

(RE)INVENTING THE HOUSE OF JUSTICE: FROM COURTHOUSE BUILDINGS TO THE METAVERSE

(RE)INVENTANDO A CASA DA JUSTIÇA: DOS EDIFÍCIOS DOS TRIBUNAIS AO METAVERSO

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RESUMO

Os edifícios dos tribunais são definidos como ambientes simbólicos e ritualísticos nos quais as pessoas experimentam a autoridade judicial. Com a eclosão da pandemia de covid-19, o acesso aos espaços físicos dos tribunais foi severamente limitado, ao mesmo tempo em que se verificou um aumento na utilização de ferramentas digitais e de trabalho remoto. A utilização e/ou o desenvolvimento de tecnologias digitais tem assim marcado o quotidiano do poder judicial em muitos países. É, no entanto, importante refletir sobre as consequências da transformação digital em curso, especialmente quando a administração de justiça já está ocorrendo no metaverso (experiências no Brasil e na Colômbia, por exemplo), levantando questões pertinentes: Ainda precisaremos de tribunais físicos? Com que finalidade, de que forma e para quem (que tipo de usuários)? As nossas questões centram-se no equilíbrio entre justiça digital e cidadania. Com este artigo pretendemos refletir sobre o futuro do tribunal físico, enquadrando-o no contexto português. A análise beneficia-se de pesquisas anteriores, incluindo um inquérito aplicado em 2022 a juízes portugueses, avaliando a sua visão relativamente à utilização de tecnologias digitais. As

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suas percepções são cruciais para compreender as transformações tecnológicas e os seus impactos no futuro dos tribunais físicos e da própria justiça.

Palavras-chave: tribunais; justiça digital; metaverso; cidadania; acesso à justiça.

ABSTRACT

Court buildings are defined as symbolic and ritualistic settings through which people experience judicial authority. With the eruption of the covid-19 pandemic, access to physical spaces of courts was severely limited, while an increase in the use of digital and remote working tools came to take place. The use and/or development of digital technologies has thus been marking the daily life of the judiciary in many countries. It is, however, important to reflect upon the consequences of digital transformation underway, especially when justice is already taking place in the metaverse (i.e., experiences in Brazil and Colombia), raising pertinent questions: Will we still need physical courts? For what purpose, in what forms, and to whom (type of users)? Our questions are focusing the balance between digital justice and citizenship. With this article, we intend to reflect on the future of the physical courthouse, framing it within the Portuguese context. The analysis benefits from previous research, including from a survey applied in 2022 to Portuguese judges, assessing their views regarding the use of digital technologies. Their perceptions are crucial to understand the technological transformations and its impacts on the future of the physical courthouses and justice itself.

Keywords: courts; digital justice; metaverse; citizenship; access to justice.

INTRODUCTION

Court buildings, through their particular architectures, and as public buildings that are seen, used and experienced by diverse types of court users, provide not only a space for justice to function, but have helped to define a symbolic and ritualistic setting through which people experience judicial authority as state institution and power, with a strong connection to the history, politics, economy, and culture of each country, which also comprises legal and judicial culture.

With the eruption of the covid-19 pandemic, access to the physical spaces of the courts was severely limited, while an increase in the use of digital and remote working tools came to take place. The use and/or development of digital technologies, videoconferences, and online

platforms to carry on virtual hearings and trials, especially during the first periods of the pandemic, has spread faster than expected and its reversion does not seem an option for courts and judicial professionals. Such a technological environment has thus been marking the daily life of the judiciary, in Portugal and in other countries, in a trend that occurred simultaneously in multiple zones of the globe.

However, and moving beyond the implementation of emergency measures, it is important to reflect upon the consequences that this process of digital transformation underway may have, in particular: the impacts that the use of virtual/digital tools and teleworking had and will have on court buildings; the importance of the physical space to the judicial system; and the importance of courthouse architecture, as a cultural and symbolic reference. In view of the consequences of the application of digital technologies as a support for the acts of judging, without the presence and interaction of its actors in the physical spaces of court buildings, but in some cases already taking place in the metaverse (like it happened recently in Brazil and in Colombia, for example), several questions may be raised: Will we still need physical courts? Will we continue to build courts? For what purpose, in what forms, and to whom (type of users)? In short, our questions consider the courthouses of the (near) future.

With this article, we intend to reflect on the future of the physical courthouse, framing it within the Portuguese context. More concretely, the analysis benefits from previous research projects on courthouse architecture and judicial organisation (Branco, 2016, 2019), on the working conditions of judicial professionals, and on the use of technologies (Casaleiro *et al.*, 2023a; Dias *et al.*, 2021). We will also use data from a survey applied in 2022 to the Portuguese judges, to assess their views regarding the use of digital technologies in the courts⁴. The judicial professionals' perceptions of the general state of maintenance and adequacy of the courts' buildings, and the use of digital technologies and teleworking in the judicial system are crucial to understand the technological transformations and its impacts on the future of the physical courthouses.

⁴ The survey was elaborated by a group of researchers of the Permanent Observatory for Justice (OPJ) at the Centre for Social Studies of the University of Coimbra, Portugal, but is part of a much larger research project that is being led by Tania Sourdin from the University of Newcastle, Australia, and Brian Barry from Dublin University of Technology, Ireland. The international research project sought to assess different judges' views about the application of technology to their role and the courts' uptake of newer technologies. The survey's questions were grouped around the following categories: 1) demographics of the respondents, 2) judicial resources and digital working, 3) the judiciary and technology, 4) working conditions, 5) training and personal development, 6) change in judiciary, 7) being a member of the judiciary, and 8) psychological distress among the judiciary. These questions formed the base of the survey. Nevertheless, to ensure accuracy, each jurisdiction that desired a multilingual survey was responsible for providing a translated version of the English one, which the Portuguese team did. The survey was online between April 20th and May 20th of 2022 and had a response rate of 12.8% (258 respondents), considering the total of 2,021 judges working in all Portuguese courts. For more information, see Casaleiro *et al.* (2023b).

CONTEXT

In the last two decades, the digital transformation of the judicial system has become a central concern of public policies for the administration of justice by several governments, in Europe and elsewhere, and a key element of its modernization, mainly with the aim of improving the performance of courts in terms of efficiency, efficacy, speed and procedural workload. With the outbreak of the covid-19 pandemic at the beginning of 2020, we witnessed an increase in the use of digital working tools, videoconferences, as well as the availability of online platforms for courts to carry out their hearings and judgments.

In Portugal, following the first declaration of the State of Emergency, access to Portuguese court buildings was conditioned and face-to-face/in person court services and proceedings severely restricted. Simultaneously, alternative ways of delivering court services were adopted or reinforced, namely through the uptake of various technologies.⁵ Consequently, between March and May of 2020 (the first lockdown period), 78.2% of the judges and 64.7% of the public prosecutors' respondents worked at home most of the time. Of these, nearly 25% of the judges and 10% of the public prosecutors reported working exclusively from home (Casaleiro *et al.*, 2023a).

In this regard, the implementation of this type of measures in the Portuguese courts relied heavily on the pre-existing technological infrastructure, but also on the provision of solutions such as the Cisco Webex Meetings tool. The CITIUS platform involved the modernization of core IT systems in the courts, including judicial electronic processes from first instance courts to the supreme courts, and more than 100 technological features in all Magistrate Information Systems. Also, and as part of the Justiça + Próxima program, Portugal is increasingly employing IT applications, including for case management, e-filing, document management, digitalization of courtroom functions, human resources management tools, help desk and public information systems (including ChatGPT technology⁶) (Casaleiro *et al.*, 2023).

In this respect, it results from the data of the Survey applied in 2022 that 72.5% of the Portuguese judges use case management systems; 79.8% use online legal databases to access case law, legislation, commentary, etc.; and 76.7% make use of Remote video conferencing (e.g., Zoom, Microsoft Teams, Webex or similar) (Casaleiro *et al.*, 2023b).

IMPACTS OF THE DIGITAL TRANSFORMATION OF JUSTICE

As we know, the digital transformation of justice does not only imply changes and adaptations in terms of technology; it also implies institutional, organizational, and regulatory changes (Rossner, 2021). Researchers have drawn attention to the transformative power of ICT in what

⁵ For a more detailed and global analysis of the measures taken by Portuguese government/public authorities and the implications of covid in fundamental rights see Centre for Social Studies, *Coronavirus pandemic in the EU – Fundamental Rights Implications*. FRA, https://fra.europa.eu/sites/default/files/fra_uploads/pt_report_on_coronavirus_pandemic_july_2020.pdf [accessed 01 October 2023].

⁶ See A estratégia - GovTech Justiça (justica.gov.pt).

concerns the roles and practices of the judicial professionals, in their daily routines (Fernando, Gomes & Fernandes, 2014), the decision-making processes (Gualdi & Cordella, 2021), and the professionals' relationships (increasing the dependence of magistrates on IT experts) (Susskind, 2020). Existing literature also points to the impacts that ICT may have on the spatial needs of the courts, raising the possibility of courts having both physical and virtual manifestations, requiring a shift in thinking about courthouse design (with courts having both physical and virtual manifestations), particularly in what regards the number of buildings and the design of courtrooms, magistrates' working spaces, and electronic storage/archival spaces (Marks, 2016; Branco, 2019; Rossner, 2021).

Since the 1990s, several authors have thus been discussing the digital transformation of justice, pointing out its potential positive and negative aspects, in technological, material, working and symbolic terms (Mulcahy, 2008; Mohr & Contini, 2011; Marks, 2016; Rowden & Wallace, 2018; Susskind, 2020; NCSC, 2021; Rossner, 2021).

Positive Aspects

Among the positive aspects we can highlight: procedural efficiency and swiftness; the protection of vulnerable parties and witnesses (online dispute resolution may help in dealing with emotions in family courts by physically separating contentious parties, or by providing adolescents a medium where they feel more comfortable engaging in the process); the introduction of IT mechanisms to facilitate the participation of distant persons or remote communities; the reduction of foot circulation in courthouses; the reduction of financial costs, and of traveling and waiting times; and the offering of potential new types of services to the public, both virtually and in person (Colburn, 2021).

The next observations, resulting from the applied Survey on judges (Casaleiro *et al.*, 2023b), illustrate these arguments well:

"Videoconferencing is important to allow testimony from those far away from the trial site, it limits the cost to the parties and allows for quicker resolution of cases." (Judge 4511709, survey 2022)

"Face-to-face trials are preferable; however, technology is important to 'shorten' distances that could make the collection of testimonial evidence unfeasible." (Judge 4548013, survey 2022)

"With regard to hearings of convicts/defendants, prior hearings, conciliation hearings, and other steps that do not involve interactions between the other procedural actors and the documentation in the file, I consider that the use of remote means makes them much more expeditious and productive." (Judge 4545732, survey 2022)

Consequently, 65.9% of the respondents consider that technology will enable them to perform their work more effectively in the future (Survey 2022). Consequently, there are high expectations regarding the digitalization of justice⁷.

Furthermore, 90.24% of the respondents consider that the increased use of digital technology in the judicial system has had a positive impact on access to justice (Survey 2022). For the

⁷ On the question of the significance of expectations in technology innovation, see Borup, Brown, Konrad & Van Lente, 2006.

perception of a positive impact the judges indicated factors such as digital literacy of lawyers, ease of court process when used remotely, and availability of internet and audio-video technology.

Negative Aspects

In terms of the negative aspects, the problems related to security and privacy of data and the inefficiencies/failures of the technological systems are among the first to take into consideration. In this respect, the covid-19 context showed the critical importance and usefulness of a robust technical infrastructure and of end-to-end digital processes in the judicial system. The necessity of a prompt adaptation to a range of technologies inevitably generated problems related to the poor internet connection or even inexistence of Wi-Fi in some courts; the lack of the necessary equipment for court clerks and court users; the fragility of systems that lacked the sophistication to cope with unexpected demands; the inadequate mechanisms of data protection; the lack of training in the use of the new technologies; and the lack of IT support services when there were difficulties (Casaleiro *et al.*, 2023b). This observation from a Portuguese judge is emblematic of such situation:

“Insufficient variety of means of remote communication available for the trial. Limited portable computer without allowing its use as a tablet or the adaptation for android system to facilitate communication. Lack of an online agenda management. Absence of video recording of testimonies. Lack of multiple screens in the courtroom so that all participants can see the necessary evidence. Very poor sound and image quality and real-time capacity in the videoconference system, and in the WEBEX system.” (Judge 4545724, survey 2022)

An additional problem relates to the stress that technology may pose to the buildings, which, in many cases and contexts, were not prepared to cope with the demands of IT infrastructures. These observations made by the Portuguese judges are elucidative of that, particularly in terms of optimal view of the participants involved:

“The design of the courtrooms prevents all participants from having an optimal view of who is being heard via the online system [position of the screen]”. (Judge 4545710, survey 2022)

“[...] the WEBEX system works satisfactorily. Nonetheless, the monitor available in the courtroom, as it is the only one available, is placed in a position that does not allow a comfortable view by all the interveners (judge, lawyers, and witnesses)”. (Judge 4545746, survey 2022)

“The lack of adequate space to work in the court makes the usefulness of the available IT resources quite unfeasible.” (Judge 4512242, survey 2022).

Another negative aspect that is repeatedly mentioned regards the loss of symbolism and formalism of the judicial space when it becomes virtual (Rossner, 2021), as well as the impacts this may have on the principles of immediacy and publicity of the hearings. Therefore, 76.30% of the Portuguese judges consider it preferable to have in-person hearings (Survey 2022), as the next excerpt distinctly illustrates:

“Remote hearings are a mistake. As far as possible, they should be face-to-face. The parties and other interveners must go to the Court to understand the meaning of it, and what they are going to do there. It is no coincidence that Courts should not be installed in office buildings. Courthouses are buildings with dignity because they represent a sovereign function of the State”. (Judge 4548005, survey 2022).

“With regard to trials, instructive debates, or first judicial interrogations, I always choose to do them in person, especially since it is normal to have to confront witnesses/experts or parties with documents of the process, which is difficult to do remotely. Regarding hearings of convicts/defendants, prior hearings, conciliation attempts, and other hearings that do not involve interactions between the other procedural actors and the documentation in the court file, I consider that the use of remote means makes them much more expeditious, and productive.” (Judge 4545732, survey 2022).

“The simultaneous use of zoom or videoconferencing systems prevents the defendants from attending all the acts of the trial, when they are not physically present.” (Judge 4545597, survey 2022).

The architectural design of the building and courtroom ritual, which is often seen as intimidating (Rossner, 2021), can likewise be seen as guaranteeing the impartiality and seriousness of justice, which may be lost when the hearing takes place on a digital platform. The use of these platforms may transmit to the parties the feeling of being before a second-class justice (Kitzinger, 2020), as the materiality of the courtroom and associated symbols may get lost (Rowden, 2018; Garapon, 2021). Thus, 31.84% of the Portuguese Judges are Somewhat concerned and 17.32% are Extremely concerned with the Reduction in face-to-face hearings (Survey 2022). The next excerpts are elucidative of such an anxiety:

“In the trials, the production of evidence should not be carried out remotely, as this harms the immediacy of the judge with the means of evidence, the dynamics of the inquiries, the control of the environment where the witness is and the direction of the works - all in prejudice of the discovery of the truth and consequent material justice.” (Judge 4521405, survey 2022).

Additionally, the quality of the IT software and hardware also raises many difficulties. It may be useful for several prior procedural phases, but it has impacts on the quality of justice that may be achieved, and the evaluation that judges must do of all the aspects concerning the hearings, as the excerpts suggest:

“Due to the poor technical quality of sound and image, there is a sacrifice of the principle of immediacy, and it is tremendously exhausting, due to the effort spent in trying to attentively understand it all in the midst the noise, communication failures, poor quality of the image, communication breaks...” (Judge 4511626, survey 2022).

“Online trials do not allow an analysis of all the witnesses’ behaviour (non-verbal language).” (Judge 4545710, survey 2022).

Even though the respondent judges mostly focused on the negative aspects related to IT infrastructure and available tools, particularly their defects, it is quite interesting to observe that their perception is, nevertheless, quite confident regarding the high expectation judges manifest for the digitalization of justice (as mentioned earlier, 65.9% of the respondents consider that technology will enable them to perform their work more effectively in the future).

FROM DIGITAL JUSTICE TO THE METAVERSE

The holding of videoconferences and the use of digital tools and platforms have thus become, in the last three years, a common practice. In the Philippines, for example, Chief-Justice

Gesmundo announced, in September 2022, that all court proceedings will take place via video-conference even after the end of the pandemic (Sarao, 2022).

Beyond the use of videoconferences or digital tools and platforms, however, court hearings are starting to take place also in the metaverse⁸. It happened in Brazil, in September 2022, where the Federal Court in Paraíba⁹ held the first court hearing in an immersive and hyper-realistic virtual environment; and in February 2023 in Colombia¹⁰, when the administrative court of Magdalena, in the city of Santa Marta, conducted a court session on the metaverse to hear a case against the Colombian Ministry of Defence and the National Police.¹¹

The promise of virtual environments in the metaverse is that of greater sensory interaction, capable of reducing distances and optimizing time; of creating a friendly environment for vulnerable parties and witnesses, particularly children; and making justice more efficient and empathetic to the citizens of the future, thus improving access to justice. But: what could be the negative aspects? It is necessary to think about the deterritorialization (Scarselli, 2020) of justice caused by virtualization¹², and the impact produced on judicial organisation, as well as the question of the permanence of telework (of judges, prosecutors, and court officials). What kind of relationship will the court have with the local social context, with the context of the conflict, and with the community itself? Furthermore, are the courts in the metaverse mere 3.0 reproductions of the physical courthouse buildings, with all their problems, and structural and architectural wear and tear? Is the usage of cartoon-like/caricatured (avatar) characters in the metaverse appropriate for a court-style setting¹³ (as it was asked after the Colombian trial¹⁴)?

⁸ According to a recent study (Maciejewski, 2023) prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, 'The concept of a metaverse refers to the migration of various parts of the human experience from the physical world to an increasingly immersive virtual world'.

⁹ See <https://www.cnj.jus.br/justica-federal-na-paraiba-realiza-primeira-audiencia-real-do-brasil-no-metaverso/> [accessed 01 October 2023].

¹⁰ The hearing is accessible here: <https://www.youtube.com/watch?v=LXi2TX9OBmQ> [accessed 01 October 2023].

¹¹ Colombian legislation passed in 2022 – Ley 2213 – expressly establishes that cutting-edge information technology can be used. In Brazil, the *Código de Processo Civil* (art. 236) establishes the use of virtual mechanisms of interaction in real time in the judicial system.

¹² On this aspect, the study prepared by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee claims that 'The complexity of cross-border civil and commercial law relations and litigation that may be involved in metaverse encompasses issues of identifying competent courts, procedural and substantive law among different judicial systems of the Member States and possibly the U.S. legal system where main metaverse services are based. Rules on enforcement add additional complexity to this landscape'. (Maciejewski, 2023).

¹³ See <https://www.firstpost.com/world/colombian-judge-sets-up-a-meta-court-holds-hearing-in-the-metaverse-12215002.html#:~:text=A%20judge%20in%20Colombia%20took,session%20in%20the%20digital%20world> [accessed 01 October 2023].

¹⁴ "The magistrate and the other participants sat in a virtual hearing room decorated with sleek office furniture and a few plants, flanked by floor-to-ceiling windows looking out onto a blue sky, mountains and a few elegant office buildings". See <https://www.law.com/international-edition/2023/02/19/justice-in-the-metaverse-heres-what-the-first-virtual-court-hearing-in-colombia-looked-like/?slreturn=20230417062636> [accessed 01 October 2023].

Or can the metaverse help improve “physical” buildings by taking users and professionals to a high-quality “virtual court”?

If we think that the virtual environment, created by videoconferences, video links or the metaverse, will not replace or do away with the physical environments, it is necessary to consider how the articulation between offline and online will be made. Susskind (2020) mentions that we will have hybrid courts, a mix between face-to-face and virtual hearings. Nevertheless, how this articulation or interoperability between the physical court and the virtual court will be implemented (using virtual platforms and/or the metaverse) is still to be seen, since this will involve radical procedural changes. And all of these changes will have to determine and establish the criteria through which the court files will be attributed to one (face-to-face) and to the other (virtual hearings). Namely: (1) how the principle of immediacy and publicity will be respected; (2) what must be done to guarantee the security of sensitive data (including biometric data); (3) how can both professionals and citizens be prepared for this new justice settings; and (4) how can this new paradigm be developed in contexts of cost constraints and increased procedural workload. We will have to wait for the legislative changes that Mexico¹⁵ wants to implement in this regard, from 2027 onwards, in the civil and family jurisdictions, to grasp some glimpses.

This hybrid articulation between the physical and virtual court, on the other hand, demands the need to evaluate what effects this has for the construction and adaptation of new and old buildings, in particular in architectural terms in relation to several features such as: (1) volumetry; (2) number of hearing rooms and offices; (3) storage/archives for case files; (4) organization and internal/external flexibility of buildings; (5) IT infrastructures, including space and security of IT servers; and (6) interface with digital platforms and an immersive virtual court.

A question that also arises is that of the ritual dynamics that such a shift involves. Rossner (2021) has dealt with the question of rituals in the virtual courts, and cautioned against what the author calls the fetishization of physical court appearances and the need to reimagine judicial rituals where co-presence and entrainment are both possible. Nevertheless, rituals need to be comprehensibly considered to encompass hybridity. How to ensure balance in the virtual world between proximity, authority, and symbolism? Such discussion also involves reflecting on digital skills, on the adoption of virtual scenarios that replicate judicial symbolism, and on the transformation of the representation of judicial, legal and citizen actors.

Additionally, and considering the internal territorial discrepancies of the different countries, and to guarantee equal and easy access to justice, it will be necessary to implement, in this concept of hybrid justice, an articulation between built physical space (court buildings), virtual platforms and itinerant justice stations (Economides, 2021), whether through buses, boats, or kiosks, capable of reducing the judicial, territorial, and digital gaps.

The opinion of citizens must also be taken into consideration when discussing the future courts. To those features mentioned before, we need to add issues related to a relevant part of society who still experiences difficulties related to digital illiteracy or belong to the so-called “digital gap” (people without access to internet, to a computer or even to a cell phone, or with

¹⁵ See <https://www.lanuovaproceduracivile.com/wp-content/uploads/2023/04/proyec.pdf> [accessed 01 October 2023].

limited credit and data allowance) (Branco, 2022; Mulcahy & Tsalapatanis, 2022). All this connects closely to geographical issues (distances and differences between communities, rural and urban, and the (in)existence of adequate IT infrastructures) and socioeconomic issues (education, earnings, aging societies¹⁶, mental health problems, disabilities, migration, etc.), producing or enhancing inequalities and social vulnerabilities (including access to justice). The existence of these barriers to a full citizenship, in what concerns access to justice, demands a judicial system made of different services and models, to guarantee the universality of justice for all.

FINAL REMARKS

It is therefore important to reflect on the consequences that this ongoing digital transformation process has had, and will have on court buildings, in particular the importance of the physical court building for the judicial system. Will we still need physical courts? Will we continue to build courts? For what, in what way, and for whom (which types of users)?

Are we moving to a time, as Susskind (2020) suggests, that we must choose to have justice as a service or as a place? And that having both will simultaneously demand a justice of “variable geometry”? And what kind of court must be “built” in the future to accommodate all these new transformations?

For centuries, there was a requirement that the court be constituted in a fixed location, that is, in a specific building. But as the Portuguese Poet Luís Vaz de Camões wrote, ‘The whole world is made up of change/Always taking on new qualities’. The judicial professionals’ perceptions on the adequacy of the courts and the use of digital technologies and teleworking in the judicial system are crucial to understand the technological transformations and their impacts on the future of justice. This means recognizing the need for a new and genuine radical commitment to try to create a closer justice system, which engages citizenship, architecture, and technology. And this demands the investment on studies (regarding the elaboration and implementation of an Intervention Plan for Judicial Buildings to tackle short-, medium- and long-term problems, as well as a Judicial IT Requalification Plan concerning equipment, platforms, and software programmes), and new “buildings” to promote a better justice with the guarantee of having an ethical and fair structure. But taking into consideration the past recent decades of judicial reforms, the main risk for the future is that the digital/virtual justice will go much faster than citizenship. And that metaverse justice, without the proper cautionary measures, will tackle the objective of a “house of justice” where all must be entitled to enter.

¹⁶ On this aspect, see the FRA/Fundamental Rights Agency recent report - Fundamental rights of older people: ensuring access to public services in digital societies (FRA, 2023). EU data indicates that only 1 in 4 people aged 65 to 74 have minimum basic digital skills.

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