DISABILITY AND THE ELDERLY IN THEIR FREEDOM OF INTERACTION WITH THE SPANISH ADMINISTRATION

VANESA SÁNCHEZ BALLESTEROS[1]

Abstract: Disability and elderly people are considered special groups due to their high degree of vulnerability, and their welfare must be supported by public measures that reinforce the guarantees of their rights and freedoms. Although new technologies open up a world of possibilities in all areas of life, their use can hinder, in some cases, the development of the rights of these groups because their practice is a complex novelty, especially in the area of communication between citizens and the Public Administration. Therefore, this study focuses on the analysis of the impact of ICTs on the right to freedom of access of persons with disabilities and the elderly.

Keywords: Disability, freedom, old age, law, digital divide, ICTs, Public Administration and elderly people.

1. INTRODUCTION

Information and Communication Technologies (ITCs) have transformed society by bringing a diversity of possibilities in all contexts of our lives (social, health, economic, etc.). They have opened up a wide range of rights for European citizens in their communications with the Public Administration since the adoption of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006[2] on services in the internal market. However, this new implementation is not without its problems, and in order for it to be a reality of improvement and to maintain the right to access it, citizens must have the appropriate knowledge in its use, as well as the technical infrastructure that makes communication and access possible. It is essential that the situation of all sectors of the population, especially the most vulnerable, be taken into account in the use and exploitation of ICTs.

The need for this study is urgent in view of the development and accelerated implementation of ICTs in Public Administration in recent years, and even more so during the covid-19 pandemic, where they have been inexcusably imposed in all administrative spheres

---

[1] Lecturer in Civil Law at the University of Jaén (vballest@ujaen.es). ORCID: 0000-0002-4697-7891.
[2] Europe. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (published in OJEU of 27 December).

without exception. There is no doubt about the notorious digital divide that is emerging among the elderly and people with disability, as ICTs require the unavoidable existence of technological and computer resources to facilitate their use. All of the above is becoming an obstacle in the processing of situations which, a priori, were simple due to their analogue nature and which are now complex due to their need to be connected to the network, among others. This is why the digital divide that occurs in people with disabilities or the elderly is undermining their rights and freedoms and, in some cases, can even lead to marginalisation.

In Spain, Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations (hereinafter Law 39/2015), aims, among others, to provide a telematic channel justified through the principles of effectiveness and efficiency for citizens and companies, providing them with greater guarantees and allowing its use by individuals on a voluntary basis, respecting their freedom. However, following the covid-19 pandemic, access through this means has become general, indirectly forcing all citizens to use it as the only means of access.

In view of this situation, we propose to analyse the implementation of telematic procedures in Spain and the consequences for citizens' rights in their telematic relations with the Public Administration; the harm caused by such requirements; and, finally, the proposals for improvement that can be offered to citizens, especially the elderly, to mitigate the effects of the digital divide.

2.   METHODOLOGY

This research work is based on the study of the rights of elderly and people with disability, especially the right to freedom in the exercise of their communication and access to the Public Administration through ICTs. Firstly, we will study the right of the person and their freedom to relate to others in the way that best suits their needs and wishes. Secondly, we will study the emergence of e-Government as a consequence of good governance[3], its legal regime and how its establishment has been justified as a more efficient and convenient means of communication and access to the Administration.

This will be followed by an analysis of the advantages and disadvantages of its use and how it affects both positively and negatively the elderly and people with disability. It will also provide an overview of the situation of ICTs use in e-governance. And to conclude this work, an analysis will be made by way of conclusions, incorporating a list of proposals for improvement with the aim of providing practical and simple solutions to eliminate the digital divide.

---

[3] "The concept of governance refers to all the government processes, institutions, procedures and practices by which the affairs of society as a whole are decided and regulated. Good governance adds a normative or evaluative dimension to the process of governing. From a human rights perspective, governance refers to the process by which public institutions conduct public affairs, manage common resources and ensure the realisation of human rights".
United Nations website. On Good Governance and Human Rights. Available at: https://www.ohchr.org/es/good-governance/about-good-governance (accessed 28 April 2022).

3.   The right to liberty of elderly and people with disability in their relationship with the administration: historical developments

Freedom and good governance are an inexcusable binomial in a social and democratic State governed by the rule of law (article 1 of the Spanish Constitution). For this reason, both the recognition of freedom and that of good governance have been introduced as necessary in society through international instruments for decades, and are now of great legal relevance.

Given the above premises, the freedom of elderly and people with disability must be analysed clearly from a conceptual point of view, understanding this right in its literal sense as an inalienable attribute of the person which grants him/her the independence to do or decide whatever he/she deems convenient, without distinction of any social circumstance, as it is a condition of the human being, which, as mentioned above, is inalienable. From a legal point of view, freedom is understood as the faculty or power to act according to one's own criteria within the framework of the Law[4] (Fernández, 2018: 267-294), whether it is exercising one's preferences or wandering. The doctrine[5] (Lasarte, 2019: 23), emphasising from the legal point of view, warns that *"the existence of the rule of law is evidenced in the recognition of the freedom of citizens, in terms of the free will that is an inherent attribute of the human person and that every legal system must accept as a presupposition"*, thus making clear the concept of freedom as the capacity of all human beings to choose according to their preferences, will and desire as a quality of the human being.

Public Administration is the set of actions and procedures of a State as a consequence of the management of services aimed at protecting the general interests of its citizens, and these actions must be established by Law (Supreme Court Ruling of 18 March 1993). In relation to the Spanish State, as an example of the use of e-Government and from its most supreme legal sphere according to the Spanish Constitution, Article 103.1, Public Administration is understood as the set of hierarchically organised bodies that objectively serve the general interest. It recognises as objectives those established by law and the rest of the legal system, according to article 3.3 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector[6] (hereinafter Law 40/2015). This Law sets out the general operating principles in its explanatory memorandum, among which the following stand out: efficiency, coordination, decentralisation, hierarchy, submission to the Law and to the Law. Throughout the text, it insists on the effectiveness and efficiency of its management towards those who are administered. Similarly, Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations[7], refers in

---

[4] Fernández Suarez, J. A. (2018). El derecho de libertad en Eduardo García Máynez. *Revista de Posgrado en Derecho de la UNAM. Nueva Época nº 8, pp. 267-294.*
[5] Lasarte, C. (2019). "Compendio de derechos de la persona y el patrimonio". 9ª edición. Dykinson. Madrid, p. 23
[6] Spain. Law 40/2015, of 1 October, on the Legal Regime of the Public Sector (published in BOE of 2 October).
[7] Spain. Law 39/2015, of 1 October, on the Common Administrative Procedure for Public Administrations (published in BOE of 2 October).

its text to the effectiveness and efficiency in the competences of these towards the Public Administration. In its explanatory memorandum, it highlights the need for e-government to better serve these principles, saving costs for citizens and companies and reinforcing their guarantees. It also adds that through e-government, transparency obligations can be better fulfilled as it offers agile and up-to-date information to interested parties.

Having recognised our basic concepts, the right to freedom and Public Administration, it is their interaction that will determine the meaning of this work.

It is inexcusable to begin our legal journey of freedom protection with the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in Resolution 217 A(III) of 10 December 1948 in Paris. This instrument was created with the aim of protecting human rights, especially those harmed by the wars that had been taking place, particularly during the Second World War. A pioneering document of international importance in the protection of human rights was drawn up, based on the recognition of human dignity as the basis of the most essential human values such as freedom, justice and peace, as established in its preamble.

Subsequently, the International Covenant on Civil and Political Rights (ICCPR), approved by the United Nations General Assembly in Resolution 2200 A (XXI) of 16 December 1966, was adopted, and its preamble is in line with the principles of the United Nations Charter, defining freedom as the basis for the recognition of human dignity (Article 9).

Following a process of democratisation of the States, freedom is recognised at the European level through the Charter of Fundamental Rights of the European Union, approved in 2000[8]. In its preamble, freedom was highlighted as a general situation inherent to every person (a personal right) and was recognised as an inalienable value of the Union, the basis and axis of the rights that make up human dignity. Although in the beginning it was only considered to be of a moral nature, as a declaration of principles, over time it was incorporated through documents with binding force thanks to the will of the States.

With the approval of the Treaty of Lisbon, after the failed European Constitution, Article 6.1 of the TEU maintains the recognition of the Charter, giving it binding legal value. It is in this text that the rights, freedoms and principles of the text are given special recognition on the same level as the Treaties in the Community context.

However, when we speak of rights, in this case that of freedom, their recognition is a constant in all European legal texts and in a significant majority in the rest of the world, and even more so, as already mentioned, on the basis of the International Declaration of Human Rights.

---

[8] Europe. The Charter of Fundamental Rights of the European Union was proclaimed at the Nice European Council on 7 December 2000 jointly by the Council, the European Parliament and the Commission and published in the Official Journal of the European Union on 30 March 2010.

As a second part of the binomial good administration, it is important to highlight that the generic concept and a standard of behaviour had already been forged in past decades. This can be seen in the judgement of the European Court of Justice of 18 October 1989 on the protection of competition in administrative proceedings. This already contains some reference to the good performance of the Public Administration, arguing the right of defence of any procedure when it may result in an act that is harmful to a person. This becomes a fundamental principle, and the notion of good administration as a generic concept is developed through European jurisprudence[9] (Ferreiro, 2015: 42-429).

However, the obligatory nature of good administration of the States in their internal functioning stemmed from the Charter of Fundamental Rights of the European Union as the first identification of a European fundamental right[10] (Tomás, 2004: 179). Its motivation, the guarantee of protection of the fundamental rights of citizens through the obligation of the Public Administration to behave appropriately. It should be added that Article 41, the right to good administration, is recognised in the category of fundamental rights. It is essential to highlight this recognition, as it is the subject of this study, which limits the exercise of the Public Administration in favour of the right to freedom. This recognition was postulated as the first of all national and international legal instruments on human rights[11] (Ferreiro, 2015: 423-435) where it includes both concepts, freedom-good administration.

At this point, and after joining the previous issues, good governance appears in the European context in the approach of ICTs in its management and communication with citizens. E-government began as a Community commitment from the Council of Europe, with the aim of taking advantage of the possibilities offered by new technologies. The commitment can already be seen in the year 2000, at the Lisbon Summit[12], when it was proposed through the eEurope programme[13], to turn the EU into the strongest power of knowledge through Internet connection.

---

[9] Ferreiro Viñuales, S. (2015). El artículo 41 de la carta de los Derechos Fundamentales de la Unión Europea: una visión crítica. *Estudios de Deusto*, *63* (1), *pp. 428-429*.

[10] "A generic reference to good administration can be found in the Declaration of the Rights of Man and of the Citizen, adopted by the French Constituent Assembly on 26 August 1789". The Declaration states that "society has the right to call every public agent to account for his or her administrative actions", establishing it as a rule, not as a right.
Tomás Mallén, B. (2004). "El derecho fundamental a una buena Administración". *MAP-INAP,* Madri, pp. 179.

[11] Ferreiro Viñuales, S. (2015). El artículo 41 de la carta de los Derechos Fundamentales de la Unión Europea: una visión crítica. *Estudios de Deusto*, *63* (1*), pp. 423-435*.

[12] European Union Portal (2000). The Lisbon Special European Council (March 2000): Towards a Europe of innovation and knowledge. Available at: http://publications.europa.eu/resource/cellar/ade37b54-018f-45a6-bf48-95ff11598b1f.0005.02/DOC_2 (accessed 5 May 2022).

[13] "eEurope is a policy initiative aimed at ensuring that future generations in the European Union take full advantage of the changes being brought about by the information society. These changes, the most significant since the Industrial Revolution, are far-reaching and global in scope".
European Commission portal. eEurope, An Information Society for All, Initiative. Available at: https://cordis.europa.eu/programme/id/IS-EEUROPE/es (accessed 1 May 2022).

In 2001, the European Commission, in its White Paper, defined European Governance[14] as the set of rules, processes and behaviours that affect the exercise of power in Europe in terms of accountability, effectiveness, coherence and participation[15] (Garrido, 2020: 115-140).

A few years later, in 2004, the Organisation for Economic Co-operation and Development (OECD)[16] published a study "eGovernment: An Imperative", where" it highlighted the achievements of the implementation of eGovernment in relation to the savings generated by eGovernment and its efficiency. At the same time, the Committee of Ministers adopted a Recommendation on democratic governance highlighting the benefits of eGovernment as a non-technical issue, emphasising that this transformation meant a considerable improvement in Public Administration service to citizens.

A year later, in 2005, the eEurope 2005 Plan[17] was approved at the Seville Summit with the objective of creating an electronic environment. On 25 April 2006, the European Commission launched the eGovernment Action Plan[18], also known as e-Goverment or e-Government (as part of i2010), setting out a roadmap for the development of eGovernment. This marks the start of the EU's information society through three key pillars: achieving a single European information space, strengthening innovation and investment in the field of ICTs research and achieving an inclusive information society. An itinerary constituted as an improvement in public services and their quality, seeking efficiency through the use of new technologies as a determining economic factor in a coherent and sustainable way.

On 12 December 2006, Directive 2006/123/EC was approved with the aim of making it compulsory for Member States to facilitate the electronic means necessary for access to procedures related to service and information activities.

In 2014, the OECD[19] published a document with Recommendations for the development of Digital Government Strategies. This document established 12 guidelines

---

[14] The White Paper on Governance, adopted by the Commission on 25 July 2001, published in the Official Journal of the European Union on 12 October 2001.

[15] Garrido Mayol, V. (2020). El principio de buena administración y la gobernanza en la contratación pública. *Estudios de Deusto: Revista de la Universidad de Deusto*, 68(2*), pp. 115-140.*

[16] OECD Portal. E-Government: An Imperative. Available at: https://www.oecd-ilibrary.org/docserver/9789264101197-sum-es.`pdf?expires=1652792058&id=id&accname=guest&checksum=D1AF9F18FEAB BCC48A9264FE4221D354 (accessed 25 April 2022).

[17] eEurope Plan (2005). An information society for all. Available at: https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52002DC0263&from=ES (accessed 25 April 2022).

[18] eGovernment Portal (2006). eGovernment Action Plan. Available at: https://administracionelectronica.gob.es/pae_Home/pae_Estrategias/pae_lineas_ccoperacion/pae_Cooperacion_Internacional/pae_estrategias_de_administracion_electronica/pae_Ambito_Europeo_Planes_accion_administracion_electronica.html (accessed 20 April 2022).

[19] OECD Portal (2014). OECD publishes a document with Recommendations for the development of Digital Government Strategies. Available at: https://administracionelectronica.gob.es/pae_Home/pae_Actualidad/pae_Noticias/Anio2014/Agosto/Noticia-2014-08-12-Recomendaciones-OCDE-estrategias-Adigital.html (accessed 12 May 2022).

to be taken into account in the development of digital administration strategies, with the aim of bringing them closer to citizens and companies by making use of new technologies, as they were already widely rooted in society.

However, all of the above was only a sample of the large number of international and EU instruments that supported and encouraged the use of electronic media for their unquestionable benefits in the application of good governance. However, we cannot forget that the main objective is the establishment of a new channel that facilitates the efficiency of the Administration in the exercise of its competences, as a modern public service[20], which helps citizens in their access to the improvement of public services and the general interest. Under no circumstances may its use entail a reduction in the rights of any group, nor an obstacle to the exercise of citizens' rights.

With the legal development of both concepts, they are modelled in favour of their efficient convergence, especially in the respect for vulnerable groups, the elderly and people with disability, in the exercise of their rights and the actions of the Administration in good governance. The aim is to reconcile the rights and freedoms of citizens with the agile and efficient development of administrative power, placing its actions at the service of the general interest.

4.   Public administration in the use of new technologies

4.1.   e-Government: principles, characteristics and objectives

From a physical point of view, it is necessary to start from a clear premise in communication, and even more so if we are dealing with a Public Administration. In order to achieve effective communication, a multitude of key factors must be present and a series of elements must be involved: a sender who sends the specific message; a receiver or individual in charge of receiving that communication; the message, information or data transmitted by the sender so that the content is understood in a fluid and effective manner; a channel through which the message is transmitted; and the code, as a fundamental element for it to be easily intelligible. Well, if this is the case, we must bear in mind that, if we change the channel, the Internet, we must ensure that all recipients have the capacity to understand the information transmitted, and this is exactly what is happening with the introduction of ICTs in Public Administration. In order to introduce any change in the means or channel of communication between citizens, the Administration and its effective communication, we must bear in mind that the Administration must check that the channel is appropriate. It must also guarantee effective two-way communication between the parties, to all the citizens it serves. This implies digital updating in both directions, administration-citizen,

---

[20] "By public service administrative activity we mean that the Administration provides services to citizens in order to guarantee the satisfaction of their needs. The essence of public service...is not the exercise of power, but the provision of services, for which, above all, it is carried out by the Administration...". Rebollo Puig, M. y Vera Jurado, D. J. (2019). "Modos y medios de la actividad administrativa". Derecho Administrativo. Tomo III. Madrid. Tecnos. Pp. 127-133.

both because they have the appropriate technical resources and, above all, because they are competent in terms of their digital capacity to ensure an effective process.

From a legal point of view, e-Government is understood as a new technological system based on information and communication through ICTs, with the aim of achieving an agile Public Administration, safe for everyone (according to Law 39/2015) and reducing institutional expenditure. In order to achieve this, it is essential to check the means or channels used by the recipient to whom it is addressed and according to Law 40/2015, for the effectiveness and efficiency of its operation and compliance with the Law and the law. Likewise, the Public Administration must ensure that the changes applied do not undermine any fundamental right. Special care should be taken in the case of fundamental rights such as the right to freedom, and even more so in the case of people with disabilities or the elderly (especially vulnerable due to lack of economic and technological resources or lack of digital literacy). It is imperative that Member States, in the spirit of transforming and updating their management environments, are able to integrate these new communication models in a space accessible to all. It is imperative that the new communication models meet the optimal requirements for their reach to cover all citizens on an equal footing. While it is true that the aim is to move towards the economy and efficiency of communication processes, we must not forget that the tools applied through ICTs can, depending on the users, lead to a situation of confusion, isolation, dependence and, in some cases, to the violation of some rights. These tools may still not be the most appropriate for vulnerable sectors of the population, and may generate a significant digital divide and harmful consequences. The digital disability divide is understood as exclusion[21] (Area, 2002: 64) and a barrier to social participation that causes a situation of inequality. This situation is on the rise and has an asymmetrical situation with technological development between the regions of the world, deepening inequality. The lack of access to ICTs produces deprivation of possibilities directly related to job insecurity, unemployment, and a bias in the distribution of wealth[22] (Vicente, López, 2005: 43-57).

We cannot ignore the obvious, that the use of information and communication technology represents a great advance in the optimisation of resources in public management, a saving of resources and an agile operation. But neither should we forget the subjective element of this new communication channel, the citizen and his or her heterogeneous social circumstances. Not all citizens have the same technological, economic or digital literacy resources[23] (Martínez and Estévez, 2021: 3). Faced with such a diversity of situations, the Public Administration must foresee the obstacles that

---

[21] Area Moreira, M. (2002). "Igualdad de oportunidades y nuevas tecnologías. Un modelo educativo para la alfabetización tecnológica". *Revista en Educar nº 29,* p. 64.

[22] Vicente Cuervo, M. R. y López Menéndez, A. J. (2005). Una aproximación a la brecha digital por discapacidad. El caso de la Unión Europea. *Boletín económico de ICE, nº 2834*, pp. 43-57.

[23] First-level digital divide refers to connection data and second-level digital divide refers to knowledge and use of the Internet.
Martínez Torán, M. y Esteve Sendra, C. (2021). "Estudio brecha digital y discapacidad: Una perspectiva centrada en las personas". Cátedra de Brecha Digital y Diversidad Funcional. Valencia, pp. 1-26.

arise with the transformation of its e-government based on ICTs, i.e., the automation of procedures and services as the only means of access. As a relevant experience in this automation process, it is worth highlighting that during the covid-19 health crisis, the use of new technologies as the sole channel of communication in a multitude of procedures with the Administration increased exponentially. This new inclusion generated significant dysfunction in the older and population with disability due to a lack of preparation for the change that was occurring at great speed and which, curiously, was introduced as a protective measure to avoid contagion through personal contact.

In view of the above, the criterion implemented during the pandemic has been maintained to date in many procedures as the sole means of access to the Public Administration. A key telematic procedure that has been implemented and has been in place since covid-19 has been the medical appointment procedure via telematic platforms. This system of access has generated, in the elderly and people with disability, an increase in dependence on their relatives and friends. The cause, in most cases, is the lack of resources and/or digital knowledge necessary to carry it out autonomously, generating discomfort, uncertainty and anxiety.

The introduction of ICTs in Public Administration must take into account a series of basic elements for its effective implementation. In addition to the channel used, as mentioned above, it is essential for users to have the necessary digital literacy in the use of the tools, as well as optimum knowledge of the code used. The analysis of the social groups at which the implementation of new technologies is aimed will favour their effective achievement: age, disability, training, technological and economic resources. It should also be taken into account that the platforms should be simple in order to generate trust and security; an intuitive interface that invites their use; standardisation of portals with single windows for all Public Administrations from a single platform for carrying out all formalities. It is essential to eliminate barriers that duplicate procedures, records and, thus, uncertainty[24] (Rodríguez, 2004: 1-23), complexity and lack of knowledge of the use of these new tools. In short, to establish a telematic environment accessible to all and respecting their freedom of choice.

Consequently, the elements that e-Government must have for its correct implementation and taking into account that it is at the public service of all citizens and that, a priori, it is heterogeneous, are: a suitable digital receiver and transmitter connected to an efficient, intuitive and accessible communication channel at the service of all; that the code used is simple to use and provides security for citizens; that the procedures used are flexible, avoiding the imposition of a single means of access, the technological one; that it provides a secure environment that guarantees the protection of citizens' data; that it is free to use; and finally, that it constitutes a "single window" for intercommunication with the different Public Administrations, in general terms.

---

[24] Rodríguez, G. (2004). Gobierno Electrónico: hacia la modernización y transparencia de la gestión pública. *Revista de Derecho. Universidad del Norte*, p*p. 1-23.*

If e-Government with ICTs meets the minimum standards that enable accessibility for all citizens in their diversity, good governance can be carried out securely and guaranteeing the rights of all[25] (Gascón, 2021: 80-108). Likewise, the appropriate integration of ICTs will promote a comprehensive cultural and technological change, in accordance with the demands and needs of the citizens it serves. We must not forget that the establishment of new means of communication and access to Public Administration through new technologies must be inclusive for all, especially the most vulnerable. We must be aware of the technological reality of society so that progress, in this new innovative process of access, meets the intended objective. If this is the case, the citizen will find himself/herself covered by the guarantees of the new instruments of administrative services that improve and protect their lives. Without forgetting that the fundamental principle of the use of ICTs in Public Administration is to guarantee free access to all citizens through e-Government, integrating a two-way, clear, agile and efficient communication, as well as respecting the freedom of citizens in terms of the choice of its use, as established in the explanatory memorandum of Law 39/2015.

4.2. Legal regime for citizens' relations with the Public Administration through ICTs in Spain

In view of the issue at hand, it is inexcusable to combine the right to freedom inherent to every person (elderly and people with disability), good governance and e-Government as a form of action that promotes and fosters the principles of all Administrations. As indicated above, the European Charter of Human Rights already indirectly includes electronic access, and it is therefore imperative that its implementation be carried out within the necessary legal framework. A framework that facilitates the establishment of the technological instruments used to achieve the most important constitutional objectives, which guarantees the freedom of all citizens in conditions of equality, free respect[26] and preservation of the integrity of their rights (Arenas, 2011: 99).

The main challenge in the use of ICTs in eGovernment is the preservation of citizens' personal rights based on the configuration of good governance[27], through the use of new technologies. Actions based on the principles of citizens' freedom, efficiency in the management of their competences, flexibility in access and proportionality in their

---

[25] Gascón Marcén, A. (2021). Los avances de la Unión Europea hacia la accesibilidad digital para las personas con discapacidad. *Revista General de Derecho Europeo, n° 53, pp. 80-108.*

[26] Arenas Ramiro, M. (2011). "Brecha digital de género: la mujer y las nuevas tecnologías". Anuario de la Facultad de Derecho, Universidad de Alcalá IV, pp. 97-125.

[27] Good Governance in the European Union has generated a quality research project and is currently undertaking the fourth edition of the EQI, published in 2021, based on measuring the perception of the quality of government in the EU. The concept of quality of government as a broad and multidimensional concept consisting of high fairness and quality in the delivery of public services, together with a low level of corruption. The concept also refers to how power is actually exercised, how the rules are perceived and experienced by citizens.
Portal of the Commission of the European Union (2021). European Quality of Government Index 2021.
Available at: https://ec.europa.eu/regional_policy/es/information/maps/quality_of_governance (accessed 2 May 2022).

actions. In short, the use of ICTs must always and in any case adhere to the principle of legality as a guarantee for all citizens in the exercise of their freedoms[28] (Aragùas Galcerà, 2012: 109-139).

We must not forget that distrust of the use of new technologies is a reality in certain sectors of the population (the elderly and people with disability) and their lack of knowledge can be an obstacle. If the Public Administration, when using the new technologies, detects that the recipients lack adequate training, thus creating a digital divide, they should eliminate their implementation as soon as possible. The new tools will be incorporated prudently, by observing the ICTs integration times of the most distrustful citizens in their use, adapting the necessary means to respect their freedom of choice to the medium they consider to be the safest (analogue or digital). The reality is that there are fears and misgivings about their use due to possible risks, causing uncertainty and anxiety as a result of a lack of knowledge of the new technologies.

It is inexcusable that the introduction of new technologies be governed by regulations that ensure the preservation of the constitutional guarantees of citizens in their relationship with the Public Administration. This can be seen in the Spanish Constitution of 1978, in Article 9.3, which expressly prohibits the arbitrary nature of the Administration; in Article 31.2, regarding the need to allocate public spending fairly through criteria of economy and efficiency; and in Article 103.1, which establishes that the Public Administration must objectively serve the general interest through the principles of effectiveness, hierarchy, decentralisation, deconcentration and coordination, with full submission to the law and to the Law. The use of e-Government in the constitutional text is recognised in Article 18.4, on the application of information technology; in Article 9.2, when it assigns public authorities to promote conditions of freedom and equality in a real and effective manner, guaranteeing minimum principles of action by the public authorities of legality, security, responsibility, etc., as well as the aforementioned rights. Therefore, citizens' right to freedom of choice in their dealings with the Public Administration cannot be circumvented while there is any hint of a digital divide in society. The law that introduces telematic innovations as a consequence of the modernisation of the system of good governance, cannot establish a limit for the administered and in no case can it restrict in any way the exercise of their rights or simply create obstacles.

Consequently, e-Government was introduced four decades ago with Law 30/1992 of 26 June 1992 on the Legal Regime of Public Administrations and Common Administrative Procedure[29] (now repealed). Already echoing the involvement of new technologies in citizens' relations with the Administration, Article 45, on promoting the use and application of new technologies, considered the Administration's use of computer

---

[28] Aragùas Galcerà, I. (2012). La Administración Electrónica en España: de la "administración en papel" a la "e-administración". *Revista chilena de derecho y ciencia política. V. 3, nº 2, pp. 109-139.*
[29] Spain. Law 30/1992, of 26 November, of the Public Administration and General Administrative Procedures (published in BOE of 27 November).

and telematic means to be appropriate for exercising its powers, allowing citizens to interact with the technical means at their disposal. Article 38 also provided for the computerisation of registers and archives. This incorporation materialised with the aim of extending communication facilities with citizens.

In addition, Law 24/2001 of 27 December 2001 allowed for telematic registers, both for the entry and exit of documents and the receipt of applications. It allowed interested parties to be notified by this means, if the citizen so indicated or consented to it as preferential.

Subsequently, the General Tax Law in 2003[30], allowed for electronic notifications and automated administrative action. In its explanatory memorandum, it reflected for the first time the importance of the use and application of electronic, computerised and telematic techniques and means by the Tax Administration. In Article 60, it already contemplated it as a means of payment; in Article 87, as a means of communication and information actions with the citizen; as social collaboration in Article 92 and a long list of other situations that invited participation through electronic means.

Law 11/2007, of 22 June, on citizens' electronic access to public services, went a step further by allowing citizens to interact by this means, incorporating in their systems the provision of the appropriate means to do so. However, this electronic communication was still subject to the voluntary nature of the users, but it represented yet another alternative channel, a facilitating channel that would help in the management of procedures, a saving for citizens and a reinforcement of their guarantees. The provision was proposed as an advance in the services that the Public Administration offered to citizens, providing agility in the processes and preventing the formalities for citizens from being cumbersome. According to the explanatory memorandum, this Law was developed out of a concern to adapt the means of access to the Public Administration to the current times. There is no doubt that new technologies should be introduced due to the great contribution of advantages and possibilities of the information society, as well as the configuration of a modern Public Administration increasing its principles of efficacy and efficiency as the inspiring axes of the electronic access process.

However, what all the approved provisions really constitute is the provision of adequate and modern telematic means of access to the Public Administration. They also imply the incorporation of instruments that facilitate efficient, flexible and agile communication for citizens, as well as the promotion of adequate information for citizens as a means of guaranteeing their rights; but nothing is established regarding the obligation for citizens to use the electronic medium, as this implies a significant investment. This transformation will undoubtedly require not only economic resources, but also personal resources for digital literacy, which could generate a problem of accessibility for some of the most vulnerable groups, such as the elderly and people with disabilities, if the use of new technologies becomes compulsory.

---

[30] Spain. Law 58/2003, of 17 December, of General Taxation (published in BOE of 18 December).

According to Law 11/2007, of 22 June, on citizens' electronic access to public services, the main objectives of the use of e-Government include: reinforcing the principles of effectiveness and efficiency; cost savings for citizens and companies; an increase in their guarantees; and an increase in transparency in the provision of information to citizens in an agile and up-to-date manner. This is a laudable intention as long as the telematic access channel between the citizen and the Public Administration is guaranteed for both parties. In view of the possible lack of coordination in the use of the new telematic media, Law 11/2007 created the figure of the User's Ombudsman, with the function of attending to citizens' complaints and suggestions to improve relations through electronic media, constituting an irreplaceable aid for the expansion of electronic culture among all.

Despite the kind intentions of all institutions, both national and EU, the integration of this new means of communication, based on electronic and telematic resources, has caused a problem of regulatory dispersion due to the multitude of provisions that regulate it. The clear example, according to the explanatory memorandum of Law 39/2015, is the approval of Law 17/2009, of 23 November, on free access to and exercise of service activities; Law 2/2011, of 4 March, on Sustainable Economy; Law 19/2013, of 9 December, on transparency, access to public information and good governance; or Law 20/2013, of 9 December, on guaranteeing market unity, among others. As a consequence, and with the aim of unifying criteria, Law 39/2015 and 40/2015, currently in force, were passed, where the use of telematic procedures is completely standardised and specified, responding, according to the legislator, to the social demand to make the telematic medium the habitual means of action.

Royal Decree 203/2021, of 30 March, which approves the Regulation of action and operation of the public sector by electronic means[31], is justified by the adaptation of telematic procedures to all citizens based on: improving administrative efficiency; increasing the transparency of its actions by developing an electronic General Point and the Citizen Folder; and ensuring that digital services are easy, intuitive and effective when using the electronic channel.

We must not forget that the obligation to adapt to electronic media is especially focused on Public Administration as a means of streamlining and making procedures more flexible, thereby increasing the guarantees for citizens. This adaptation highlights the good will of the institutions when they modernise their web platforms by providing them with more efficient communication processes. However, this efficiency, which enables the implementation of new technologies, must make clear the freedom of choice of use for everyone, including companies, in the event of a lack of technological resources. Something that has not happened, as these and self-employed workers, among others, are already obliged to interact with the Public Administration by telematic means, thus completely avoiding any difficulty in adapting and digitally transforming themselves. This has been regulated by Law 39/2015 in its article 14.2, establishing those obliged to communicate

---

[31] Spain. Royal Decree 203/2021, of 30 March, approving the Regulation on the action and operation of the public sector by electronic means (published in the Official State Gazette of 31 March).

electronically: legal persons, entities without legal personality, those who carry out a professional activity for which compulsory registration is required, those who represent an interested party who is obliged to interact electronically with the Administration and employees of the Public Administrations for the procedures and actions they carry out with them due to their status as public employees, in the manner determined by regulation by each Administration. Likewise, although natural persons are generally excluded from the obligation, those who, due to their economic capacity, technical capacity, professional dedication or other reasons, can prove that they have access to and availability of the necessary electronic means, are obliged to do so. In short, the obligation is widespread and much more so in recent times, as telematic administrative procedures have managed to establish themselves in all contexts, almost in a unique way. As a result, there is a limitation of the right of freedom to interact, whoever one may be, and in some procedures, all citizens are obliged to apply telematically (e.g. medical appointments). As a result, a digital divide is growing, especially among the elderly and people with disability.

4.3. Inconveniences in the exercise of the rights of elderly and people with disability through e-Government

Despite the obvious advantages provided by the use of electronic media in communications and access to the Public Administration, we should not ignore the existence of dangers and consequences, both positive and negative, especially for vulnerable groups. Producing a digital divide.

In terms of the positive aspects or consequences detected in the use of e-Government, we find the following: its agility, is undoubtedly the time saving it produces for both the Public Administration and the citizen, shortening distances, enabling immediate information and communication, which is very beneficial for the administered; efficiency in terms of the reduction of resources needed to serve citizens; the availability of access anywhere and at any time; the increase in citizen participation and information; ecologically sustainable, as it requires fewer material resources; and secure, if the appropriate personal data protection measures are established[32 y 33].

However, we must focus on the disadvantages that may arise for citizens in the use of ICTs with the Public Administration, with the aim of proposing solutions to protect the rights of all, especially the most vulnerable groups, the elderly and people with disability. Thus, we can highlight the following disadvantages:

---

[32] Spain. Organic Law 15/1999 of 13 December 1999 on the Protection of Personal Data (published in the Official State Gazette of 14 December) adapted our legislation to the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing in turn the hitherto existing Organic Law 5/1992 of 29 October 1992 on the Regulation of the Automatic Processing of Personal Data.

[33] Spain. Organic Law 3/2018 of 5 December, of Protection of Personal Data and digital rights guarantee (published in BOE of 6 December).

▫ *Inaccessibility* due to the lack of technological resources in some sectors of the population, especially vulnerable groups. It is clear that citizens do not use or possess the same technological structural means, resulting in the imposition of the only possible access, digital access, a situation of dependence, marginalisation, lack of protection and violation of rights for those who do not have them.

▫ *Digital illiteracy.* Knowledge of ICTs is a determining factor in enabling and promoting their use. The presence of social groups who, due to age or disability, do not have it, imposes a barrier to access and a detriment in terms of opportunities and violation of their rights.

▫ *High cost.* If the most vulnerable groups receive low pensions (especially non-contributory pensioners), the provision of technological tools for accessing to e-Government will be difficult to achieve for these vulnerable groups and, therefore, to obtain an adequate ICTs integration process. According to data from the Ministry of Employment and Social Security[34], the average pension in Spain in August 2022 is 1,091.28 euros. According to these data and in comparison to the current standard of living, it seems insufficient to maintain a good quality of life. We must not forget that new technologies require constant updating of applications, as a result of the research that takes place day after day, requiring more powerful equipment to avoid obsolescence and to guarantee access to the Administration's digital platforms. Likewise, depending on the Administration, there will be a clear difference in resources that will make it possible to update them and offer suitable platforms.

▫ *Vulnerability of personal data.* The privacy of citizens is essential and, therefore, that it be protected through digital platforms, as a multitude of sensitive data is used, which can be exposed by the countless cyber-attacks, causing insecurity. To this end, various regulations have been passed to protect the privacy of users (Organic Law 15/1999, of 13 December on the Protection of Personal Data and Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the guarantee of digital rights).

▫ *High complexity.* If we take a tour of the different digital platforms, we can see that some are cumbersome and not very intuitive, mainly due to the specificity of the standardised procedures. It is essential that they are simple to use, especially if they are aimed at many sectors of the population that do not have the necessary resources for effective communication with the Public Administration and whose rights may be violated.

In summary, in view of the consequences that arise from the integration of ICTs in the processes of communication and access to the Public Administration, we must affirm

---

[34] EPDATA Portal (2020). Pensions in Spain.
Available at: https://www.epdata.es/datos/pensiones-graficos-datos/20/espana/106 (accessed 6 September 2022).

that the obstacles that arise can be eliminated through the exercise of respect for freedom in the use or non-use of electronic processes. The implementation of e-Government should not entail a reduction in citizens' rights, regardless of their social circumstances. The use of ICTs imposes in its objectives the efficiency of the Public Administration and the general interest. It is essential to implement flexible procedures that facilitate the objectives of the Public Administration in the exercise and respect of citizens' rights and freedoms, giving special protection to vulnerable groups and, therefore, always and in any case, respecting the wishes and preferences of those being administered. The modernisation of Public Administration must take the necessary time to adapt to current times and the needs of users, balancing and reconciling its implementation. This will require freedom of choice for citizens with regard to the means of communication with the Public Administration, regardless of the area in which it is implemented. There is no doubt that, with the passage of time, generations will adapt to technological means, as well as with the help of the necessary resources through the consolidation of open networks for all and the subsidising of digital media for those most in need.

4.4. The digital divide among the elderly

Following the covid-19 pandemic, the emergency implementation of e-government communication processes through telematic media has had a negative impact on the most vulnerable sectors of the population, the elderly and people with disability. Moreover, there have been devastating consequences in the exercise of their rights due to a lack of digital competence and technological resources. This is how the digital divide[35] arises, understanding the concept in general terms as inequality in access to the Internet and ICTs. The solutions to eliminate the digital divide are classified into two types, one hard and one soft: the soft one deals with the technological infrastructure and the hard one with the starting point of the divide, the social and economic bias of the elderly and people with disability. The latter is more complex to eliminate because it is in turn integrated by different variables: economic, chronological, countries, gender and personal circumstances of each citizen[36] (Almenara, 2008: 15-43). According to sources, this circumstance is caused by the heterogeneity of the implementation of telematic resources derived from social imbalances at a global level. It is estimated that it affects 52% of women and 42% of men in the world[37]; a bias that does not occur continuously at a global level, as it will also depend on the economic and technological level of the world's regions, since

---

[35] In 2003, the United Nations held the so-called World Summit on the Information Society. The conference in Geneva resulted in a declaration specifying the importance of the right to freedom of expression in the framework of the "information society".
Visible Portal (2003). "6 key points on the digital divide and the right to the Internet".
Available at: https://www.visibles.org/es/actualidad/democracia-y-participacion/6-puntos-clave-sobre-brecha-digital-y-derecho-internet (accessed 1 May 2022).

[36] Almenara, J. C. (2008). TIC para la igualdad: la brecha digital en la discapacidad. *In ANALES de la Universidad Metropolitana. Vol. 8, nº 2, pp. 15-43.*

[37] Iberdrola portal. The digital divide in the world and why it causes inequality.
Available at: https://www.iberdrola.com/compromiso-social/que-es-brecha-digital (accessed 15 May 2022).

according to the Word Stats source as of May 2020, the African continent would have a much lower level of connection, around 39.3% compared to 87.2% of Europeans and 94.6% of North Americans.

There is undoubtedly a profound difference at the global level. These data show us the great technological divergence between one country and another, so that digital literacy is still in a process of consolidation through the promotion of progress, in search of a balance between the States in the different areas of society, educational in terms of technological training, economic in terms of the necessary structural and social resources, and ideological in terms of promoting the integration of all sectors of the population on an equal footing.

From the EU point of view, if we compare the digital divide in Europe by age or disability, this gap is even more accentuated. The Director General of the IMSERSO[38] in Spain expressly recognised this issue as a concern for defending the rights of the elderly, showing his interest in correcting it. Such is his recognition that the IMSERSO website[39] already includes an action related to the equalisation of the digital problem with the elderly, "ICTs accessibility space"[40]. In this section of the portal, there is a series of services aimed at training older people in the use of technologies and their approach through tutorials on the use of ICTs, online and face-to-face courses, useful advice on digital tools, etc. However, in order to reach this point, older people need to have the previous technological resources (PC, Smartphone, tablet), as well as the minimum knowledge of digital literacy to be able to understand the section. It is difficult to learn about the development of a new medium through it if we do not know how to access it due to a lack of basic digital skills. The idea can be very useful, but it is essential that the beginnings are carried out face-to-face in order to be effective. Likewise, a programme is currently being carried out in Spain "levanta la cabeza" through private institutions[41] (Atresmedia), with the aim of integrating the elderly in the use of ICTs.

---

[38] IMSERSO: The Institute for the Elderly and Social Services is one of the Spanish Social Security Management Entities responsible for the management of social services complementary to the benefits of the Social Security System, disability and retirement pensions, in their non-contributory modalities, as well as the exercise of the competencies of the General State Administration in matters of the elderly and dependent persons.
This institution was created through Royal Decree-Law 36/1978, of 16 November, on institutional management of Social Security, with Royal Decree 140/1997, of 31 January, it changed its name to the Institute of Migration and Social Services, and finally, Royal Decree 1600/2004, of 2 July, which develops the basic organic structure of the Ministry of Labour and Social Affairs, defined its current name.
Available at: https://www.imserso.es (accessed 5 May 2022).
[39] IMSERSO portal. La brecha digital de los mayores de edad.
Available at: https://blogciudades.imserso.es/tag/brecha-digital/ (accessed on 5 May 2022).
[40] IMSERSO portal. TEC accessibility space.
Available at: https://www.imserso.es/imserso_01/espaciomayores/esptic/index.htm (accessed on 1 May 2022).
[41] Portal Atresmedia (2022) "Levanta la cabeza" campaign.
Available at: https://compromiso.atresmedia.com/levanta-la-cabeza/ (accessed 23 May 2022).

According to a study in Spain on the digital divide in ageing, 73.3% of older people between 65 and 74 years of age would be using the internet by 2021. The increase of the connected population is considerable, as in 2006 the percentage was 5.1%, according to the National Statistics Institute (INE) in the "Survey on Equipment and Use of Information and Communication Technologies in Households". However, thanks to the health pandemic of 2020, its use has grown exponentially due to the needs that have arisen and, consequently, the digital divide has evolved favourably, minimising its percentage among people of age[42] and/or disability.

Analysing the oldest age group in depth, we can see that those over 74 years of age have not been included in the study, so that the results, if they had been included, would be less satisfactory. We can also observe that life expectancy at birth in Spain is 85.4 years for women and 80 years for men for the year 2020, according to the INE[43]. This is a similar average in the EU environment, although somewhat lower, denoting a considerable percentage eluded that generates fictitious results in the participation of the elderly in ICTs. And this is so because if we consider 83 years as the average life expectancy at birth in Europe and add the assumption that only the age range up to 74 years has been analysed, we detect that there are about 9 years undetermined in the survey on access to digital skills. This lack of study of people aged 75 and over would lead to a higher average digital divide, since they either have no access or only minimal access, as it has been ignored. If this age/disability group had been taken into account, it would mean a considerably lower percentage in the use of new technologies, giving rise to a clear consideration of the digital divide by age and disability.

In the survey on the internet use during the last three months, according to the INE[44] in 2019, the question was clarified a little more: 90% of young people between 16 and 64 used the internet in the last three months, 63% of people between 65 and 74 years old and, finally, 23% of people over 75 years old, clearly showing the digital divide by age and disability. In terms of gender, according to the same source in the 2021 survey of at least one computer literacy, for those under 65 there was no apparent difference, however, in the 65-74 age group, 45.8% of men compared to 33.2% of women, clearly showing the gender digital divide. The age group over 75 years has not been collected, but according to the trend, it is very likely that the difference is even more pronounced. In short, the digital divide is a fact among the elderly and people with disability, and much more so among women.

---

[42] Ageing online portal
Available at: https://envejecimientoenred.es/la-brecha-digital-por-edad-los-mayores-continuanreduciendola/ (accessed 2 May 2022).
[43] Portal of the National Institute of Statistics (2021). Life expectancy in Spain.
Available at: https://www.ine.es/ss/Satellite?c=INESeccion_C&cid=1259926380048&p=1254735110672 &pagename=ProductosYServicios%2FPYSLayout (accessed 10 May 2022).
[44] National Institute of Statistics Portal (2021). By 2030, significantly increase the number of young people and adults who have the necessary skills, in particular technical and vocational skills, to access employment, decent work and entrepreneurship.
Percentage of adults (16-74 years) who have performed computer-related tasks in the last 12 months by gender, age group and type of task.
Available at: https://www.ine.es/jaxiT3/Tabla.htm?t=46292 (accessed 5 May 2022).

5.   E-government and elderly and people with disability in a globalised world

ICTs have played a fundamental role in the phenomenon of globalisation, however, not all countries are in the same process of modernisation and development. This is why the global repercussion of the digital divide will be at different levels, depending on a multitude of elements, including their economy, social and technological development index and, obviously, their political and cultural factors that favour or do not favour change. And even the location factor, within the same country, could have an influence, and this is due to the existence of places that are not digitised, despite the technological progress of the country[45] (empty Spain) (Colom, 2020: 352).

In Europe, in 2020, the Commission produced a document entitled the "Digital Economy and Society Index[46] (DESI)" analysing the overall performance of digital competitiveness in its environment. Its results are very encouraging, especially in the wake of the health pandemic that exponentially boosted the use of digital technologies immediately. According to the report, among the most digitised countries were Finland, Sweden, Denmark and the Netherlands, including them as global leaders. They were followed by Malta, Ireland and Estonia. It should be noted that Ireland has had the most successful digital transformation in the last five years, followed by the Netherlands, Malta, and Spain, performing above the European average. The paper noted that the human factor and its digital skills were essential in this digitisation process. It considered that, if these factors were adequate, they would inexcusably favour an efficient communication and information system between citizens and the Public Administration and, in general, with the digital transformation of society. Likewise, the digital skills of the European population were analysed at a global level, with the result that 42% of the European population lacked the minimum digital skills. In terms of the use of digital public services, e-government and e-health, 67% of the European population was recognised as using these services, with Estonia, Spain, Denmark, Finland and Latvia standing out in this respect.

According to the "Global Information Technology Report" published by the World Economic Forum, in partnership with the World Bank's development programme (InfoDev) and INSEAD Business School, Finland is the world's leading country in ICTs deployment, as a result of the assessment of 82 countries[47]. The report produced a

---

[45] Colom, C. (2020). Las brechas digitales que deben preocuparnos y ocuparnos. *Ekonomiaz: Revista vasca de economía nº 98, pp. 350-353.*
[46] Portal of the e-Government Observatory (2022). Digital Economy and Society Index (DESI).
Available at: https://administracionelectronica.gob.es/pae_Home/pae_OBSAE/Posicionamiento-Internacional/ Comision_Europea_OBSAE/Indice-de-Economia-y-Sociedad-Digital-DESI-.html (accessed 3 May 2022).
[47] Portal of the European Commission (2022). Cordis.
Available at: https://cordis.europa.eu/article/id/19772-finland-ranked-best-in-world-for-ict-deployment/es (accessed 2 May 2022).

Network Readiness Index (NRI) revealing that the US had fallen to second place due to its inadequate ICTs diffusion, in contrast to Finland, which came first. The United Kingdom came seventh, Denmark eighth, followed by Germany in tenth place and the Netherlands in eleventh. Other EU countries were also well ahead, such as France in 19th place, Spain in 25th place and Italy in 26th place.

Given these circumstances, it is essential to differentiate between two determining factors: the technological level of a country and the implementation of ICTs in e-Government, as this does not necessarily imply that they are on a par, since there are considerable differences between some countries and others. In the UN study on "United Nations e-Government" published on 6 August 2020, from the 193 UN member states, Estonia together with Denmark and the Republic of Korea top the list of countries with the highest "e-Government Development Index"[48], with Estonia ranking first in e-participation index worldwide. It adds that Estonian citizens do all their business online, except for getting married, getting divorced and buying and selling real estate. So remarkable is Estonia's digital resilience that it has pledged to help 130 countries online, including Japan and the US[49], to bridge the digital divide by providing solutions through the e-Estonia Briefing Center.

In addition to Estonia, which is in first position, according to the ranking established by the "e-Participation Index" at world level, we find in the first positions: Republic of Korea, USA, Japan, New Zealand, Austria, Singapore and UK. The reason is conclusive, the direct consequence of the incidence of the covid-19 pandemic. The explanation is obvious, the urgency that occurs at the time of confinement and to avoid as much as possible the suspension of citizens' rights, causes the use of the necessary tools from all fronts, economy with e-commerce and the digitisation of the public sector. Not exempt from problems due to its immediate implementation, the serious incidence of the digital divide for many citizens is once again emerging, being even more pronounced in the most vulnerable sectors of the population, the elderly and people with disability. The International Telecommunications Union highlighted the existence of people who do not have access to technology, which puts them at a disadvantage compared to others who do. Thus, its discourse was oriented towards detecting the problem of access, based on the difference between those who know how to use them and those who do not. Although there are a large number of people who

---

[48] It is a ranking tool in terms of digital governance, capturing the scope and quality of online services, the state of telecommunications infrastructure and existing human capacity. It identifies each country's strengths, challenges and opportunities. It is a tool that supports countries' efforts to provide effective, accountable and inclusive digital services, with the aim of closing the gaps on the principle of leaving no one behind. Undoubtedly, its results are key for each country's ministers associated with digital policies and strategies. UN Portal. (2022). Global Launch of the UN E-Government Survey 2022.
Available at: https://publicadministration.un.org/en/Research/UN-e-Government-Surveys (accessed 29 May 2022).
[49] UN Portal. (2020). Covid-19 More government activities online despite persistent digital divide, according to annual eGovernment survey.
Available at: https://publicadministration.un.org/Portals/1/E-Government%20Survey%202020%20Press%20Releases.pdf (accessed 29 May 2022).

know how to use them and have the resources to do so, there is also a percentage who do not. Furthermore, he added that among those who do not, the majority were older people and people with disabilities because of their greater degree of difficulty and because they are not taken into account[50] (Bermúdez, Sevilla and Sánchez, 2014: 489-498).

However, at the global level and depending on their technological capabilities, most countries are keen to further implement eGovernment through innovative initiatives. Efforts will focus on removing the technological barriers that may arise between citizens and government, being aware of the very unequal access situation. However, despite the difficulty, the goal of digital transformation is a fundamental part of sustainable development in many countries[51]. As an analysis that clearly shows the current situation, the "E-Government Survey 2020" highlights the key points that it detects as problematic in the application of ICTs. Among the most important points: the absence of benefits, the existence of barriers due to lack of understanding of data, limited resources, concerns with data quality, security and privacy, including finally the requirement for a long-term approach. This leads us to conclude that despite the efforts for the efficient integration of ICTs in e-Government in a globalised way, serious dysfunctions are detected, depending on the country and its development, with citizens due to a multitude of factors, but especially due to the lack of resources, both technological and those derived from digital competence.

6. Conclusions and proposals for improvement

To conclude, this study has been based on the protection of the rights of elderly and people with disability in their freedom of choice in the form of access to Public Administration procedures through e-Government. It has analysed the consequences of the incorporation of e-Government on a regular basis in all areas of life, transforming society in the use of ICTs and much more, since the covid-19 health pandemic. While it is true that new technologies play a fundamental role in the development of society, it is also true that, if the processes of incorporation are not adequate, they can cause a marked digital divide, especially in the most vulnerable groups, as observed in the data.

Despite the advantages of the incorporation of ICTs in information and communication processes, we cannot forget, as has already been developed throughout the text, that the obstacles can produce devastating consequences in groups that are not yet prepared for it, either due to a lack of economic or technological resources, or due to the new technologies introduced in the information and communication processes. Likewise,

---

[50] Escandell Bermúdez, M. O., Fortea Sevilla, M. D. y Castro Sánchez, J. J. (2014). La brecha digital en las personas con discapacidad visual. *Revista INFAD de Psicología. International Journal of Developmental and Educational Psychology. V. 1*, pp. 489-498.

[51] UN Gateway. (2020). Welcome remarks and key messages. Launch of the UN E-Government Survey 2020.
Available at: https://www.un.org/development/desa/statements/mr-liu/2020/07/remarks-launch-2020-egov-survey.html (accessed 29 May 2022).

it is a reality that promotes a large number of advantages for the citizens of the world, but it should be highlighted that its exclusive use can lead to the violation of citizens' rights, especially those of older or with disability citizens due to a lack of adaptation to the environment, either due to a lack of technological, economic or even social resources.

After noticing the obstacles that occur in the procedures and access to e-Government for the elderly and people with disability, it can be seen that society is not yet ready for digital communication as the "only" system for information, communication and access to administrative procedures. It is imperative that the right to freedom to choose how to access Public Administration is maintained, that the implementation of eGovernment is an opportunity for citizens to improve their lives and not just an aid to speed up the administration's procedures. It is necessary that citizens' rights remain intact through respect for the freedom of the individual in achieving his or her effective integration in all areas of community life.

As a result of this work, the following considerations are proposed:

Firstly, the maintenance of analogue processes of access to the Public Administration for all citizens and even for companies, so that their right to freedom is thereby fully respected. The absence of digital skills or technological resources should not be an obstacle to communicating with the Public Administration. As we have already seen, e-government is a mechanism that increases the efficiency and effectiveness of the actions of the administration at the service of citizens. It is essential to give citizens and companies with limited resources the freedom to interact with the Administration in the most advantageous way for them, until time incorporates the necessary digital training for all. If the two systems of access are maintained, both for citizens and companies, respect for citizens' rights will be guaranteed, and even more so for the elderly and the people with disability.

Secondly, it is proposed to implement a technological support service for citizens. In the offices of the Public Administration and through the principle of proximity, it would be advisable to incorporate a physical support person nearby, a support person in each territorial entity to serve as a bridge for accessing to new technologies. This figure would be a great help for the age and disability groups, as, in addition to providing support, he or she would promote a training link for citizens lacking digital literacy (proposing ICTs courses, tutoring access, etc.). The presence of a person close to the Public Administration will provide security for citizens with access problems and a lack of digital literacy and economic and technological resources. This personal assistant, located in each Public Administration register, would have the competence to support people who need it in their procedures, with the aim of alleviating their anguish, clearing their doubts and providing them with guarantees in the exercise of their rights without any obstacle whatsoever. Preserving the freedom to choose the means of communication with the Public Administration does not entail any added cost, since until the introduction of ICTs this had been done in an analogue manner. However, granting freedom of choice would be a gesture of respect for the diversity and freedom of citizens, regardless of their age or disability.

Public aid for accessing to technological resources (pc, tablet, free software, etc.) as well as for internet services with more economical fees based on age, internet vouchers. Open wifi access in public centres financed by local entities, as new technologies must reach everyone as services of social interest[52] (SIG). From here we propose to go further and consider it as a service of general social interest[53], due to its necessity and repercussion on the population worldwide, so that everyone has access to digital information and communication regardless of their economic circumstances. If we are in the age of communication and information at a global level, it is logical that everyone should have the possibility of accessing to knowledge by having the appropriate resources, since the treasure of a people is its education and culture[54] (Delors, 1996: 46).

To conclude, after this study, it is indisputable to highlight that the citizens' right to freedom must remain unscathed in the face of any social transformation, even when the integration of change is in favour of improvements in the Public Administration system, since its objective is to be at the service of the citizens. It is inevitable that the technological changes that have taken place in recent decades will generate some dysfunction, and even more so due to the urgency of their implementation. However, processes must be adjusted in order to find solutions for all citizens, especially for the most vulnerable sectors of the population, the elderly and people with disability. We must not forget that progress must always go forward with all citizens, respecting differences, social circumstances and especially our right to freedom.

7. BIBLIOGRAPHY

ALMENARA, J. C. (2008). TICs para la igualdad: la brecha digital en la discapacidad. *In ANALES de la Universidad Metropolitana. Vol. 8, nº 2, pp. 15-43.*

ARAGÙAS GALCERÀ, I. (2012). La Administración Electrónica en España: de la "administración en papel a la "e-administración". *Revista chilena de derecho y ciencia política. V. 3, nº 2, pp. 109-139.* https://doi.org/10.7770/rchdcp-V3N2-art425

---

[52] Within the European framework of Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (Users' Rights) and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (Better Regulation), Law 9/2014 of 9 May, General Telecommunications Act (published in the Official State Gazette of 10 May) is regulated in Spain. Article 2.1. on telecommunications as services of general interest establishes that telecommunications are services of general interest that are provided under free competition.

[53] Services of general interest are those that are considered as such by the Public Administrations of EU Member States and are therefore subject to specific public service obligations. Social services of general interest address the needs of the most vulnerable citizens and are based on the principles of solidarity and equal access. They can be both economic and non-economic.
European Union portal. Services of general interest.
Available at: https://ec.europa.eu/info/topics/single-market/services-general-interest_es (accessed 3 May 2022).

[54] Delors, J. (1996). "La Educación encierra un tesoro". Informe a la UNESCO de la Comisión Internacional sobre la Educación para el Siglo XXI (Compendio. Documento de reunión, p. 46.

AREA MOREIRA, M. (2002). "Igualdad de oportunidades y nuevas tecnologías. Un modelo educativo para la alfabetización tecnológica". *Revista en Educar nº 29, p. 64.*

ARENAS RAMIRO, M. (2011). "Brecha digital de género: la mujer y las nuevas tecnologías". Anuario de la Facultad de Derecho, Universidad de Alcalá IV. Pp. 97-125.

COLOM, C. (2020). Las brechas digitales que deben preocuparnos y ocuparnos. Ekonomiaz: *Revista vasca de economía nº 98, pp. 350-353.*

DELORS, J. (1996). La Educación encierra un tesoro. Informe a la UNESCO de la Comisión Internacional sobre la Educación para el Siglo XXI (compendio). Documento de reunión. P. 46.

ESCANDELL BERMÚDEZ, M. O., Fortea Sevilla, M. D. y Castro Sánchez, J. J. (2014). La brecha digital en las personas con discapacidad visual. *Revista INFAD de Psicología. International Journal of Developmental and Educational Psychology. V. 1, pp. 489-498.* https://doi.org/10.17060/ijodaep.2014.n1.v1.396

FERNÁNDEZ SUAREZ, J. A. (2018), El derecho de libertad en Eduardo García Máynez. *Revista de Posgrado en Derecho de la UNAM. Nueva Época nº 8. Pp. 267-294.* https://doi.org/10.22201/fder.26831783e.2018.8.74

FERREIRO VIÑUALES, S. (2015). El artículo 41 de la carta de los Derechos Fundamentales de la Unión Europea: una visión crítica. *Estudios de Deusto, 63(1). Pp. 423-435.* https://doi.org/10.18543/ed-63(1)-2015pp423-435

GASCÓN MARCÉN, A. (2021). Los avances de la Unión Europea hacia la accesibilidad digital para las personas con discapacidad. *Revista General de Derecho Europeo, nº 53), pp. 80-108.*

GARRIDO MAYOL, V. (2020). El principio de buena administración y la gobernanza en la contratación pública. Estudios de Deusto: *Revista de la Universidad de Deusto, 68(2), pp. 115-140.* https://doi.org/10.18543/ed-68(2)-2020pp115-140

LASARTE, C. (2019). "Compendio de derechos de la persona y el patrimonio". 9ª edición. Dykinson. Madrid. Pp. 23.

MARTÍNEZ TORÁN, M. y Esteve Sendra, C. (2021). "Estudio brecha digital y discapacidad: Una perspectiva centrada en las personas". Cátedra de Brecha Digital y Diversidad Funcional. Valencia. Pp. 1-26.

REBOLLO PUIG, M. y Vera Jurado, D. J. (2019). "Modos y medios de la actividad administrativa". Tomo III. Madrid. Tecnos. Pp. 127-133.

RODRÍGUEZ, G. (2004). Gobierno Electrónico: hacia la modernización y transparencia de la gestión pública". *Revista de Derecho. Universidad del Norte, pp. 1-23.*

TOMÁS MALLÉN, B. (2004). "El derecho fundamental a una buena Administración". MAP-INAP, Madrid. Pp. 179.

VICENTE CUERVO, M. R. y López Menéndez, A. J. (2005). Una aproximación a la brecha digital por discapacidad. El caso de la Unión Europea. *Boletín económico de ICE, n° 2834, pp. 43-57.*