THE CHILD'S RIGHT TO DEVELOPMENT IN THE DIGITAL AGE

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Interestingly, the UN Convention on the Rights of the Child and the Internet emerged almost at the same time. However, the process of finalizing the Convention took a long time, and even today, some children's rights are still not fully protected. On the other hand, from the moment the Internet began to represent a social reality, its development proceeded at an incredible speed, overcoming any obstacle, subtly infiltrating almost every sphere of today's human life. Although it may not seem so, the unstoppable development of the digital world was still made possible by humans – those same humans who did not sufficiently focus on the proper development of the child. It is of utmost importance that children's rights, including the right to development, be monitored and protected in all circumstances, including in the digital environment, even if this requires the imposition of certain limitations.

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1 Legislative History of Children's Rights

Within the framework of the United Nations (hereinafter: UN), many instruments have been adopted that directly or indirectly strive to protect the position of children. However, even before the UN was founded, certain changes in the understanding of children had begun. The moment when it became clear that the adopted international standards could and must be applied to children, the process of "internationalization of children's rights" began, which had first materialized in the Declaration on the Rights of the Child from 1924, which was adopted by the Assembly of the League of Nations and then, in an expanded form, the United Nations adopted a new Declaration on the Rights of the Child in 1959.

Even though it does not apply exclusively to children and does not have a binding character, the Universal Declaration of Human Rights is of great importance. This Declaration established important principles and values that were later elaborated in legally binding UN treaties.

In addition to the Declaration as mentioned above, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also important.

For improving the position of children, the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages from 1962 is also of great importance. However, in the field of family law, that is, children's law, the most important act that was adopted is the UN Convention on the Rights of the Child from 1989 (hereinafter: UNCRC).

It took a long journey to recognize and institutionally regulate children's rights finally. Today, numerous organizations are behind the acts whose norms regulate the position of children exclusively, i.e., the acts that indirectly affect children's rights. The intent of these acts is not uniform in terms of whether they are legally binding or not, and neither is their relevance, but one thing is certain – once this process has been initiated, the way children and their position will be perceived becomes permanently set. In terms of family law, specifically child law, the most

significant milestone was the adoption of the UNCRC in 1989.1 Before UNCRC, the recognition of children as developing individuals and the need for their protection was central to international children's rights law. The Convention's drafters likely understood both the importance of safeguarding children's development and the practical challenges of establishing it as a human right. Although the right to development isn't explicitly stated in earlier declarations or human rights treaties, its inclusion in the UNCRC was intentional.² The UNCRC itself stems from years of work. The development of a document on children's rights was driven by a growing recognition of children as distinct individuals and the strengthening of International Human Rights Law³. At the 34th session of the UN Commission on Human Rights in 1978, the impact of armed conflicts on children and the need to protect them were highlighted. During this session, the Polish delegation presented a draft of the Convention on the Rights of the Child (the socalled Polish draft), based on the 1959 UN Declaration. Shortly afterwards, a working group was formed dealing with the proposals submitted by various states or organizations. More than ten years would pass before the Working Group submitted the final text draft (though the initial plan was for the Convention to be adopted in 1979), which was first adopted by the UN Human Rights Commission and the Economic and Social Council. It was then further submitted to the UN General Assembly for adoption, where it was adopted by acclamation. The final version differed significantly from the original draft, with one key change – and one of the Convention's major innovations in international children's rights law - being the inclusion of the child's right to development in a binding treaty.⁴

The UNCRC represents a unified and coordinated document. In contrast, the rights proclaimed in the UNCRC represent a synthesis of efforts to ensure the best possible quality of life for the child. Though the final regulation of children's rights and its attempt to improve the overall position of children are undeniably motivated by a noble idea, it was surely not an easy road to finally put this idea into practice.

¹ Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

² Peleg, 2019, p. 91.

³ Detrick, Doek & Cantwell, 1992, p. 19.

⁴ Peleg, 2019, p. 55.

2 The Right to Development in the UN Convention on the Rights of the Child

The issue of establishing a right to development did not receive significant attention during the drafting process. It wasn't until 1988, a decade later, that India proposed adding Article 6 to the UNCRC, addressing the child's right to life and linking it to children's rights to survival and development, a suggestion that was subsequently endorsed by the Working Group responsible for drafting the UNCRC.⁵

The innovation of the UNCRC lies not in the protection it offers to children's development, but in the establishment of a right to development which does not have a single 'true' meaning but grants extensive protection to various aspects of this right, such as physical, emotional, spiritual, and cultural growth.⁶ The inclusion of the right to development in the UNCRC was intentional, as it had not been explicitly safeguarded in previous international declarations on children's rights or in any broader human rights treaties.⁷

In addition to the dilemmas raised by the concept of the right to life, specifically who can be considered its entitled party, the concept of the right to development also offers room for different interpretations, even though most of the discussions centred on the meaning of the right to survival and its potential overlap with the right to life whereas the right to development mostly remained on the periphery of the discussion.⁸

While at first glance it may seem that a child's development has nothing to do with the general human right to development, as highlighted in the UN Declaration on the Right to Development, certain similarities can be observed.⁹

Firstly, the *travaux préparatoires* show that the concept of the child's survival and development was influenced by the developmental discourse of the time, which can be explained by the fact that the UN Declaration on the Right to Development was adopted only three years before the UNCRC. Secondly, the Committee on the

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⁵ Peleg, 2017, p. 3.

⁶ Peleg, 2019, p. 56.

⁷ Peleg, 2019, p. 56.

⁸ Peleg, 2017, p. 3.

⁹ Manfred, 2005, p. 46.

Rights of the Child has taken a holistic approach to the concept of development, emphasizing the importance of all other provisions of the UNCRC through the principle of development. Finally, the fact that the right to life, survival, and development is considered one of the four general principles of the UNCRC confirms that the child's right to development goes hand in hand with the general human right to development as outlined in the UN Declaration on the Right to Development.

The mentioned UN Declaration on the Right to Development attempted to define this right, which it views as "an inalienable human right based on which every person and all nations acquire the right to participate in, contribute to, and enjoy the results of economic, social, cultural, and political development." The ultimate goal of development, according to the Declaration, is the "improvement of the well-being of the entire population and all individuals." 11

During the negotiation of the final text of Article 6, Italian representatives emphasized that the terms survival and development in the language of international organizations had acquired special significance, implying the assurance of the child's survival in order to achieve the full development of the child's personality, both physically and spiritually.¹²

It is our view that this implies that if states create an environment that allows children to grow healthily and safely, without fear and beyond scarcity, and to develop their personality, talents, and abilities to their fullest potential in accordance with their developmental capacities, they are simultaneously implementing the right to human development. ¹³ Ensuring the survival and physical health of the child is undoubtedly a priority for member states, but it is also emphasized that this provision covers all aspects of development, with health and psychosocial well-being being closely interconnected. The Committee on the Rights of the Child emphasizes that the right to survival and development can only be implemented in a holistic way, through the respect of all other provisions of the UNCRC, such as the child's right to health, adequate nutrition, social security, an appropriate standard of living, a healthy and

¹⁰ Declaration on the Right to Development, 1986, Article1(1).

¹¹ Declaration on the Right to Development, 1986, Article 2(3).

¹² Mowak, 2005, p. 13.

¹³ Mowak, 2005, p. 47.

safe environment, education, and play, as well as the respect for parental responsibilities.¹⁴

At the time the UNCRC was adopted, it was stressed that when applying the provisions of the UNCRC, different factors must be taken into account and that its provisions may take on different meanings in different environments. ¹⁵ Considering the overall changes that have occurred both on an individual and global level, the right to development today acquires an entirely new dimension and meaning.

It is well known that the earliest period of childhood is highly significant in human development and, as such, forms the foundation for acquiring and developing essential life skills and personal abilities. ¹⁶ The first five years of life are so important for human development and have such a crucial impact on the child and the outcomes they later achieve that some authors argue that the state has a special interest in ensuring healthy development during this period, which is only possible if such care becomes an integral part of the legal system. ¹⁷

The conventional mechanism for protecting children's rights should not be interpreted as a final and closed system. On the contrary, the rights of children, as defined in the UNCRC, represent only the starting point and the minimum framework for the protection of these rights, beyond which the contracting parties should in no case retreat in defending children's rights. The system of children's rights established by the UNCRC, after a prolonged and exceptionally complex process of harmonizing the text of the agreement, conditioned by numerous factors, including cultural ones, is only the foundation for the future development of the system for the protection of the rights of those on whom the world depends. This mechanism must primarily be interpreted in terms of its continuous improvement and raising the level of protection for the rights guaranteed by the UNCRC. The minimum consensus that the contracting parties reached in defining the rights protected by the UNCRC represents the lowest common denominator and thus the cornerstone shared by all legal systems, which are often quite incomparable in terms of broader societal frameworks, in which the protection of children's rights is achieved. In this sense, all rights in the UNCRC must be interpreted in a way that

15 Cohen & Kilbourne, 1998, p. 643.

¹⁴ General Comment No. 7, 2005.

¹⁶ Huntington, 2017, p. 758.

¹⁷ Huntington, 2017, p. 759.

the achieved level of children's rights in a given legal system is continuously improved, expanding the scope of action and protection of children's rights regulated by the UNCRC.

3 Children and the Internet

As highlighted, the UNCRC was adopted in 1989, which interestingly coincides with the year often cited as the birth of the Internet. It is clear and entirely expected that the creators of the UNCRC did not consider it necessary to regulate the protection of children's rights in this area of societal reality, as they neither could nor knew how to. Today, nearly 35 years after the adoption of the UNCRC and the emergence of the Internet, it is clear how vital it is to consider the protection of children's rights in the digital environment. However, it took more than 30 years for the Committee on the Rights of the Child to address this issue. The fact is, a large number of children today have access to the Internet and various types of content that can affect them in different ways. For instance, one study shows that 95 percent of teens have access to a smartphone, and 45 percent of teens say they are online "almost constantly". 18 However, we must be cautious with statistical data, as a 2020 study conducted by UNICEF shows that as many as 33 percent of children do not have internet access at home. What is a fact is that access to the Internet mostly depends on the country's income group, the rural-urban divide, and household wealth.¹⁹ While it may be impossible to determine the exact number of children who have internet access, that number has undoubtedly reached significant levels by now.

"Growing numbers of children are on social networking sites but many are not taking all necessary steps to protect themselves online." ²⁰

This was likely one of the reasons the Committee on the Rights of the Child addressed this issue. In 2021, General Comment No. 25 (GC25) on children's rights in relation to the digital environment was adopted.

¹⁸ Dworkin, 2021.

¹⁹ Amaro et al, 2020, p. 4.

²⁰ European Commission: DG Communication, 2011.

Although not legally binding, GC25 is a significant international framework that guides Member States on how to develop legislation and regulations concerning children's rights online, helping them to fulfil their obligations under the UNCRC. Among other things, it is stated that "the rights of every child must be respected, protected and fulfilled in the digital environment".²¹ Furthermore, GC25 states that the four principles offer a framework for interpreting the implementation of all other rights under the UNCRC, and they should act as a guide for identifying the actions necessary to ensure the realization of children's rights in the digital environment.²²

Opportunities that the digital environment offers to children represent one of the crucial role in children's development. Children's lives are increasingly shaped by their online experiences, and that world can be completely distinct from the environment of their home and school.²³ With the advent of the Internet, children have been given the opportunity to more easily access numerous information and data, which can be significant for various aspects of their development.

On the one hand, the digital environment offers children opportunities for education, information, creative development and enables children to explore various subjects, discover new worlds, and foster their interests, but also to entertain themselves.²⁴ As digital natives, they are well-equipped to succeed in an increasingly digital and interconnected education system and future labour market. Furthermore, the usage of different digital tools can support children with disabilities in learning, connecting, communicating, and engaging in recreational activities online, as long as these tools are accessible. On the other hand, while acknowledging the many benefits of the Internet (which we believe far outweigh the drawbacks), it is important also to consider the potential ways in which the Internet can pose risks to children and their rights. The risks that tend to jeopardize children's rights can be marked as four big C. Namely, in the very text of GC25, it is stated that it is necessary to "raise awareness among children about the potential negative consequences of exposure to risks associated with content, contact, conduct, and contract". Depending on the type of danger, children can have different roles. In this sense, when it comes to harmful content, children appear as recipients; in the case of contact, children act as participants. When it comes to conduct, children appear as actors, and finally, in the

²¹ General comment No. 25, 2021, I(4).

²² General comment No. 25, 2021, III.

²³ Ryan, 2024, p. 1.

²⁴ Đorđević & Jeličić, 2023, p. 84.

case of a contract, children are the consumers. The 4C classification also differentiates between aggressive, sexual, and value-related risks, as this approach helps maintain a balanced perspective on the various risks children may face.²⁵

4 Regulations that Deal with Children's Rights in the Digital Environment

The need to protect children from harmful content was recognized within the EU with the adoption of Council Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media service, which includes specific rules for safeguarding minors from inappropriate content. This Directive is based on the principle that the less control a user has over media content, the more likely it is to be harmful and, therefore, subject to stricter regulations. It also addresses the protection of minors from harmful content in television broadcasting.²⁶ Two types of harmful television content are identified: the first is content that can seriously harm the physical, mental, or moral development of minors, such as pornography or scenes of gratuitous violence, and which should, therefore, be excluded from television programming. The second type includes content that may potentially harm minors' development, but can be shown during times when minors are unlikely to be watching. Under the legislation, content that could seriously harm minors is prohibited from being included in any (linear) broadcast program.²⁷ It may only be made available on demand in a manner that ensures minors will generally not be exposed to such content.²⁸ The main shortcoming of Directive 2010/13/EU was that it did not refer to content that is not shown through traditional electronic media, and which long ago began to represent the dominant form that young people follow. Bearing that in mind, the Commission proposed the revision of the Audiovisual Media Services Directive (AVMSD), and after negotiations between the colegislators the European Parliament approved a report on the provision of audiovisual media services, and in 2018, the Council adopted the Council Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in

²⁵ Livingstone & Stoilova, 2021, p. 6.

²⁶ Đorđević & Jeličić, 2023, p. 84.

²⁷ Council Directive 2010/13/EU, 2010, Article 27(1).

²⁸ Council Directive 2010/13/EU, 2010, Article 12.

view of changing market realities finalizing the legislative process. The updated rules extended the scope of the application to cover video-sharing platforms as well. As it is stated video-sharing platforms "also have a considerable impact in that they facilitate the possibility for users to shape and influence the opinions of other users". That means that services such as *YouTube*, *Facebook* and other social media services that share audiovisual content are also covered by the revised Directive (EU) 2018/1808.

Video-sharing platforms will now also have to put in place measures "to protect minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development" (Directive (EU) 2018/1808, Article 28b). Such measures consist of tools for users to report and flag harmful content, age verification or parental control systems. Namely, one of the measures proposed by the said Directive (EU) 2018/1808 implies "establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors".

Furthermore, it is also important to mention Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, adopted on July 4, 2018. These guidelines, addressed to all Council of Europe member states, provide recommendations on key principles, rights, operational measures, and international cooperation.

The guidelines aim to help states and other stakeholders develop a strategic approach to navigating the digital world, prioritizing children's safety. At the same time, these guidelines urge states to involve children in decision-making to ensure national policies reflect digital developments. These guidelines are relevant to a broad audience, including government bodies, professionals, civil society, businesses, and families. Among other things, in the *Preamble* it is stated that the digital environment is complex and subject to rapid evolution and is reshaping children's lives in many ways and that States have the primary responsibility to respect, protect and fulfil the rights of the child in a manner consistent with the best interests and evolving capacities of the child.

As this document points out, access to the digital environment is crucial for children's rights, and limited access due to poor connectivity can hinder their ability to exercise their human rights entirely. However, there are concerns about the impact on children's healthy development and well-being in the digital environment, including, but not limited to, risks of harm from excessive use, sleep deprivation, and physical health issues.

For the topic of this paper, paragraph 2.2. entitled 'Evolving capacities of the child', is particularly interesting, where it is stated that "the capacities of a child develop gradually from birth to the age of 18" and that "individual children reach different levels of maturity at different ages". Respecting this difference in the developmental path of each individual child, "policies adopted to fulfil the rights of adolescents may differ significantly from those adopted for younger children".

With the aim of protecting and promoting children's rights, the EU Strategy on the Rights of the Child was also adopted. This strategy provides policy guidance and a roadmap for EU Institutions and Member States to plan their actions and design programs focused on promoting and protecting children's rights in the coming years. The strategy addresses six key thematic areas to help children integrate into EU decision-making and increase their participation in its political and democratic processes. The fifth area, titled "Digital and Information Society," aims to ensure that children can safely use the Internet and access its opportunities equally. Among other things, it is stated that the growth of digital technologies offers children opportunities. However, it also exposes them to harmful content, such as hate speech and misinformation, due to inadequate controls and the risk of harmful interactions. Having that in mind, the European Commission urges Member States to support media literacy in education, helping children critically evaluate online content and identify disinformation and harmful material.

Finally, the relatively new 'EU Digital Services Act (DSA)'. Its main objective is to prevent illegal and harmful activities online, as well as the spread of disinformation. Furthermore, DSA aims to ensure user safety, safeguard fundamental rights, and promote a fair and transparent online platform ecosystem. The DSA applies to all digital platforms, including social media. Furthermore, very large online platforms or search engines are subject to additional regulations and for now, The European Commission has identified 19 platforms as such, including social media and

networking sites like Facebook, Instagram, TikTok, and X (formerly Twitter), as well as search engines like Google and Bing. Under this law, these platforms will be held legally accountable for unlawful user behaviour if they are aware of illegal content. This includes material such as child sexual abuse content, terrorist content, illegal hate speech, and illicit goods or services. Among other provisions, the law focuses on protecting children, requiring platforms to ensure a high level of privacy, safety, and security for minors using their services.

Article 28 is especially dedicated to the online protection of minors. In the first paragraph, it is stated that "providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service." Furthermore, providers of online platform must not display advertisements on their interface based on profiling using personal data of the service recipient when they are reasonably certain that the recipient is a minor.

5 Social Media as a Unique Threat to Children's Right to Development

All the abovementioned regulations deal with the issue of the protection of minors in the digital environment in a certain manner. However, sometimes the sole wish and even introduction of certain measures that are aimed at the protection of the children, are not enough.

The data shows that minors are at the great risks that can sometimes be fatal. Sometimes young people are not sufficiently aware of the consequences that their actions can cause. It can be harmful for other people, but it could be harmful for them as well.

It seems that most of the problems arise from social media, bearing in mind that children today start using social media at the age of seven²⁹ and that the average time young people spend on social media is more than five hours per day.³⁰ The need for regulation of social media was noticed within the UNESCO when Audrey Azoulay, Director-General of UNESCO, stated "social media platforms have also accelerated and amplified the spread of false information and hate speech, posing major risks to societal cohesion,

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²⁹ Lewi, 2023.

³⁰ McKov, 2023.

peace and stability."³¹ UNESCO's action plan, developed through extensive global consultations and supported by an international opinion survey, highlights the urgent need for action. The survey reveals that 85 percent of citizens are concerned about the impact of online disinformation, especially as social media platforms have become the main source of information for a large majority of them.³²

It seems that existing regulations can do little to protect minors when dealing with the issue of social media. There is still a great risk of harmful content that children can be exposed to. Furthermore, unknown contacts that potentially can bring children into various dangerous situations is the real risk. The easy and rapid availability of electronic media, along with its wide variety, enables the widespread dissemination of unverified content, exposing users to fake news that leads to conflict between freedom of expression and users' right to access accurate and verified news. To balance these competing interests, professional and scientific circles emphasize the need for restrictions on freedom of expression.

Furthermore, the misuse of social media can increase the risk of children developing mental health issues, like eating disorders, anxiety and depression.³³ Other potential dangers include cyberbullying, online predators and inappropriate material. This was the reason for the multistate lawsuit was filed in the US District Court for the Northern District of California.³⁴ Among other things, Meta is accused of engaging in deceptive practices that violate several state consumer protection laws, including falsely claiming that its products are not harmful to young users and are not designed to promote addictive use. Additionally, it alleges that Meta engaged in unfair and unconscionable practices by designing its social media platforms with addictive algorithms that contribute to anxiety, depression, and body image issues among adolescents, while also failing to warn about these risks.³⁵ Furthermore, social media platforms may bypass conscious thought and affect brain functions, potentially fostering addiction and self-harm. The states involved in the lawsuit against Meta see it as their responsibility to protect children by restricting these purportedly deceptive practices.³⁶

³¹ Huard & O'Hagan, 2023.

³² Huard & O'Hagan, 2023.

³³ US Public Health Service, 2023, p. 7.

³⁴ People of the State of California v. Meta Platforms, 2023.

³⁵ Ibid.

³⁶ Ibid.

The Eurochild 2023 report on children in need across Europe, titled "Children's Rights: Political Will or Won't?", highlights that the three primary concerns regarding children's online safety are cyberbullying, child sexual abuse and exploitation, and the digital impact on children's mental health. These issues were reported to be increasing, with severe consequences for children's development.³⁷ In addition to this, one study found that adolescents who spent over three hours a day on social media were twice as likely to experience negative mental health outcomes, including symptoms of depression and anxiety.³⁸ Some researchers believe that excessive social media exposure can potentially lead to addiction-like changes in brain structure, similar to those seen in substance or gambling addictions. Problematic social media use, such as compulsive behaviour, is linked to sleep issues, attention problems, and feelings of exclusion in adolescents.³⁹ Additionally, the fear of missing out (FOMO) on social media has been associated with negative mood, depressed feelings and general unhappiness.⁴⁰

Beyond the negative effects of prolonged social media use on children's development, the content children are exposed to is also a significant concern.⁴¹ In addition, to define harmful content, we could say it is "any piece of online media (e.g. video, photo, text post, audio, etc.) that has the potential to cause harm or injury to an individual or group of people."⁴² While social media offers a sense of community for some, different studies found that certain platforms display live depictions of self-harm, which can eventually lead to normalization of such behaviours. Social media can also fuel body dissatisfaction, disordered eating, social comparison, and low self-esteem, particularly among adolescent girls. All mentioned, together with exposure to hate-based content, as well as misinformation, represent serious threats to the safety and healthy development of children.

³⁷ Aboubadra & Palomares, 2024, pp. 3-4

³⁸ Riehm et al., 2019, p. 1267.

³⁹ Kelly et al., 2019, pp. 59-60.

⁴⁰ Przybylski et al., 2013, p. 1842.

⁴¹ One issue that won't be covered here due to space limitations but deserves significant attention is sharenting - the practice of parents posting pictures of their children from the very start of their lives. The reasons for this can vary, from a desire to share the happiness they experience with their children, to economic motives, such as earning money. The impact of such behaviour should not be underestimated, as there have been cases where the publication of photos without the children's knowledge has been linked to the development of depression and anxiety later in life.

⁴² Gamble, 2022.

6 What Can We Do, or What Has Already Been Done?

Thanks to Sigmund Freud, Erik Erikson, and Jean Piaget, who laid the foundation in the field of developmental psychology, the concept of childhood has become a significant area of research, leading many scholars to focus specifically on childhood itself. However, early childhood development has also captured the attention of legal theorists, for whom three aspects are of fundamental importance. First, the understanding that early childhood is a critical period for acquiring cognitive and non-cognitive skills; second, that during this period, the relationship between children and parents begins to develop; and third, that the deficiencies a child experiences during this time can have lifelong consequences.⁴³ The fact that this period is of exceptional importance for every individual, shaping and determining their future in various ways, should be enough of an impetus for states to recognize its significance and ensure that child protection during this time receives adequate legal articulation. In this regard, some authors have even emphasized the need to create a new field of law, early childhood development and the law. 44 One of the consequences of studying the childhood period is the understanding that children mature gradually and, accordingly, should be granted certain rights even before they fully transition into adulthood, or cease to be children under the law. In other words, it is well established that children are not born with a full set of rights but acquire them as they grow. Giving a young person too much responsibility or autonomy before they are ready to manage it may have counterproductive effects.⁴⁵ Judgments about the appropriateness of conferring or restricting rights are often based on assumptions about minors' maturity; today, these judgments are informed by developmental science.46

Suppose there are rules regarding children's rights to decide about schooling, medical treatment, or work. In that case, it should not be difficult to accept that children may not always understand the extent of harm their actions can cause to others or themselves, including how harmful content on social media can impact their health and development.

⁴³ Huntington, 2017, p. 767.

⁴⁴ Ibid.

⁴⁵ Ryan, 2024, p. 4.

⁴⁶ Scott, 2024, p. 304.

In addition to the special protection that needs to be provided to very young children, which has already been highlighted by the Committee of Ministers and pertains to preventing premature exposure to the digital environment⁴⁷, special attention must be given to the limited use of social media, considering all that has been mentioned. By regulating the types of media children consume, the law can influence how young people perceive the world and their place in it.⁴⁸

There are already some good practices around the world concerning these issues.

Florida recently passed a law banning children under 14 from having social media accounts and children aged 14 and 15 will be permitted to have accounts with parental consent.⁴⁹

In France, the Education Code from 2018 introduced a ban that applies to the use of mobile phones and other electronic communication devices, such as tablets and smartwatches, within schools and colleges. The same law also permits high school boards to implement, through internal regulations, a ban on the use of these devices by students.⁵⁰ Furthermore, France is set to trial a mobile phone ban in schools for students up to age 15, aiming to provide children with a "digital pause." Nearly 200 secondary schools will participate in the experiment, requiring students to surrender their phones upon arrival. This goes further than the 2018 law, which prohibited phone use on school premises but allowed students to keep their devices.⁵¹

Across Europe, phone bans in schools have been a topic of debate. State-level policies regarding smartphones in German schools vary widely due to the country's federal system. Federal regulations permit each state to set its own educational

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⁴⁷ In the cited Recommendation CM/Rec(2018)7 it is stated that "specific measures and policies should be adopted to protect infants from premature exposure to the digital environment due to limited benefits with respect to their particular physical, psychological, social and stimulation needs" (para. 55).

⁴⁸ Ryan, 2024, p. 4.

⁴⁹ Nottingham & Fung, 2024.

⁵⁰ France Education Code, Article L511-5.

⁵¹ A commission established by French president raised concerns about the harmful effects of excessive screen exposure on children's health and development. A 140-page report released in March 2024 highlighted a strong consensus on the negative impacts of digital devices, including disrupted sleep, increased sedentary behavior, lack of physical activity, and a higher risk of obesity, as well as vision problems. The report recommended a staged approach to children's mobile phone use: no phones before age 11, phones without internet access between ages 11 and 13, and phones with internet but no social media access until age 15. It also advised that children under three should not be exposed to digital devices, as they are deemed unnecessary for healthy development (Willsher, 2024).

policies, leading to diverse approaches to smartphone use in schools. But for example, Bavaria has enforced a comprehensive ban on mobile devices since 2006, though exceptions are made for educational purposes.⁵²

In 2021, the Norwegian Parliament has officially adopted several amendments to the 2009 Marketing Act, presupposing that all edited photos must be characterized as such in order to reduce one of the problems, social media causes to children and that is Body dysmorphic disorder. This means that if an influencer shares promotional content in which their body shape, size, or skin has been altered they are required to label the content with a standardized notice created by the Ministry of Children and Family Affairs.⁵³

The Netherlands introduced a quasi-ban in secondary schools this year, and Italy has implemented various phone bans since 2007, reimposing them in 2022.⁵⁴ In February 2024, the Department for Education (DfE) in England issued non-statutory guidance recommending that schools limit mobile phone use, although it did not mandate an outright ban.⁵⁵ The guidance highlighted concerns about online bullying, distractions, and excessive screen time impacting children's well-being. Schools must have a behaviour policy that outlines banned items, and headteachers have discretion over how to implement mobile phone restrictions. In October 2024, the Labour government supported this approach, emphasizing the negative effects of phone use on learning and well-being.

In Scotland, the government issued guidance in August 2024, stating that a national ban was not feasible but allowing schools to impose their own restrictions.⁵⁶ Similarly, Northern Ireland's Department of Education recommended in September 2024 that pupils avoid using phones during school hours and not bring them to primary schools.⁵⁷

53 Abraham, 2021.

⁵² Atkins, 2024.

⁵⁴ Willsher, 2024.

⁵⁵ Mobile phones in schools: Guidance for schools on prohibiting the use of mobile phones throughout the school day, 2024.

⁵⁶ Beck, 2024.

⁵⁷ Beck, 2024.

There are several issues that future regulations must address, one of which should be prohibiting social media use for minors under a certain age. The impact of social media on children's health and development is significant, creating an obligation for society to mitigate its negative effects, at least until children reach a certain level of maturity and receive adequate information on its safe use. Moreover, the use of social media after a certain age should be allowed only with the consent of a caregiver, usually the parents. However, this approval has to be meaningful and not established merely pro forma, as is the case now.

Furthermore, similar to TV channels and their programs, a rule could be established to categorize profiles based on their content. If a profile is not suitable for children of a certain age, it should be set to private, meaning it cannot be accessed without the owner's approval.

Finally, given that large platforms like *Instagram* and *TikTok* cannot effectively monitor all posts for appropriateness, a potential solution could involve limiting the number of users or restricting the number of posts per day. This approach would enable more effective content oversight and help reduce the spread of harmful, unchecked material.

7 Conclusion

It has become more than evident that the use of mobile phones, or any similar devices, can have numerous harmful consequences for the proper development of children, with social media, as one of the main sources of information for children, representing the most dominant source of negative influence. By not understanding the potential risks these devices pose, we allowed children to start using mobile phones and social media without first warning or educating them on how to use them properly. Now, when the harmful consequences have become completely clear, we have turned to relatively weak attempts to limit or ban their use. Of course, such an endeavour cannot succeed overnight, nor can it be effective if applied only in certain areas. It is essential to take global steps and work together to do everything possible to protect the best interests of children, and healthy development is certainly in their best interest. Of course, there will always be the issue of profit for companies that create platforms designed to attract as many users as possible, but this will once again place us before the question: "Are we truly guided by what is in

the best interest of children, or by interests that adults define as best, which often reflect their benefit or profit?".

Even though, there are always will be the ones who will argue that "in an age where social media is, for many, the predominant form of news, expression, and assembly, allowing any country or any government agencies within a country to ban it is a violation of children's rights"58 we have to ask ourselves which rights are truly violated, and which are actually protected by the introduction of restrictions?

In today's world, can we truly claim that children's rights are being adequately protected?

The protection of children's rights must remain at the forefront of our efforts, but it's not enough to simply have policies and regulations in place. The challenge lies in finding a balance. A balance between providing children with the freedom and opportunities they need to grow, learn, and thrive, and safeguarding them from harm. This balance requires thoughtful consideration, not only from governments and institutions but also from parents, educators, and society at large.

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References

Aboubadra, L., & Palomares, B. F. (2024) Child safety and well-being online Taken from Children's Rights:

Political will or won't? Eurochild 2023 report on children in need across Europe. Retrieved from https://eurochild.org/uploads/2024/02/Sub-report-Digital-2024.pdf (accessed_ 5 October 2024).

Abraham, E. (2021) 'Norway to introduce law requiring influencers to declare retouched photos on social media'. *The Independent*. Retrieved from: https://www.independent.co.uk/lifestyle/norway-influencers-advertisers-edited-images-b1875659.html (accessed: 11 September 2024).

Amaro, D., Ávanesian, G., Mishra, S., & Mizunoya, S. (2020) How many children and young people have internet access at home? Estimating digital connectivity during the COVID-19 pandemic. UNICEF. Retrieved from https://data.unicef.org/resources/children-and-young-people-internet-access-at-home-during-covid19/ (accessed: 3 November 2024).

Atkins, S., (2024) How Germany Deals with Smartphone Use in Schools. Phone Locker. Retrieved from: https://phonelocker.com/smartphones-in-german-schools/ (accessed: 20 October 2024).

⁵⁸ Magid, 2015.

- Beck, M. (2024) *Mobile phones in schools: Mandating a ban?* House of Lords Library. Retrieved from: https://lordslibrary.parliament.uk/mobile-phones-in-schools-mandating-a-ban/#ref-30 (accessed: 2 September 2024).
- Cohen, C. P., & Kilbourne, S. (1998) 'Jurisprudence of the Committee on the Rights of the Child: A Guide for Research and Analysis', *Michigan Journal of International Law*, 19(3), pp. 633-728.
- Convention on the Rights of the Child (CRC), adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.
- Council Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, Official Journal of the European Union, L 303, 28. 11. 2018, pp. 69–92.
- Council Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media service, Official Journal of the European Union, L 95, 15 April 2010, pp. 1–24
- Declaration on the Right to Development, UN General Assembly, [1986] A/RES/41/128.
- Department for Education (2024) Mobile phones in schools: Guidance for schools on prohibiting the use of mobile phones throughout the school day. Retrieved from:

 https://assets.publishing.service.gov.uk/media/65cf5f2a4239310011b7b916/Mobile_phones
 _in_schools_guidance.pdf (accessed: 25 September 2024).
- Detrick, S., Doek, J. E., & Cantwell, N. (1992) The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires". Dordrecht: Martinus Nijhoff Publishers
- Dworkin, J. (2021) Teens online and social media use. *University of Minnesota Extension*. Retrieved from: https://extension.umn.edu/parenting-and-caregiving/teens-online-and-social-media-use (accessed: 3 November 2024).
- Đorđević, V., & Jeličić, G. (2023) 'Domaća praksa oglašavanja i dečija prava', *Ekonomski signali*, 18, pp. 83-97.
- EU strategy on the rights of the child, Communication From the Commission to the European Parliament, The Council, the European Economic and Social Committee and the Committee of the Regions Document 52021DC0142, Brussels, 24.3.2021. Retrieved from: https://eurlex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0142 (accessed: 5 October 2024).
- European Commission: DG Communication (2011) Digital Agenda: children using social networks at a younger age; many unaware of basic privacy risks, says survey, IP/11/479, Retrieved form https://ec.europa.eu/commission/presscorner/detail/sw/ip_11_479 (accessed: 12 September 2024).
- France Education Code. Retrieved from:
 https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071191/LEGISCTA0
 00006166644/?anchor=LEGIARTI000006525119#LEGIARTI000006525119 (accessed: 16
 October 2024).
- Gamble, J. (2022) A review of harmful content online. HWB. Retrieved from: https://hwb.gov.wales/keeping-safe-online/views-from-the-experts/a-review-of-harmful-content-online (accessed: 2 November 2024).
- General comment No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25. Retrieved from: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation (accessed: 4 October 2024).
- General Comment No. 7, Implementing child rights in early childhood, UN Committee on the Rights of the Child, [2005] CRC/C/GC/7, 1; Retrieved from: http://repository.un.org/handle/11176/259087, 12.12.2024,

- https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf (accessed: 23 October 2024).
- Huard, P. & O'Hagan, C. (2023) Online disinformation: UNESCO unveils action plan to regulate social media platforms, UNESCO Press Releases. Retrieved from: https://www.unesco.org/en/articles/online-disinformation-unesco-unveils-action-planregulate-social-media-platforms (accessed: 5 September 2024).
- Huntington, C. (2017) 'Early Childhood Development and the Law', Southern California Law Review, 90(4), pp. 755-814.
- Kelly, Y., Zilanawala, A., Booker, C., & Sacker, A. (2019) 'Social Media Use and Adolescent Mental Health: Findings From the UK Millennium Cohort Study', EClinicalMedicine, 6, pp. 59–68. Retrieved from: https://doi.org/10.1016/j.eclinm.2018.12.005 (accessed: 22 September 2024)
- Lewis, B. (2023) *Children aged seven using social media regularly.* BBC. Retrieved from: https://www.bbc.com/news/articles/cl4rvm78py60 (accessed: 3 November 2024).
- Livingstone, S. & Stoilova, M. (2021) "The 4Cs: Classifying Online Risk to Children" (CO:RE Short Report Series on Key Topics). Leibniz-Institut f
 ür Medienforschung; Hans-Bredow-Institut, Social Science Open Access Repository, https://doi.org/10.21241/ssoar.71817
- Magid, L. (2015) Social media and children's rights in the global village, ConnectSafely. Retrieved from: https://connectsafely.org/rights-of-children-in-the-digital-age/ (accessed: 3 November 2024).
- Manfred, N. (2005) 'Article 6: The Right to Life, Survival and Development', in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans & M. Verheyde (eds.), A Commentary on the United Nations Convention on the Rights of the Child, Vol. 6, Leiden: Martinus Nijhoff Publishers.
- McKoy, J. (2023) Social Media Has Potential to Enhance Rather Than Undermine Mental Well-Being'. School of Public Health. Retrieved from: https://www.bu.edu/sph/news/articles/2023/social-media-has-potential-to-enhance-rather-than-undermine-mental-well-being/_(accessed: 23 October 2024).
- Nottingham, S., & Fung, B. (2024) 'Florida governor signs law restricting social media access for children'. CNN. Retrieved from: https://edition.cnn.com/2024/03/25/tech/florida-social-media-law-age/index.html (accessed: 7 September 2024).
- Paunović, N. (2024) 'Disclosing and Disseminating Fake News Through Media and Freedom Of Expression', Media, Penal Law and Judiciary, pp. 107-127.
- Peleg, N. (2017) Developing The Right To Development, *International Journal of Children's Rights*, 25(2), p. 380-395. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3033457# (accessed: 23 October 2024).
- Peleg, N. (2019) The Child's Right to Development. Cambridge: Cambridge University Press.
- People of the State of California v. Meta Platforms, Inc. (2023) case no. 4:23-cv-05448, retrieved from: https://oag.ca.gov/system/files/attachments/press-docs/Less-redacted%20complaint%20-%20released.pdf (accessed: 23 October 2024).
- Przybylski, A. K., Murayama, K., DeHaan, C.R., & Gladwell, V. (2013) 'Motivational, emotional, and behavioral correlates of fear of missing out', *Computers in Human Behavior*, 29, pp. 1841–1848. Retrieved from:
 - https://www.sciencedirect.com/science/article/abs/pii/S0747563213000800 (accessed: 20 September 2024).
- Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment. (Adopted by the Committee of Ministers on 4 July 2018 at the 1321st meeting of the Ministers' Deputies).
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), Document 32022R2065, Official Journal of the European Union, 27.10.2022.
- Riehm, K. E., Feder, K. A., Tormohlen, K. N., Crum, R. M., Young, A. S., Green, K. M., Pacek, L. R., La Flair, L. N., & Mojtabai, R. (2019) 'Associations Between Time Spent Using Social Media and Internalizing and Externalizing Problems Among US Youth', JAMA psychiatry,

- 76(12), pp. 1266–1273.
- https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749480
- Ryan, C. (2024) 'Children's Autonomy Rights Online', *University of Chicago Law Review Online*. Online post. Retrieved from: https://lawreview.uchicago.edu/online-archive/childrens-autonomyrights-online (accessed: 23 October 2024).
- Scott, E. S. (2024) Restating the Law in a Child Well-being Framework, *The University of Chicago Law Review* 91(279), pp. 279-313. Retrieved from:
- https://scholarship.law.columbia.edu/faculty_scholarship/4422 (accessed: 23 October 2024). US Public Health Service (2023) Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory, *Health and Human Services*. Retrieved from
 - https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf (accessed: 23 October 2024).
- Willsher, K. (2024) France to trial ban on mobile phones at school for children under 15. *The Guardian*. Retrieved from:
 - https://www.theguardian.com/world/article/2024/aug/27/france-to-trial-ban-on-mobile-phones-at-school-for-children-under-15 (accessed: 2 November 2024).