[NL] Proposals to Improve Constitutional Protection of Communications

IRIS 2000-6:1/23

Lodewijk Asscher
Institute for Information Law (IViR), University of Amsterdam

In recent years questions have arisen concerning the constitutional protection of the freedom of communication in the Information Society. The current provisions in the Dutch Constitution (Grondwet or Gw) (e.g. art. 7 and art. 13 Gw) were originally drafted in the nineteenth century and were not designed for modern-day technology. Now a new report, by a governmental commission under Leiden-based professor H. Franken, suggests some major changes to the constitution.

The report gives an outline of the present developments that are shaping the Information Society. It highlights the changing role of government and gives a brief sketch of the technological revolution that lies at the heart of the Information Society. Convergence, digitalisation, circuit switching and the intelligence network are but a few elements of the dramatic change in information technology. A brief introduction to the fundamental aspects of the law of freedom of communication follows, as well as an evaluation of their impact on the information society.

The report describes the Dutch freedom of expression clause, art. 7 Gw, in greater detail. It deals with the problems inherent in the present protection and links them to developments in information technology. A proposal for a new, technology-neutral, art. 7 Gw is introduced. Key elements are the fact that all media will be protected alike, and that a new clause is added to guarantee the pluriformity of public media.

Also, the Dutch privacy clause, art. 10 Gw, is slightly changed to adapt to the Information Society. The proposed art. 10 will protect the whole chain of information processing.

A more profound adaptation is proposed in the chapter where the protection of secrecy of communications, art. 13 Gw, is examined. The Commission suggests a whole new approach, in which a "live" conversation is protected at the same level as a phone-call or an email-exchange. The new article 13 would also include a clause on the horizontal application of the fundamental right, intended to ensure that the protection 13 Gw offers is not limited to protection from state action.

It is expected that the Dutch government will give its opinion on the new proposals sometime during the autumn 2000. At that point, a proposal to amend the constitution may be introduced in Parliament.

© European Audiovisual Observatory (Council of Europe) 2026

Commissie Grondrechten in het Digitale Tijdperk, Rapport, Den Haag, 24. Mai 2000.

Report on the Improving of Constitutional Protection of Communications, Den Haag, 24 May 2000.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026