdiction) and transparency.

Various regulations are currently being enacted in this area. Notable among them is Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), which constitutes the first comprehensive legal framework for the regulation of artificial intelligence in the European Union. Its aim is to reconcile technological innovation with enhanced protection of fundamental rights through a preventive risk-management model.

In any event, the application of AI to judicial functions presents limits deriving from basic constitutional principles. To outline a few, judicial independence requires that judicial decisions be made by judges and courts, not by algorithms. Similarly, the right to a fair trial with full guarantees requires that judicial reasoning be understandable, verifiable, and subject to review by the parties and appellate bodies. For

this reason, legal scholarship insists on the necessity of preserving effective human oversight over any decision-making process assisted by artificial intelligence.

b) The effective protection of fundamental rights—the core mission of constitutional courts—must adapt to an environment in which decisions capable of affecting liberty, equality, privacy, or freedom of expression are increasingly dependent on automated processes and complex algorithms.

1. One of the main issues lies in algorithmic opacity, which conflicts with constitutional requirements regarding the reasoning of public decisions and with the right of citizens to know the grounds justifying an action that affects their rights and legitimate interests.

It is particularly instructive to examine recent case-law of the Court of Justice of the European Union, which has significantly reinforced transparency requirements in automated decision-making systems. In particular, the judgment of 27 February 2025, *Dun & Bradstreet Austria* (C-203/22), holds that the data subject has the right to receive meaningful information about the logic involved in algorithmic models used in decisions that produce significant legal effects. The ruling thus consolidates a European principle of algorithmic explainability, closely linked to the fundamental rights to personal data protection, effective judicial protection, and good administration.

For its part, the European Court of Human Rights (ECtHR) has highlighted that the deployment of advanced automated data-processing technologies must be subject to particularly stringent judicial review whenever fundamental rights may be affected.

2. Another particularly relevant aspect is the question of liability. It is necessary to determine which public authority is accountable for potential errors or infringements of fundamental rights. Technology cannot replace the accountability inherent in the exercise of public power.

Thirdly.— Conclusion

In conclusion, digitalisation and artificial intelligence are profoundly transforming the framework within which constitutional justice operates. Constitutional courts must no longer merely oversee the traditional conduct of public authorities, but must also confront the risks arising from technologies capable of decisively influencing the exercise of fundamental rights. Constitutional justice in the twenty-first century is

called upon to play a pivotal role in shaping a digital constitutionalism capable of reconciling technological innovation with the effective protection of fundamental rights.

Artificial intelligence promises to solve many problems; it is now up to the law to prevent it from creating new ones.