

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 so-called *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*

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

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."¹⁰ 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

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.

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.

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

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

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”.

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

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

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

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

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

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.

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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

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

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,

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- 76(12), pp. 1266–1273.