

THE CONSTITUTIONAL PROTECTION FRAMEWORK REGARDING THE EMERGING EVOLUTION OF THE PROVISION OF DIGITAL TECHNOLOGIES OR SERVICES TO THE CONSUMER

VEACESLAV ZAPOROJAN

Associate Professor, Doctor of Law,
Academy of Economic Studies of Moldova
Republic of Moldova
e-mail: zaporojan.veaceslav@ase.md
ORCID ID:0000-0002-8906-9789

SERGIU COJOCARU

PhD student, Academy of Economic Studies of Moldova
Republic of Moldova
e-mail: cojocaru.s@gmail.com
ORCID: 0009-0002-9357-243X

Abstract: The research subjected to a broad analysis the constitutional, legal and administrative guarantees of contractual relationships regarding the new economic trends of providing new digital technologies, content and services to consumers by professionals. From the perspective of constitutional law, a new concept of “digital constitutionalism” is currently being promoted, through which the legal and administrative framework is given a critical importance regarding the establishment of clear normative rules regarding the protection of the confidentiality of data, including personal data, in order to avoid online infringement of consumer rights, but with continuous access to new digital technologies, including digital content of goods and services. The infringement of these constitutional and legal aspirations makes it impossible to guarantee the constitutional framework for the protection of human rights in a state of law of a modern digitalized society.

Avoiding constitutional litigation in the Republic of Moldova is possible through multi-aspect studies, including the application of the comparative study method, related to specific cases from other states in which constitutional justice has faced factual and legal circumstances regarding the constitutional guarantees that are necessary to accompany new digital technologies.

Modern digitalization sets new tasks for the Government and public authorities of the Republic of Moldova regarding the adaptation of public services to the constantly evolving technological landscape and to the requirements of the modern business environment for the efficiency and responsiveness of services. The achievement of these tasks establishes the key strategies necessary for this purpose, which we have exposed in this research.

The study conducted led us to the conclusion that the achievement of these tasks is possible by reviewing and updating the regulatory framework to support the modern digital transformation of the economy in the Republic of Moldova.

Keywords: modern digitalization, public services, e-government, digital transformation, public private partnerships, public administration, data protection, digital education.

JEL Classification Codes: H83, O38, L86, O33, K23, M15.

Introduction. The research underwent a broad analysis of the constitutional, legal and administrative guarantees of contractual relations on modern economic trends of provision by professionals (traders) to consumers of new digital technologies, digital content and services. Constitutional law, being the fundamental and supreme branch of law and being the guarantor of human rights and freedoms in any social formation as a rule of law, at present, to professional-consumer relations, through the prism of constitutional law, a new concept of „digital constitutionalism” is also promoted. (Digi-Con Academy, 2024). Digital constitutionalism in the opinion of researcher Edoardo Celeste „embodies the idea of projecting the values of contemporary

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

constitutionalism in the context of the digital society” (Celeste, 2021). This concept and institution allows the legal and administrative framework to establish a critical importance on clear regulatory rules to protect the privacy of certain data, including personal data, in order to avoid online harm to consumer rights, but with continued access to new digital technologies, including the digital content of goods and services provided. The violation of these constitutional and legal aspirations makes it impossible to guarantee the constitutional framework for the protection of human rights in a rule of law and to promote a modernized digitized society. Legal relations in a modern digitized era require great efforts to respect the rights of members of society and avoid constitutional disputes. In the Republic of Moldova, this purpose may have been achieved through multi-sided studies, including the application of the comparative study method, related to concrete cases from other states with more developed democracies, in which constitutional justice has already faced factual and legal circumstances regarding the constitutional guarantees necessary to accompany new digital technologies.

Terminology. The research conducted has caused us to detect some terminological inaccuracies applied in the field of consumer protection legislation in the Republic of Moldova. The Constitution of the Republic of Moldova, as the fundamental and supreme law, does not contain express regulations on legal relations and consumer protection. The Civil Code, however, as a superior legislative act in the private law system regulates the status of subjects in consumer protection relations in art. 3 Consumer and professional, where it defines "consumer any natural person who, within a civil legal relationship, acts predominantly for purposes not related to entrepreneurial or professional activity", and "professional any natural or legal person of public law or private law who, within a civil legal relationship, acts for purposes related to entrepreneurial or professional activity, even if the person does not aim to obtain a profit from this activity". (Civil Code of the Republic of Moldova, 2002).

In the same sense, but terminologically, the “Law on Consumer Protection”, which was adopted and entered into force after the adoption and entry into force of the Civil Code (Law on Consumer Protection, 2003), establishes the parties in the respective relations as “**Consumers**” and “**Traders**”.

Thus, in the Republic of Moldova, the consumer, based on the norms of both organic laws, is protected by both a “professional” and a “trader”. In principle, in a terminological sense, a trader is a professional, from whom the consumer must be protected because the other natural or legal person carries out commercial, industrial, production or artisanal activities. In Romanian, both are persons who work in a certain field of activity based on appropriate training, the trader being only specialized in performing commercial acts. (Dictionaries of the Romanian language, 2012)

In the process of researching some deficiencies regarding the terminological omission, we applied the comparative method and studied the question through the lens of the legal norms applied in Romania, we terminologically applying the same language. Thus, in Romania, Government Ordinance no. 21/1992 on consumer protection nominates the person from whom the consumer must be protected under the title of "economic operator" (Government Ordinance No. 21/1992 on consumer protection,1992) in the Civil Code - "professional". (Civil Code of Romania, 2009)

Romania is a member state of the European Union, a political and economic union within which the Republic of Moldova received the status of candidate country in 2022, for which reasons in a comparative aspect, of public international law and national legislation (Government Decision No. 1171/2018), it is necessary to compare it with the legislation of the European Union. Analyzing Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, translated into Romanian in art.2 "1. "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;", and "2. "trader" means any natural or legal person, whether public or private,

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

who is acting, including through another person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive. (European Union, 2011. Directive 2011/83/EU)

Respecting the commitments applied in the Republic of Moldova within the framework of the accession process to the European Union, we will consider that the basis for the process of harmonizing the legislation of the Republic of Moldova with the EU legislation is the harmonisation obligations resulting from the commitments assumed by the Republic of Moldova in relation to the European Union, from other relevant international instruments, as well as from the National Programme for Accession, in accordance with the established terms and conditions. (Republic of Moldova, 2018. Government Decision No. 1171/2018) The normative act of the European Union, mentioned in this research, directs us to use the term "trader", as it is translated into Romanian in the normative acts of the European Union and not that of the Civil Code of the Republic of Moldova as "professional". We mention our conclusion, that however the term "professional" would be more correct, being more universal, which terminologically includes any natural or legal person who has much higher knowledge and skills taken from practice in the field of goods and services used. In this regard, we will also mention that in the official languages of the European Union in Directive 2011/83/EU the term "professionnel" is used in French, and "trader" in English. Romance languages, such as: Italian "professionista"; Portuguese "Profissional" etc.

The regulatory framework for the provision of digital technologies or services to the consumer. This research focuses on the constitutional framework for protecting the way in which digital technologies or services are provided to consumers, as a result of which we will mention that constitutionalization in this sense is a complex process, being ongoing in contemporary society. The researcher Edoardo Celeste, analyzing the legal framework of “digital constitutionalism”, mentioned, “the diverse and dispersed components of the process of constitutionalization of the digital ecosystem contribute equally to the substantiation of the ideals and values of digital constitutionalism, which represents a new theoretical direction within contemporary constitutionalism, which aims to adapt its core values to the needs of the digital ecosystem” (Celeste, 2021). According to Directive 2011/83/EU “Digital content means data that are produced and delivered in digital form, such as computer programs, applications, games, music, video recordings or texts, regardless of whether they are accessed by downloading or streaming, from a material support or by any other means.” The development and practical application by the Member States of the European Union of Directive 2011/83/EU has led to the adoption of new regulatory acts within the European Union, such as Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services. (European Union, 2019. Directive (EU) 2019/770) Some members of the European Parliament have also proposed the adoption of the EU Code of Online Rights. (European Union, 2012. EU Code of Rights in the Online Environment) The aforementioned draft Code has not been adopted, but it shows the importance of digital social and legal relations within the Member States of the European Union.

Modern digital social and legal relations, as a result of their development, have also led to the application of social measures, including legislative ones, in the Republic of Moldova to protect the rights of consumers of digital content or digital services. Recently, on 08.11.2024, the Parliament voted in final reading the draft law on contracts for the supply of digital content and digital services – Law 247/2024. (Republic of Moldova, 1992. Law No. 247 of 08-11-2024 on contracts for the supply of digital content and digital services). Modern digitalization and Law 247/2024 sets new tasks for the Government and public authorities of the Republic of Moldova regarding the adaptation of public services to the constantly evolving technological landscape and to the requirements of the modern business environment for the efficiency and responsiveness of

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

services. The achievement of these tasks establishes the key strategies necessary for this purpose, which we have exposed in this research. The Ministry of Economic Development and Digitalization, through the project submitted to the Parliament, adopted into national legislation several directives of the European Parliament and of the Council regarding contracts for the provision of digital content and digital services. “The adoption of this draft law provides for the provision of a set of uniform and well-defined rules for the sale and consumption of digital content, such as computer programs, software, games, digital books or DVDs, CDs or sticks, if they are carriers of digital content or services.” (Consumer rights of digital content and services.)

In this study, we set out to further analyze what the “digital transformation” of the economy and society is - in essence, it represents one of the most profound mutations of the 21st century. Contractual relationships between professionals and consumers are increasingly taking place online, involving new digital technologies, content and digital services. This reality requires a broad analysis of how constitutional, legal and administrative guarantees can cope with and keep up with the pace of innovation.

The present research explores these guarantees, underlining the urgency of adopting a new concept: “digital constitutionalism”. Through this lens, the legal and administrative framework acquires critical importance in establishing clear normative rules, designed to protect fundamental human rights in a modern digitalized society, while ensuring continuous access to innovation. Damaging these aspirations makes it impossible to effectively guarantee the rule of law in the digital age.

In fact, the concept of “digital constitutionalism” transcends a simple regulation of e-commerce, aiming at protecting human rights in the virtual environment at the same level and under the same conditions as the physical one. Its weak point is the protection of data confidentiality, mostly of personal data. In a world based on “Big Data” and “digital algorithms”, data confidentiality and security essentially become guarantees of individual freedom and non-discrimination online.

In order to avoid harming consumer rights, it is vital to balance unfettered access to new technologies with a robust protection framework. Constitutional guarantees must accompany innovation, setting clear limits on the collection, processing and use of data, as well as on the surveillance powers of the state and digital corporations.

In this regard, the Constitutional Court of the Republic of Moldova, during the exercise of constitutional jurisprudence, has reflected the constitutional way of protecting consumer rights in 19 decisions. Decision no. 10 of 14.04.2022, for example, establishes that “ideally, the proper functioning of the price-setting mechanism in order to obtain fair price levels, i.e. that correspond to the interests of producers and consumers,...”, but “...the legislator may adopt measures to correct market imbalances or to protect consumers”. (Constitutional Court of the Republic of Moldova, 2022. Decision no. 10)

In a comparative aspect, the Constitutional Court of Romania has also exercised its constitutional jurisprudence on consumer protection in several decisions of constitutional review. Thus, in Decision no. 692 of October 6, 2020 “The Court held that the normal functioning of the market economy is perfectly compatible with consumer protection measures, and that freedom of trade and the protection of national interests in economic activity are not only not incompatible with the establishment of rules regarding the quality of products or services provided, but they are also imposed by other obligations incumbent on the state, namely the one provided for in art. 135 para. (2) lett. f) of the Constitution regarding the creation of the necessary conditions for increasing the quality of life.” (Constitutional Court of the Republic of Moldova, 2020. Decision no. 692)

To avoid constitutional disputes, it would be good to use the comparative method by analyzing the experience of other states, especially European ones, where constitutional justice

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

has already faced complex factual and legal circumstances related to digital guarantees, which provide a valuable basis for avoiding constitutional disputes in the Republic of Moldova.

Multi-aspect studies and the comparative method of study are essential. Analysis of the jurisprudence of constitutional courts in states with a longer tradition in digital regulation (such as those in the European Union) can provide Moldovan authorities with a program of actions in developing norms that would anticipate and prevent legislative conflicts. Such important comparative cases help to understand how principles such as proportionality, necessity and legality apply in the digital space, from e-commerce to cybersecurity.

To support and illustrate the conclusions and strategies presented in the article, we propose for analysis some concrete examples and case studies that can be integrated into the respective chapters:

1. Examples for the Fundamentals of Digital Constitutionalism (Data Protection). These examples illustrate how constitutional guarantees are directly applied in the digital environment:

- Data Privacy Protection (Art. 28 of the Constitution) - Schrems II Case (Court of Justice of the European Union, 2020). The CJEU invalidated a US-EU data transfer framework (Privacy Shield) due to the lack of adequate safeguards against government surveillance in the US, considering that it violates the fundamental right to data protection and to an effective remedy. It shows that states (including the Republic of Moldova) must ensure that citizens' data, even when transferred internationally, benefit from constitutional and legal protections at the highest level. (Court of Justice of the European Union, 2020)

- Consumer Rights Guarantees - Litigation on “Dark Patterns”: These are manipulative user interfaces used by professionals to induce consumers to make unfavourable decisions (e.g., automatic subscription, difficulty to cancel). They demonstrate the need for clear national regulation to prevent online infringement of consumer rights and to protect genuine contractual will. (Court of Justice of the European Union, 2020)

2. Examples for Avoiding Constitutional Litigation (Comparative Method). These cases show how constitutional justice has faced the dilemmas of digitalization:

- Proportionality and Legality in Surveillance - Decisions of the German Constitutional Court on the retention of traffic data (Data Retention). The Court ruled that general and indiscriminate data retention is unconstitutional, requiring strict criteria of necessity and proportionality. It serves as a model for the Constitutional Court of the Republic of Moldova in assessing laws that allow authorities to access communications data, ensuring that they do not violate the right to privacy (Art. 28) and the secrecy of correspondence (Art. 30).

- Access to Information and Digital Content - US Supreme Court Decisions (or European equivalents) on Net Neutrality. Although as a regulatory subject, the discussions are based on ensuring non-discriminatory access to the internet, considered essential for freedom of expression and access to knowledge. Here the essence is that it emphasizes the need for the Republic of Moldova to guarantee continuous and equal access to new technologies and digital content, thus protecting democratic principles.

3. Examples for Government Tasks (Digitalization Strategies). These concrete examples illustrate the actions needed at the administrative level in the Republic of Moldova:

- Integrated Digital Governance (e-Government) – Creating a Digital-by-Default administration. For example, in Estonia: Implementation of universal electronic identity (ID Card) [18] and online voting. This is an example of a 100% digitalized public service that increases the efficiency and responsiveness of services.

- Public-Private Partnerships (PPP) - Using private expertise for rapid innovation. MCloud Platform (Moldova) (Republic of Moldova, Mcloud Platform, 2018). A successful example of PPP, where private infrastructure or software development (e.g., cloud services) is used by public

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

authorities to streamline costs and scale services quickly, supporting the digital transformation of the economy.

- Review of the Regulatory Framework (Laws) - Adoption and adaptation to the new Code of Rights in the Online Environment. Here we can analyze the EU Directive on Digital Content and Services (2019/770) (European Union, 2019. Directive (EU) 2019/770) which introduces explicit guarantees for digital products, establishing clear rules on conformity, security updates and liability of suppliers. The Republic of Moldova needs to take over and adapt these rules to provide strong legal guarantees.

- Digital Education - Investing in skills. National Digital Re-qualification Programs: Projects that offer free or subsidized courses for civil servants and citizens in areas such as cybersecurity, coding and the use of e-government services, essential for modern public administration.

These concrete examples provide empirical support for the theoretical statements in the article, demonstrating that digital constitutionalism is not just a concept, but a reality based on international legal precedents and good administrative practices.

To develop the importance of the topic of digital constitutionalism and the guarantees of rights in the era of economies with major implications of new information technologies, adding depth to the analysis and conclusions, we will describe the topic by focusing on the public policy implications and the mechanisms for the effective implementation of “digital constitutionalism” in the Republic of Moldova, which would involve:

I. Deepening the Concept – from legislation to digital ethics. Digital constitutionalism is not limited to data protection legislation; it represents a philosophy of governance that integrates fundamental values (freedom, equality, human dignity) into the architecture and use of technology. Here are the fundamental digital rights that require explicit guarantees, including:

- The right not to be evaluated solely algorithmically: Citizens must be able to challenge decisions that affect them (e.g. granting a loan, employment) made by artificial intelligence systems, ensuring the transparency and explainability of algorithms.

- The right to erasure (the right to be forgotten): The guarantee that personal data does not remain on the internet indefinitely, a critical pillar of privacy in the big data economy.

- The right to equal access to the internet (including net neutrality): An implicit constitutional guarantee that essential services and digital content are accessible to all, without discrimination or blockages based on commercial interests.

II. Mechanisms for Implementing Constitutional Guarantees. Achieving constitutional aspirations requires more than just laws; it requires adapted institutions and effective oversight mechanisms. Here it is important to identify the role of Constitutional Justice, and in order to prevent litigation and ensure the coherence of the regulatory framework, the Constitutional Court of the Republic of Moldova (CCM) must adopt a preventive and anticipatory approach that requires a structural analysis that uses certain formats of engagement such as:

- The Extended Comparative Model: The CCM can study not only the jurisprudence of the European Court of Human Rights (ECtHR) and the CJEU, but also the decisions of the Supreme Courts of countries such as Brazil (on the Marco Civil da Internet) or Canada (on surveillance). This would allow the development of specific digital proportionality tests for interferences with online rights.

- Advisory Opinions: Increased use of advisory opinions on major digitalization draft laws (e.g. legislation on artificial intelligence or cybersecurity) could identify and correct unconstitutionality before they enter into force, thus preventing costly litigation.

III. Administrative adaptation: e-government and secure partnerships. Modern digitalization requires authorities not only to use technology, but to govern it in accordance with the principles of the rule of law, through the following aspects:

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

- Data governance and secure interoperability Here, it must be taken into account that a crucial aspect is the way in which data is shared between government agencies: The Once-Only Principle: The implementation of this principle (the citizen does not provide the same information more than once) must be accompanied by strict security and confidentiality guarantees. The interoperability of systems (data exchange between ministries) must be regulated by a legal data governance framework that specifies who, when and why has access, avoiding abuses and protecting personal data.

- Regulation of digital public-private partnerships (PPPs). Although PPPs are essential for accelerating digitalization, they pose constitutional and security risks. Data sovereignty clauses: PPP contracts for cloud services or critical systems development must include clear clauses ensuring that sensitive data of citizens and the state remain under the full jurisdiction and control of the Republic of Moldova. Security risk assessment: Any transfer of administrative functions to the private sector through digitalization must be preceded by a rigorous assessment of the impact on human rights and cybersecurity, ensuring that commercial interests do not override constitutional protection.

IV. Review of the regulatory framework - legislative priorities. The conclusion on the need to review the regulatory framework translates into specific legislative actions:

- Law on Artificial Intelligence (AI). Ensuring transparency and accountability of algorithms; avoiding data-based discrimination (right to equality). Establishes clear limits for the use of AI in public services (health, justice) and protects citizens from prejudicial automated decisions.

- Updating the digital civil/commercial code. Clear guarantees for the conformity and durability of digital content and services (e.g., mandatory security updates). Strengthens consumer protection in digital contractual relations, reducing civil and administrative litigation.

- National cybersecurity framework. Protecting critical infrastructure and citizens' data (right to security and a functioning digital environment). Ensures economic resilience and uninterrupted operation of public services, a precondition for the digital rule of law

By focusing on these public policy implications and institutional mechanisms, the Republic of Moldova can transform digital constitutionalism from a theoretical concept into a practical framework that supports the modern digital transformation of the economy, while guaranteeing the fundamental rights of citizens.

Modern digitalization sets new tasks for the Government and public authorities of the Republic of Moldova regarding the adaptation of public services to the constantly evolving technological landscape and the requirements of the modern business environment for the efficiency and responsiveness of services. The achievement of these tasks establishes the key strategies necessary for this purpose, which we have exposed in this research.

Conclusion: the imperative to review the regulatory framework. The study leads to a firm conclusion: the achievement of the complex tasks imposed by modern digitalization is possible only by reviewing and updating the existing regulatory framework. It must move from a reactive to a proactive approach, supporting the modern digital transformation of the economy in the Republic of Moldova in a way that guarantees the fundamental rights of citizens at the same time.

Adopting the principles of digital constitutionalism is not a luxury, but a necessity to ensure that the Republic of Moldova remains a functioning state of law in a modern digitalized society. The regulatory framework must become a catalyst for innovation, not a barrier, while establishing those constitutional guarantees indispensable for human dignity in the online world.

Annual International Scientific Conference
“Competitiveness and Innovation in the Knowledge Economy”
September 26-27, 2025
Chisinau, Republic of Moldova

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Annual International Scientific Conference
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September 26-27, 2025
Chisinau, Republic of Moldova

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