

## CHALLENGES OF PROTECTING CHILDREN'S RIGHTS IN THE DIGITAL ENVIRONMENT\*

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### ABSTRACT

*The imperative of every state is to protect the children's rights as the most vulnerable social group. The protection of children's rights has been particularly intensified with the adoption of the UN Convention on the Rights of the Child (1989), which promotes four basic principles – non-discrimination, the right to life, participation in decision-making and active participation in resolving issues that affect their lives, as well as the best interests of the child. The consequences of the (still actual) COVID-19 pandemic are visible in many areas, including the protection of children's rights. Namely, children had to get used to the “new normal” in an extremely short period of time, which in certain segments had an adverse effect on their development and social integration.*

*The effects of the COVID-19 pandemic are also visible in the digital environment, which brings with it a number of positive and negative aspects in relation to children and their rights. Although the virtual environment has made it possible to fulfil one of the universal rights of children – the right to education, it has intensified a special form of violence – virtual, cyber violence that threatens the safety of children in the “new normal”. It is important to emphasize that the Council of Europe has adopted Recommendation CM/Rec (2018)7 of the Committee of Ministers to member states on Guidelines for Respect, Protection and Exercise of the Rights of the Child in the Digital Environment. Given that the digital environment shapes children's lives in different ways, creating opportunities, but also certain risks to protect their well-being, this document recommends that member states review their legislation, policies and practices to promote the full range of children's rights in the digital environment and providing effective responses to all the impacts of the digital environment on the well-being of children and the enjoyment of their human rights. European Union policies in the field of protection of children's rights are also very important. Through its policies, the European Union seeks to enable every child to realize his or her full rights. The European Union's Strategy on the rights of the child sets children apart from the leaders of tomorrow and the citizens of today. For the issues of this paper, a particularly important part of the Strategy are the guidelines for creating policies*

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*aimed at protecting the rights of children in the digital society. In addition to the above, there are a number of other documents of the Council of Europe and the European Union for the protection and promotion of children's rights, which are analyzed in the context of digitalization. Special emphasis is placed on contemporary issues of development and protection of children's rights to privacy in the digital environment, the right to access the Internet and digital literacy, but also cyber violence as a form of endangering the child's safety, and the discussion on which issues was further stimulated by the COVID-19 pandemic.*

**Keywords:** *children's rights, cyber violence, digital environment, the COVID-19 pandemic*

## 1. INTRODUCTION

Children's rights are universal and require the same level of protection at all times. Protecting these rights is a particular challenge for states because of their notion of children as a vulnerable social group. As expected, social changes that affect many spheres of life also affect children's rights. Although the established international legal standards for the protection of children's rights are characterized by universality, living conditions in the digital environment require their adaptation. Digitalization is a process that has been going on for decades, but the COVID-19 pandemic has accelerated that process in certain segments. The consequences of accelerated digital development naturally also affect children and the protection of their rights. Today, children are involved in the use of digital technologies from an early age, on the one hand voluntarily, out of their own curiosity, and on the other hand "forcibly" due to social adaptation and following modern trends.

Through their policies, the Council of Europe and the European Union are establishing a number of mechanisms to protect the rights of children in line with the challenges of modern times. The unavailability of modern technologies as a prerequisite for the realization of certain rights of children leads to the development of the phenomenon of digitally neglected children who are denied the exercise of their modern rights. Guided by the principles of the best interests of the child, equality and non-discrimination, the Council of Europe and the European Union promote the harmonization of children's rights in Europe. Digitalization, which brings about a number of changes, requires states to adapt the existing legal system to new standards and modes of operation. Therefore, the rights of children should be placed in the context of the new age and its benefits should be used, which can also improve the social position of children. It is immanent that society progresses and develops, but that progress must not be to the detriment of children as the most vulnerable social group. In this regard, the development of children's rights in the digital environment is accompanied by a number of challenges arising from cyber violence. The European soft law contained in numerous documents seeks to establish mechanisms for the protection of children's contemporary rights and to prevent potential dangers that could undermine the whole concept of protecting their rights.

The aim of this paper is to point out the challenges of protecting the rights of children in the digital environment, but also the synergy and interdependence in the realization of individual rights of children created by digitalization. First of all, in order to better understand the issue of children's rights, the global significance of the Convention on the Rights of the Child is pointed out, whose universal standard of the best interests of the child is the basis for protecting and promoting children's rights. Also, the paper discusses European soft law sources for the protection of children's rights in the digital environment and evaluates their effectiveness. Relevant documents of the Council of Europe and the European Union are analyzed, which seek to preserve and strengthen the rights of children in the digital environment, pointing out the complexity of their application in practice. Since the COVID-19 pandemic has had an additional impact on the digital environment of children, it required the application of these previously established rules and also provided some answers to the question – can their application adequately protect the rights of children in the digital environment? Every social change entails positive and negative aspects, creating new approaches in regulating certain issues. Therefore, the position of the child in the digital environment is pointed out in the third chapter by redefining the concept of socially neglected child in the modern context. The fourth chapter of the paper analyzes certain rights of children related to digitalization, with special reference to the right to access the Internet. Analyzing (European) legal documents, in the fifth chapter is emphasize the importance of preventing cyber violence. In addition, the question of whether the right to access the Internet should be recognized as a modern right of children is answered. Finally, the effectiveness of the existing legal regulation is assessed, the future challenges of protecting the rights of children in the digital environment are pointed out, and suggestions for further research are given.

## **1. INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF CHILDREN'S RIGHTS**

### **1.1. 1989 UN Convention on the Rights of the Child**

Children, as subjects of rights, thus holders of rights and obligations, fully enjoy human rights.<sup>1</sup> Although the Convention on the Rights of the Child<sup>2</sup> (hereinafter: CRC) sets out the basic principles of protection of children's rights – the right to

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<sup>1</sup> Philosophers of law Hart and Wellman have questioned the concept of the rights of the child, but their renunciation contradicts the modern understanding of the position of the child since they have legal rights recognized and enforceable by the courts. More about it: Tucak, I., *Dijete kao nositelj prava*, in: Rešetar, B. (ed.), *Dijete i pravo*, Pravni fakultet u Osijeku, Osijek, 2009, pp. 63-84, p. 74-75

<sup>2</sup> UN Convention on Rights of the Child (CRC), Official Gazette, International Agreements, No. 12/1993

life, survival and development, the right to act in the best interests of the child, the right to non-discrimination and the right to participate<sup>3</sup> – these rights are further protected by the establishment of appropriate safeguards by legal instruments of a regional nature, such as those of the Council of Europe and the European Union. The CRC, as the most important international document regulating the protection of children's rights, has established universal patterns of protection of their rights.<sup>4</sup> The CRC imposes an obligation on signatory states to create mechanisms for the protection of children's rights within their legislation.<sup>5</sup> Children's rights can be divided into the following categories: rights to survival, right to development, protection rights and participatory rights.<sup>6</sup> From the aforementioned categories of children's rights, it can be concluded that an important feature of the protection of children's rights is pedocentrism,<sup>7</sup> i.e. pedocentric approach in which the interests and rights of the child are placed at the center of every family<sup>8</sup> as fundamental social units.<sup>9</sup> However, even three decades after the adoption of the CRC, its important feature is the universality which is manifested in the establishment of the best interests of the child.<sup>10</sup> The best interests of the child are the standard by which the competent national authorities undertake to apply them when making decisions concerning the child. However, acting in the best interests of the child is not directed only towards state bodies, but also towards parents who make every decision related to the child based on his/her best interests.<sup>11</sup> The universality of the standard of the best interests of the child is also reflected in the fact that it

<sup>3</sup> Vučković Šahović, N.; Petrušić, N., *Prava deteta*, Pravni fakultet Univerziteta u Nišu, Niš, 2016, p. 78

<sup>4</sup> It is important to point out that the CRC codifies the rights of children and for the first time guarantees a number of civil, political, social, cultural and many other rights of children without discrimination on the grounds of color, sex, religion, political or other beliefs, property, social origin or any other characteristics. Šernhorst, N., *Ustavnosudska zaštita prava djece*, in: Rešetar, B. (ed.), *Dijete i pravo*, Pravni fakultet u Osijeku, Osijek, 2009, pp. 85-116, pp. 88-89

<sup>5</sup> Hrabar, D., *Obiteljsko pravo u sustavu socijalne skrbi*, Narodne novine, Zagreb, 2019, p. 164

<sup>6</sup> Čović, A., *Prava deteta – evolucija, realizacija i zaštita*, Institut za uporedno pravo, Beograd, 2017, p. 18

<sup>7</sup> About pedocentrism: Pedocentrizam, 2022, [<https://proleksis.lzmk.hr/41187/>], Accessed 8 February 2022

<sup>8</sup> Hrabar, D., *Uvod u prava djece*, in: Hrabar, D. (ed.), *Prava djece – multidisciplinarni pristup*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, pp. 13-38, p. 23

<sup>9</sup> Speaking of the family as a fundamental social unit, it is important to point out that there are certain rights of the child within the family. According to the CRC, these are the child's right to live with his or her parents, to upbringing, to know his or her own origins, and to develop. More about it: Hrabar, D., *Prava djece u obitelji*, Revija za socijalnu politiku, Vol. 1, No. 3, 1994, pp. 263-267, pp. 265

<sup>10</sup> Article 3 (1) of CRC, *op. cit.*, note 2

<sup>11</sup> Bubić, S., *Standard „najbolji interes djeteta“ i njegova primjena u kontekstu ostvarivanja roditeljskog staranja*, in: Bubić, S. (ed.), *Zbornik radova – Drugi međunarodni naučni skup Dani porodičnog prava „Najbolji interes djeteta u zakonodavstvu i praksi“*, Vol. 2, No. 2, Pravni fakultet Univerziteta „Džemal Bijedić“ u Mostaru, Mostar, 2014, pp. 11-31, p. 12

applies to every treatment of the child, whether formal or informal in nature.<sup>12</sup> Therefore, every opinion of the child should be respected, his or her rights must be consistently enforced and respected, and the introduction of a comprehensive approach by relevant actors in the protection of children's rights is crucial.<sup>13</sup> Due to universal principles, the CRC is today, more than 30 years after its adoption, still an innovative document that opens up opportunities to protect children's rights in the digital environment. Due to the possibility of adapting CRC to the conditions of the digital environment, states apply the concept of the best interests of the child – criteria for assessing the child's well-being in the physical world, which is applicable in the digital environment. Taking into account the best interests of the child in the digital environment as a dynamic concept, the primary task of states is to ensure children's right to information (in a broader sense), protection from harmful conduct in the digital environment and transparency in assessing the best interests of the child.<sup>14</sup>

## 1.2. Council of Europe and European Union

The European system of protection of children's rights is implemented by the Council of Europe and the European Union. According to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms<sup>15</sup> (hereinafter: ECHR) as a key Council of Europe document regulating the protection of human rights, children enjoy all guaranteed human rights – the right to access to justice, non-discrimination, the right to respect of family and private life and many others, including the right to education.<sup>16</sup> The European Social Charter<sup>17</sup> (hereinafter: ESC) emphasizes the importance of educating children.<sup>18</sup> In addition to the above-mentioned Council of Europe documents, the Convention on the

<sup>12</sup> Medić, I., *Najbolji interes djeteta u europskim prekograničnim predmetima*, in: Župan, M. (ed.), *Prekogranično kretanje djece u Europskoj uniji*, Pravni fakultet Sveučilišta Josipa Jurja Strossmayera u Osijeku, Osijek, 2019, pp. 9-60, p. 12

<sup>13</sup> Hrabar, D., *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010) – family law aspect*, in: Kutsar, D.; Warming, H. (eds.), *Children and Non-Discrimination – Interdisciplinary textbook*, University Press of Estonia, 2014, pp. 77-90, p. 82

<sup>14</sup> Point 13 of General comment No 25 (2021) on children's rights in relation to the digital environment (General comment No. 25), CRC/C/GC/25, 2 March 2021

<sup>15</sup> Official Gazette, International Agreements, No. 18/1997, 6/1999, 14/2002, 13/2003, 9/5005, 1/2006, 2/2010

<sup>16</sup> *Ibid.*, art. 2 of the Protocol 1 ECHR

<sup>17</sup> Official Gazette, International Agreements, No. 15/2002

<sup>18</sup> More detail: Majstorović, I., *Europski obiteljskopравни sustav zaštite prava djece*, in: Hrabar, D. (ed.), *Prava djece – multidisciplinarni pristup*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, pp. 39-62, p. 47

Exercise of Children's Rights,<sup>19</sup> guaranteeing procedural rights to children, is also important. The Council of Europe has also adopted a number of other documents – guidelines and recommendations, which aim to implement the internationally established standard of protection of the best interests of the child.<sup>20</sup> Speaking of the European Union and its system of protection of children's rights, it is necessary to emphasize the Charter of Fundamental Rights of the European Union (hereinafter: CFR),<sup>21</sup> the adoption of which cataloged the rights and freedoms in the European Union. This has enabled a more adequate impact on the development of law within family law, which in the substantive sense is the responsibility of the Member States.<sup>22</sup> In addition to the right to respect of private and family life, the CFR emphasizes other children's rights. The CFR very generally emphasizes the right to education,<sup>23</sup> which is especially important to interpret in the context of the digital environment, creating an obligation for the state to enable the implementation of this right in special circumstances. However, in the context of children's rights, the most important provision is Article 24 of the CFR, which guarantees the right of children to protection and care in order to ensure their well-being. This provision clearly shows the consistency in the implementation of the CRC and the standards of the best interests of the child, so the European Union also puts children at the center of its activities and policies. In addition, there is an obligation for public authorities to always act with the aim of protecting the interests of the child.<sup>24</sup> The special emphasis on the provision of "children's rights" in Article 24 of the CFR can be interpreted as a further contribution to the development of soft law in the field of children's rights,<sup>25</sup> i.e. the development of children's policy,<sup>26</sup> which is a guarantee of protection of children's rights in the digital environment.

Although the existing legal framework allows for the protection of children's rights in the digital environment, both internationally and at European level, the Coun-

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<sup>19</sup> Official Gazette, International Agreements, No. 1/2010

<sup>20</sup> *Priručnik o pravima djeteta u europskom pravu*, Ured za publikacije Europske unije, Luxembourg, 2016, p. 25, More details on the adopted documents for the protection of children's rights within the Council of Europe: *Ibid.*

<sup>21</sup> Official Journal of the European Union, C 202/389, 7 June 2016

<sup>22</sup> Korać Graovac, A., *Povelja o temeljnim pravima EU i obiteljsko pravo*, in: Korać Graovac, A.; Majstorović, I. (ed.), *Europsko obiteljsko pravo*, Narodne novine, Zagreb, 2013, pp. 25-52, p. 26

<sup>23</sup> Art. 14 of CFR, *op. cit.*, note 21

<sup>24</sup> Art. 24 (2) of CFR, *op. cit.*, note 21; Korać Graovac, *op. cit.*, note 22, p. 46

<sup>25</sup> Petrašević, T., *Dijete u pravu Europske unije*, in: Rešetar, B. (ed.), *Dijete i pravo*, Pravni fakultet u Osijeku, Osijek, 2009, pp. 273-296, p. 287

<sup>26</sup> Rešetar, B., *Dijete i pravo – interdisciplinarni pristup*, in: Rešetar, B. (ed.), *Dijete i pravo*, Pravni fakultet u Osijeku, Osijek, 2009, pp. 297-310, p. 298



cil of Europe and the European Union seek to raise awareness of the importance of protecting children's rights in the complex conditions of digitalization through a series of recommendations, declarations, resolutions and strategies as part of soft law.

With the Recommendation of the Committee of Ministers of the Council of Europe and the Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment (hereinafter: Recommendation CM/Rec (2018)/7)<sup>27</sup> and Annex thereof, the Council of Europe points to the importance of developing and protecting the rights of children in line with the development of modern technologies. Although digital technologies, as well as their use, are presented exclusively in a positive light, it is necessary to legally regulate their use and thus protect the weakest social group – children, who today through digital technologies exercise the right to education, expression, communication and socialization.<sup>28</sup> The Council of Europe also emphasizes the duty of its member states to ensure an adequate level of protection of children's rights in the digital environment, and therefore recommends: *i*) reviewing legislation, practices and policies aimed at protecting children, *ii*) familiarizing the competent bodies with the Recommendation and clarifying its provisions to children in a clear way, *iii*) familiarizing business entities and taking appropriate measures to protect children, *iv*) cooperating with the Council of Europe in the development of strategies and programs that create a framework for the protection of children's rights in the digital environment, and *v*) reviewing the Recommendation at least every five years,<sup>29</sup> which is in line with the ever-changing digital technologies that also affect children's rights. However, a prerequisite for the implementation of all these recommendations is to provide access to the digital environment. The Council of Europe clearly points out that the unavailability of digital content reduces the conditions for children to exercise their rights, which makes it necessary to ensure adequate access to modern technology, which should be free in public spaces, including educational institutions. Speaking of children's rights in the digital environment, a bigger problem than inadequate access to modern technology is the neglect of these children's rights in rural areas, children with disabilities, children in alternative care and children involved in international migration. These forms of neglect of children's rights could be interpreted as forms of modern, digital discrimination. Although ensuring the availability of modern technologies is unquestionably the most important precondition for ensuring the rights of children in the digital environment, the

<sup>27</sup> Recommendation CM/Rec(2018)7 of the Committee of Ministers to member states on Guidelines for Respect, Protection and Exercise of the Rights of the Child in the Digital Environment

<sup>28</sup> *Ibid.*, Introductory provisions of Recommendation CM/Rec(2018)/7

<sup>29</sup> *Ibid.*, points 1-5 of the introductory provisions of the Recommendation CM/Rec(2018)/7

conditions and provisions related to the use of digital technologies should be clear, transparent, understandable and adapted to children.<sup>30</sup>

An integral part of the Recommendation are the Guidelines for Respecting, Protecting and Exercising the Rights of the Child in the Digital Environment, which define a child as a person under 18, and the digital environment as an environment that includes information and communication technologies, including Internet, mobile technology, digital networks and bases.<sup>31</sup> The basic principles and rights of the Guidelines are the best interests of the child – a generally recognized international standard for the protection of children’s rights adapted to the conditions of the digital environment, the child’s right to ability development, non-discrimination and procedural rights.<sup>32</sup> The Guidelines seek to achieve several goals. First, they seek to provide Council of Europe member states with a basis for creating policies and laws aimed at protecting the rights and welfare of children in the digital environment, as well as developing a coordinated approach between member states to achieve much-needed harmonization in protecting children’s rights in the digital environment. Second, in addition to emphasizing the role of the state, the Guidelines also identify businesses as relevant actors in the protection of children’s rights in the digital environment, primarily by fulfilling the envisaged obligations regarding the protection of children’s rights and providing support in their promotion. Finally, the importance of the Guidelines is reflected in the fact that they open the possibility of implementing actions and cooperation that achieve the desired goals of protecting the rights of children in the digital environment.<sup>33</sup> The Guidelines also point to the importance of non-discrimination, emphasizing the rights of children with disabilities in the digital environment. It can be seen that the digital environment has a dual function – on the one hand, it is pointed out that digitalization poses a potential danger of increasing vulnerability of children, while on the other hand, it opens the possibility of strengthening and protecting their rights, for which a preventive approach of the states is necessary, i.e. the creation of appropriate policies.<sup>34</sup>

The Council of Europe Strategy for the Rights of the Child (2016–2021) provides guidelines for the regulation and protection of children’s rights in the digital environment. Unlike the aforementioned Recommendation, which is primarily aimed at the obligations of member states, the Strategy sets out the objectives of

<sup>30</sup> *Ibid.*, chapter 3.1 of Guideline for respecting, protecting and exercising the rights of the child in the digital environment

<sup>31</sup> *Ibid.*, chapter 1

<sup>32</sup> *Ibid.*, chapter 2

<sup>33</sup> *Ibid.*, chapter 1

<sup>34</sup> *Ibid.*, chapter 2.3



the Council of Europe, such as promoting the right to non-discrimination, the right to access information, freedom of expression and others, as well as concrete actions environment.<sup>35</sup>

Through a number of policies, the European Union seeks to protect children's rights and enable their full implementation. The European Union made a significant step forward in regulating children's rights in 2006, when the first Strategy on the Rights of the Child was adopted.<sup>36 37</sup> The ubiquitous digitalization and the COVID-19 pandemic have prompted the European Commission to adapt the Strategy on the Rights of the Child in 2021,<sup>38</sup> as a strategic document for shaping policies for the protection of children's rights in the European Union. In the context of the digital environment, an important part of the 2021 Strategy is the chapter on digital and information society issues. This chapter emphasizes that digital technologies have their advantages and disadvantages, and that due to the COVID-19 pandemic, children are increasingly exposed to digital devices to which social and cultural life has "moved", which has consequences for children's health. It follows that digitalization is an inevitable process that requires the regulation of certain rights, especially of children as the most vulnerable social group. This issue requires Member States to ensure equal access to digital technology, the Internet, the development of digital competences and centers for safer Internet. The importance of the European Union Strategy on the Rights of the Child is also evident in the fact that it pays special attention to artificial intelligence and measures for legal regulation of this issue.<sup>39</sup> Following the Strategy on the Rights of the Child, the European Parliament adopted a Resolution<sup>40</sup> emphasizing the importance of the European Union in implementing digital literacy as a precon-

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<sup>35</sup> Council of Europe Strategy for the Rights of the Child (2016-2021), Council of Europe, 2016, p. 20, 21, Available at: [<https://edoc.coe.int/en/children-s-rights/7207-council-of-europe-strategy-for-the-rights-of-the-child-2016-2021.html>], Accessed 10 February 2022

<sup>36</sup> Rešetar, B., *op. cit.*, note 26, p. 308

<sup>37</sup> With its EU Strategy on the Rights of the Child, the European Commission is in fact emphasizing the goals that need to be achieved at Member State level in the direction of protecting children's rights. The Strategy is always focused on current problems and threats, so the Strategy for 2021 emphasized the consequences of the COVID-19 pandemic and digitalization on children's rights. More details on European Union documents on children's rights: Hrabar, D., *Prava djece u EU – pravni okvir*, in: Korać Graovac, A.; Majstorović, I. (eds.), *Europsko obiteljsko pravo*, Narodne novine, Zagreb, 2013, pp. 53-72, p. 66

<sup>38</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy on the rights of the child, COM/2021/142 final, 24 March 2021

<sup>39</sup> *Ibid.*

<sup>40</sup> European Parliament resolution of 11 March 2021 on children's rights in view of the EU Strategy on the rights of the child (2021/2523(RSP))

dition for exercising children's rights, combating digital threats and preventing exclusion.<sup>41</sup> In line with the efforts for equal opportunities for access to digital technologies, especially websites and mobile applications, the Directive<sup>42</sup> of the same name was adopted, which, in the context of children's rights and digital technologies, pays special attention to children with disabilities in accessing and exercising digital rights.

## 2. THE POSITION OF CHILDREN IN THE DIGITAL ENVIRONMENT

In a digital environment that operates according to specific rules and laws, it is important to ensure the implementation and protection of children's rights and to point out the dangers of such an environment. The constant expansion of the digital environment includes digital networks, their content, artificial intelligence, biometrics, applications, the so-called augmented reality, automated systems and more.<sup>43</sup> All of the above leads to the creation of a kind of digital culture<sup>44</sup> and digital citizenship. In particular, children today must be equal digital citizens who use digital technology in the right way, approach its use with caution and know how to protect their own rights in the digital environment.<sup>45</sup> Therefore, the characteristics of the child as a digital citizen are knowledge of the use and interpretation of digital content, assessment of its credibility and critical thinking about the opportunities and challenges of the digital environment, which is related to education, empowerment and protection, as the challenges of 21st century digital citizenship.<sup>46</sup> Digital technologies bring many benefits to children, especially in terms of education, access to information and economic opportunities.<sup>47</sup> Among other things, in relation to children, there are opportunities for decentralization of hierarchical relationships, a greater degree of cooperation, innovation and cre-

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<sup>41</sup> *Ibid.*, point 31 of Resolution

<sup>42</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, Official Journal of European Union, L 327, 2 December 2016

<sup>43</sup> General comment No. 25., *op. cit.*, note 14

<sup>44</sup> More about it: Pasqualetti, F.; Nanni, C., *Novi mediji i digitalna kultura. Izazov odgoju*, Kateheza, Vol. 27, No. 3, 2005, pp. 244-265

<sup>45</sup> Richardson, J.; Samara, V., *Lagani koraci koji pomažu djeci da postanu digitalni građani*, Vijeće Europe, 2020, p. 4. Available: [<https://rm.coe.int/lagani-koraci-koji-pomazu-djeci-da-postanu-digitalni-gra-ani/16809e74dc>], Accessed 9 February 2022

<sup>46</sup> Isman, A.; Canan Gungoren, O., *Digital Citizenship*, The Turkish Online Journal of Education Technology, Vol. 13, No. 1, 2014, pp. 73-77, p. 73

<sup>47</sup> *Djeca u digitalnom svijetu – stanje djece u svijetu 2017.*, UNICEF, 2017, p. 3. Available: [[https://www.unicef.hr/wp-content/uploads/2015/09/Izvjestaj-HR\\_12-17\\_web.pdf](https://www.unicef.hr/wp-content/uploads/2015/09/Izvjestaj-HR_12-17_web.pdf)], Accessed 9 February 2022

ativity.<sup>48</sup> However, in addition to all the advantages of the digital environment that enable the implementation of certain rights of children, there is another side of the environment expressed in negative phenomena – social isolation, loneliness, dissatisfaction,<sup>49</sup> cyber violence, as well as the phenomenon of “too much information”, loss of privacy and increasing exposure to virtual pedophilia.<sup>50 51</sup> When it comes to the dangers of modern technologies, primarily the Internet, which enables the exercise of many “digital” rights, the role of parents in preventing the negative consequences of its use is also important. Thus, parents can provide parental mediation, which can include educational procedures, dialogue with the child and setting special rules.<sup>52</sup> Due to all the above, children today exercise most of their guaranteed rights with prior digital literacy, which refers to the knowledge of digital technologies and their use. This is a prerequisite for some other actions in the digital environment, primarily media literacy.<sup>53</sup> The fact that almost 90% of children and young people use the Internet every day fully justifies the need to implement digital literacy.<sup>54</sup> The realization of certain children’s rights also leads to changes in the context of living standards. The CRC guarantees the right of children to a standard of living which, *inter alia*, should lead to the physical, mental, moral and social development of the child, with the obligation of the state to enable parents to exercise this right.<sup>55</sup> New obligations are imposed on states, more precisely the obligation to establish new standards. In order to realize the rights of children in the digital environment, every child should be provided with access to the Internet, which is imposed as their modern right. In general, the neglect of modern children’s rights – the right to access the Internet, the right

<sup>48</sup> Nikodem, K.; Kudek Mirošević, J.; Bunjevac Nikodem, S., *Internet i svakodnevne obaveze djece: analiza povezanosti korištenja interneta i svakodnevnih obaveza zagrebačkih osnovnoškolaca*, Socijalna ekologija, Vol. 23, No. 3, 2014, pp. 211-236, p. 212; See also: Stoilova, M.; Livingstone, S.; Khazbak, R., *Investigatin Risks and Opportunities for Children in a Digital World: a rapid review of the evidence on children’s internet use and outcomes*, Innocenti Discussion Paper 2020-03, UNICEF Office of Research – Innocenti, Florence, 2021, p. 20-22

<sup>49</sup> Borić Letica, I.; Velki, T., *Rizična ponašanja djece i mladih na internetu*, in: Velki, T.; Šolić, K. (eds.), *Izazovi digitalnog svijeta*, Fakultet za odgojne i obrazovne znanosti Sveučilišta Josipa Jurja Strossmayera u Osijeku, Osijek, 2019, pp. 61-104, p. 81

<sup>50</sup> *Ibid.*

<sup>51</sup> On the disadvantages of the digital environment for children, see: The digital environment [<https://www.coe.int/en/web/children/the-digital-environment>], Accessed 9 February 2022

<sup>52</sup> Blažeka Kokorić, S., *Utjecaj novih informacijsko-komunikacijskih tehnologija na obiteljski život*, Medijske studije, Vol. 11, No. 22, 2020, pp. 81-101, p. 92

<sup>53</sup> Lisičar, H., *Pravni aspekti zaštite maloljetnika u elektroničkim medijima*, in: Hrabar, D. (ed.), *Prava djece – multidisciplinarni pristup*, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, pp. 119-146, p. 140

<sup>54</sup> Borić Letica, I.; Velki, T., *op. cit.*, note 49, p. 69

<sup>55</sup> Čović, *op. cit.*, note 6, p. 17

to education and the right to privacy and access to information in the digital environment, leads to the phenomenon of “digitally neglected children” as opposed to the term “socially neglected child”.<sup>56</sup> A digitally neglected child would be a child who is denied access to modern digital technologies, both in material and formal terms. How to explain the impossibility of access to these technologies in material and formal terms? Digital neglect in the material sense would mean the failure of the state to provide the necessary infrastructure for normal functioning in the digital environment. Apart from the state, the responsibility for the child’s digital neglect in some cases lies with the parents, whose duty is to provide the child with all the necessary conditions for his/her development (to which it is necessary to add their financial capabilities).<sup>57</sup> On the other hand, digital neglect in the formal sense would mean the fulfillment of material preconditions, but without significant content that would follow the real needs of children. A closely related problem with the term digitally neglected child is discrimination in the digital environment, which directly leads to the endangerment of children’s rights. Therefore, any form of discrimination, and thus digital neglect, would be eliminated by providing equal access to digital technologies and the rights of children associated with them. In particular, children may be discriminated against in the digital environment and thus prevented from exercising their rights by: *i*) exclusion from the use of digital technologies, *ii*) receiving unwanted hate messages and *iii*) automated processes resulting from filtering data on children in the virtual environment.<sup>58</sup> Although the European Union promotes equality of all its citizens, including children, statistical indicators need to be taken into account in order to develop their rights in the digital environment. A key problem in this regard is the pronounced European inequality.<sup>59</sup> Awareness of the development of rights lies with the children themselves. In 2019, only 0.4% of children were digitally deprived in Iceland, while this percentage was 20.8% in Bulgaria and 23.1% in Ro-

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<sup>56</sup> On the notion of the socially neglected child: Hrabar, D., *Obiteljsko pravo*, Narodne novine, Zagreb, 2021, p. 20

<sup>57</sup> Speaking about children’s rights in the modern, digital context, the standard of living, in addition to the usual rights, includes the right to access the Internet, which ensures the child’s standard of living. In this sense, parents would be obliged to act in accordance with their abilities, while in the other direction, the duty of the state through numerous mechanisms to enable the exercise of this right. Art. 27: Standard of living [<https://archive.crin.org/en/home/rights/convention/articles/article-27-standard-living.html>], Accessed 9 February 2022

<sup>58</sup> Points 9 and 10 of General comment No. 25, *op. cit.*, note 14

<sup>59</sup> Thus, in Portugal, 10% of households do not use the Internet because the connection costs are too expensive, compared to Denmark, the Netherlands or Luxembourg, which do not have such problems at all, making digitalization and guaranteeing children’s rights in these countries safer. Households – reasons for not having internet access at home [[https://ec.europa.eu/eurostat/databrowser/view/isoc\\_pibi\\_rni/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/isoc_pibi_rni/default/table?lang=en)], Accessed 21 February 2022

mania.<sup>60</sup> In addition to digital deprivation, it is important to note the percentage of children who are not interested in digital media. While this percentage is only 2.6% in Ireland, it is as high as 17.3% in Bulgaria.<sup>61</sup> Also, an important indicator of the position of children in the digital environment is the percentage of children who are insecure in the use of digital technologies as a mechanism for exercising their individual rights.<sup>62</sup> These are all challenges that children face, which place the obligations of legislators to respond more promptly and solve the problems caused by digitalization, especially the problem of inequality. In order to eliminate certain negative indicators regarding children's digital competencies, which are also necessary for the exercise of certain rights, the European Union seeks to promote children's digital skills through numerous programs and provide them with the necessary infrastructure to exercise their modern rights.

### 3. THE RIGHT TO ACCESS THE INTERNET – THE MODERN RIGHT OF CHILDREN?

Digitalization, and partly the COVID-19 pandemic, have especially made certain children's rights a reality. In fact, the need to regulate and guarantee modern rights, such as the right to access the Internet, the right to education and the right to access information and protect privacy in the digital environment, has been particularly emphasized. These rights are interrelated in a cause-and-effect relationship, which can be explained as follows. If a child today does not have the right to access the Internet, his/her right to education through distance learning tools is endangered or almost prevented. This directly violates the international standard of children's right to education. Ultimately, it is necessary to guarantee children the right to access information and express their opinions, because if this right were denied, children would not be active social participants. The Council of Europe and the European Union actively advocate the implementation of these rights of children in the digital environment, striving to ensure equal opportunities for every child in the digital environment, but also to protect them from all dangers that could harm their rights. In general, the digital environment has not brought new rights to children, but imposes an obligation on states to apply the framework of existing rights to the said environment.

<sup>60</sup> Ayllon, S. *et al.*, *Digital diversity across Europe: Policy brief September 2021*, 2021, p. 4. Available at: [<https://www.digigen.eu/wp-content/uploads/2021/09/DigiGen-policy-brief-digital-diversity-across-Europe.pdf>]

<sup>61</sup> *Ibid.*, p. 5

<sup>62</sup> Denmark has 3.7% of insecure children when it comes to technology, and Bulgaria is again leading in a negative sense, with 16.8% of insecure children. *Ibid.*, p. 6

The digital age, which has been evolving since the beginning of the 21st century, especially in the context of the COVID-19 pandemic, has shown that the right to access the Internet is becoming one of the fundamental human rights.<sup>63</sup> However, the right to access the Internet in this paper is only colloquially stated as a right, given that international documents call on states to include this right in the group of fundamental human rights. However, although not included in the body of fundamental human rights, the right to access the Internet can also be interpreted in the context of other guaranteed rights, especially in European law.<sup>64</sup> Some states have designated the right to access the Internet as a fundamental human right, and thus the right of children.<sup>65</sup>

Today, the Internet has become a global service that provides a number of possibilities, so it is necessary to define it as one of the human rights. It is almost impossible to talk about the right to education of children in the digital environment if the right to access the Internet under equal conditions is not provided. In addition, the inability to access the Internet affects the child's right to access information and the freedom of expression as fundamental rights of democratic societies. Back in 2005, when the Internet practically began to develop in the form in which it is present today, as many as 70% of children in European countries used the Internet.<sup>66</sup> The harms of the Internet have led to the fact that children today need to be guaranteed not only the right to access the Internet, but also the right to secure access to the Internet. There are a number of advantages that the Internet provides to children in the realization of their rights. First of all, children are at the source of information, they gain different views of the world around them, they are given the opportunity to connect with other peers.<sup>67</sup> The Internet, which can be viewed as part of the digital environment in a broader sense, is (in) directly related to the participatory and protective rights of children. On the one hand, the Internet provides an opportunity for children to be better informed and thus active advocates of these same rights, which can be interpreted as a participa-

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<sup>63</sup> This statement is confirmed by the conclusion of the United Nations, which defines the Internet as a fundamental human right, calling on states to provide implementing measures for everyone to access the Internet, with particular condemnation of intentional obstruction or obstruction of Internet access. UN: Internet access is now a basic human right [<https://www.teachthought.com/technology/un-internet-access-now-basic-human-right/>], Accessed 11 February 2022

<sup>64</sup> In the context of the ECHR, the right to access the Internet is interpreted through the right to freedom of expression. Đukić, D., *Pravo na pristup internetu kao ljudsko pravo*, Strani pravni život, Vol. 60, No. 3, pp. 205-217, p. 207

<sup>65</sup> Of the European countries, Estonia, Finland and France have more specifically defined the right to access the Internet. *Ibid.*

<sup>66</sup> Čović, *op. cit.*, note 6, p. 60

<sup>67</sup> Stoilova, M.; Livingstone, S.; Khazbak, R., *op. cit.*, note 48, p. 7

tory right, while on the other hand, negative connotations related to the right to use the Internet affect their protection rights.<sup>68</sup>

The right to access the Internet needs to be interpreted from a broader perspective, as the inability to access it may jeopardize other rights, such as the right to play. The CRC envisages the right to play as an obligation of states to recognize the child's right to free time, which should include play and other activities appropriate to the child's age, as well as participation in cultural life.<sup>69</sup> Thus, it can be concluded that the right to play would also include the right to play in a virtual environment.<sup>70</sup> This issue was especially prompted by the COVID-19 pandemic when children were prevented from playing in the usual way due to lockdown and social distance measures. Given that the effects of children's right to play include socialization, the establishment of friendships and learning about social dynamics,<sup>71</sup> the question arises whether such effects are achieved in play in the digital environment? Playing in a virtual environment can hardly achieve effects like the one in physical form, but such a concept needs to be interpreted through the right to play in the modern world because a different approach would lead to a violation of the guaranteed right. The European Union has recognized the importance of regulating the use of the Internet, which is why in 2012 the European Strategy for a Better Internet for Children<sup>72</sup> was adopted, emphasizing the modern challenges of using the Internet in relation to children. This Strategy is based on four basic principles: *i*) establishing quality content for young people on the Internet, *ii*) raising awareness and empowerment when using the Internet, *iii*) creating a safe environment for children using the Internet and *iv*) combating sexual abuse and exploitation of children through the Internet.<sup>73</sup> The Strategy is also charac-

<sup>68</sup> Coppock, V.; Gillet-Swan, J. K., *Children's rights in a 21<sup>st</sup> century digital world: Exploring opportunities and tension*, Global Studies of Childhood, Vol. 6, No. 4, 2016, pp. 369-375, p. 370

<sup>69</sup> Payà Rico, A.; Bantulà Janot, J., *Children's Right to Play and Its Implementation: A Comparative, International Perspective*, Journal of New Approaches in Educational Research, Vol 10, No. 2, 2021, pp. 279-294, p. 280

<sup>70</sup> Digitalization accompanies children from an early age, and the right to play through digital technologies begins from an early age when kindergarten children get the opportunity to play on computers, which shows the importance of educators in learning to act in a digital environment. See: Plowman, L.; Stephen, C.; McPake, J., *Growing Up with Technology: Young children learning in a digital world*, Routledge, London, 2010, p. 10. Available at: [[https://www.researchgate.net/publication/41530139\\_Growing\\_Up\\_with\\_Technology\\_Young\\_children\\_learning\\_in\\_a\\_digital\\_world](https://www.researchgate.net/publication/41530139_Growing_Up_with_Technology_Young_children_learning_in_a_digital_world)]

<sup>71</sup> Mrnjauš, K., *The Child's Right to Play?!*, Croatian Journal of Education, Vol. 16, No. 1, 2014, pp. 217-233, p. 226

<sup>72</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Strategy for a Better Internet for Children, COM (2012)196 final, 2 May 2012

<sup>73</sup> *Ibid.*, Introductory provisions of the European Strategy for a Better Internet for Children. The importance of this Strategy is also evident in the fact that it defines the concept of media literacy as a



terized by the effort to make children active participants in the digital society by encouraging them to, in addition to using the Internet, also create content, which would consequently allow them to develop digital skills.<sup>74</sup> In relation to the safe use of the Internet, the Strategy emphasizes three “security pillars” – government policies, parents and children themselves.<sup>75</sup>

The right to access the Internet is a complex issue and a contemporary cause of child inequality. As expected, the biggest problem with Internet access is in poorer countries as opposed to more developed ones. According to statistics, only 1 in 25 children in Europe does not have access to the Internet. However, an additional problem is the fact that almost half of the websites are in English, which is why children cannot find or understand the requested information.<sup>76</sup> The complexity of the right to access the Internet is once again evident in the following way. Speaking of English-language sites, it is to be assumed that not all children can and do know English, which ultimately depends on their abilities. It is clear that the linguistic inadequacy of the website is a kind of discrimination, especially problematic for the European Union, which guarantees linguistic diversity and availability of content in all 24 official languages. However, in order to better understand the right to access the Internet in the European Union, statistical indicators need to be taken into account. At the level of the 27 Member States of the European Union, in 2021 as many as 92% of households had access to the Internet, an increase of 6% compared to 2016.<sup>77</sup> There is no doubt that the COVID-19 pandemic has affected the increase in the number of Internet users. Given the constant emphasis on the development of digital skills, in 2019, 56% of EU citizens had basic or intermediate digital skills, which is an increase of 2% compared to 2015.<sup>78</sup> It follows that the right to access the Internet has been implemented at the level of the European Union, although no document explicitly obliges Member States to implement this right.<sup>79</sup> Although it is necessary to promote the equality of all children in the exercise of their rights, it is difficult, almost impossible, to

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protective mechanism for children and youth in the use of electronic media. See: Lisičar, H., *op. cit.*, note 53, p. 143

<sup>74</sup> Chapter 2.1.2. of European Strategy for a Better Internet for Children, *op. cit.*, note 72

<sup>75</sup> *Ibid.*, chapter 2.3 of European Strategy for a Better Internet for Children.

<sup>76</sup> Djeca u digitalnom svijetu – stanje djece u svijetu 2017., *op. cit.*, note 47, p. 17

<sup>77</sup> Level of internet access – households [https://ec.europa.eu/eurostat/databrowser/view/tin00134/default/table?lang=en], Accessed 11 February 2022

<sup>78</sup> Individuals who have basic or above basic overall digital skills, [https://ec.europa.eu/eurostat/databrowser/view/tepsr\_sp410/default/table?lang=en], Accessed 11 February 2022

<sup>79</sup> However, research indicates differences in the Member States regarding the availability of the Internet or computers, which has led to the term digital deprivation – 5.3% of children in Europe are dealing with this problem. Digital diversity across Europe: Recommendations to ensure children across Europe equally benefit from digital technology, [https://www.digigen.eu/news/digital-diversity-across-eu-

guarantee any right to every child, including the right to access the Internet. For example, every child is guaranteed the right to a (reasonable) standard of living, even though millions of children are starving. The same argument could be used with regard to the right to access the Internet, but this issue is much more complex given that, in addition to the existing problem of inequality and guaranteeing children's rights, it further deepens children's inequality in exercising their rights.

As it follows international standards for the protection of children's rights, in the context of the right to access the Internet, the European Union should reduce the cost of Internet connection, provide more public access points, eliminate all inequalities in access to the Internet and make the Internet available on digital devices on the go.<sup>80</sup>

### 3.1. The right to education in the digital environment

The right to education is one of the rights of children, which with its social dimension enables every child to participate in society.<sup>81</sup> Apart from the social dimension of education, there is also its economic dimension, according to which it must be available to everyone.<sup>82</sup> The complexity of this right stems from the CRC, according to which it can be interpreted bilaterally – as a process, which is manifested in its gradualness and a means of achieving societal goals, and which relates to the development of the child in the broadest sense.<sup>83</sup> Education in the digital environment is undergoing a number of changes.<sup>84</sup> Technological changes and new pedagogical approaches have led to increased competitiveness, which can affect the development of the quality of educational institutions, but also deepen inequalities among students due to the need to ensure digital technologies as an integrative part of the teaching process.<sup>85</sup> The price of modern technology and

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rope-recommendations-to-ensure-children-across-europe-equally-benefit-from-digital-technology/], Accessed 18 February 2022

<sup>80</sup> Djeca u digitalnom svijetu – stanje djece u svijetu 2017., *op. cit.*, note 47, pp. 29, 31

<sup>81</sup> Korać Graovac, A., *op. cit.*, note 22, p. 42

<sup>82</sup> Vučković Šahović, N.; Petrušić, N., *op. cit.*, note 3, p. 184

<sup>83</sup> Hrabar, D., *Prava djece u obiteljskom zakonodavstvu*, in: Hrabar, D. (ed.), *Prava djece – multidisciplinarni pristup*, Pravni fakultet Sveučilišta u Zagrebu, 2016, pp. 63-82, p. 74

<sup>84</sup> The concept of digitalization of education needs to be followed from several aspects. In order for it to be achievable as a guaranteed right of children, it is necessary to adapt pedagogical approaches to education, because otherwise, the basic goals of education are not met. Pettersson, E., *Understanding digitalization and educational change in school by means of activity theory and the levels of learning concept*, Education and Information Technologies, No. 26, 2021, pp. 187-204, p. 189

<sup>85</sup> Bryant, P., *Making education better: implementing pedagogical change through technology in a modern institution*, in: Zorn, A.; Haywood, J.; Glachant, J-M. (eds.), *Higher Education in the Digital Age: Moving Academia online*, Edward Elgar, Cheltenham/Northampton, 2018, pp. 35-54, p. 36

its (economic) availability, in connection with education in a new, virtual environment, emphasizes inequalities among children and their discrimination.<sup>86</sup> In the context of European law, the right to education needs to be viewed from the perspective of the European Union and the Council of Europe. The CFR provision of Article 14 guarantees the right to education, i.e. in addition to the general provision on the right to education, the possibility of free compulsory schooling is also envisaged.

As European Union law provides for the equality of all European citizens in the exercise of their rights, the same applies to the right to education. Therefore, the restriction of this right should always be predictable, have a legitimate aim, be justified and non-discriminatory.<sup>87</sup> All these characteristics of education, especially the emphasis on its universality, were called into question by the emergence of the COVID-19 pandemic, which also meant the forced digitalization of education. In that sense, it is necessary to see a kind of threat to this right through the already mentioned social and economic dimension. Although the COVID-19 pandemic, i.e. the first lockdown, lasted relatively short, the digitalization of education in this regard should not reverse the social roles and authorities of children, primarily by turning the role of parents into teachers. Although digitalization potentially leads to the scarcity of children's social relations, a particularly important problem regarding education in the digital environment is its economic dimension. Digitalization of education, which undoubtedly leads to better access to teaching materials and better insight into students' educational "weaknesses",<sup>88</sup> may have a negative effect if the fact that parents ensure the child's right to education in accordance with their capabilities is not taken into account. In other words, if a child does not have access to a computer or the Internet, he/she is denied the right to education as a universal right important for the development of his/her personality. The issue of prompt digitalization of the right to education is also manifested in the insufficient level of digital literacy.<sup>89</sup> Given that the European Union's policies seek to ensure the right to education of every child, in order to fully implement this right in the digital environment, it is necessary to establish a single

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<sup>86</sup> Winkler, S., *The impact of COVID-19 on children's rights*, EU and Comparative Law Issues and Challenges Series, Vol. 5, 2021, pp. 580-600, p. 593

<sup>87</sup> Priručník o pravima djeteta u europskom pravu, *op. cit.*, note 20, p. 135

<sup>88</sup> More about it: The opportunities and challenges of digital learning [<https://www.brookings.edu/research/the-opportunities-and-challenges-of-digital-learning/>], Accessed 14 February 2022

<sup>89</sup> A good part of European countries still do not have an incorporated definition of digital literacy in their legislation. However, those countries that define the term digital skills, define it as pedagogical methods of using digital technologies, basic computer skills, data retrieval skills and the like. European Commission/EACEA/Eurydice, *Digital Education at School in Europe: Eurydice Report*, Publications Office of the European Union, Luxembourg, 2019, p. 26

definition of digital literacy, as recommended by the Committee on the Rights of the Child.<sup>90</sup> Regarding the forced digitalization of education with the emergence of the COVID-19 pandemic, the European Network of Ombudspersons for Children (ENOC) highlighted the fact that European countries quickly introduced distance learning platforms protecting the right to education as a fundamental right of children while warning against discrimination due to the unequal availability of digital technologies.<sup>91</sup> Although the right to education in the European Union in the already mentioned digital environment is often called into question due to lack of digital skills and the economic dimension of device availability, such statements are not sustainable.

The importance of the right to access the Internet and digital technologies in the context of education is also important due to the fact that between 16 and 46% of children use the Internet to fulfill school obligations, as a direct part of the teaching process.<sup>92</sup> Not to be overlooked is the fact that European households on average have more than one digital device needed to learn in a digital environment, while more than 70% of parents recognized the “forced” digitalization of education during a pandemic as a mechanism to strengthen their child’s autonomy.<sup>93</sup> Thus, it is evident that there are material conditions for the feasibility of digitalization of education at the level of the European Union, which does not jeopardize the implementation of this right of children. However, the challenges are the lack of motivation in the sense that during the pandemic 50% of children were less interested in the teaching process compared to the period before (“forced digitalization”).<sup>94</sup> Following international standards, as well as the protection of the universal right to education in the context of digitalization, guided by the best interests of children, the European Union has developed an Action Plan for Digital Education (2021–2027). It emphasizes the importance of the right to education as part of the European acquis, in two segments: *i*) providing the necessary infrastructure and equipment, and *ii*) developing digital skills and literacy.<sup>95</sup> All of

<sup>90</sup> More details: points 99-105 of General comment No. 25., *op. cit.*, note 14

<sup>91</sup> *European Network of ombudspersons for Children (ENOC) – ENOC Bureau Statement „Children’s rights in the context of the COVID-19 outbreak.”* Available at: [<http://enoc.eu/wp-content/uploads/2020/04/ENOC-Bureau-statement-on-CR-in-the-context-of-the-COVID-19-outbreak-FV.pdf>], Accessed 14 February 2022

<sup>92</sup> Smahel, D. *et al.*, *EU Kids Online 2020: Survey results from 19 countries*, 2020, p. 25, [DOI: 10.21953/lse.47fdeqj01ofo]

<sup>93</sup> Mascheroni, G.; Saeed, M.; Valenza, M.; Cino, D.; Dreesen, T.; Zaffaroni, L. G.; Kardefelt-Winther, D., *Learning at a Distance: Children’s remote learning experiences in Italy during the COVID-19 pandemic*, UNICEF Office of Research – Innocenti, Florence, 2021, pp. 9, 20

<sup>94</sup> *Ibid.*, p. 16

<sup>95</sup> European Education Area – Digital Education Action Plan (2021-2027) [<https://education.ec.europa.eu/focus-topics/digital/education-action-plan>], Accessed 14 February 2022

the above points to the fact that the European Union protects the right to education as a universal right of children by adapting it to the conditions of a modern, digital environment.

### 3.2. The right to access information and protect privacy

One of the rights of children that is the subject of modern scientific debate is the right to access information. According to the CRC, the child has the right to access information, whereby the state has the duty to provide mechanisms that, on the one hand, allow children access to various information, and on the other hand, protect children from harmful and unwanted content. Consequently, there is a conventional obligation of states to protect the privacy of children. In a broader sense, the right of access to information needs to be interpreted in addition to the child's right to freedom of expression.<sup>96</sup> In addition to regulating this right at the international level, the CFR, as part of the primary legislation of the European Union, also regulates the issue of the right to expression and information, which relates to the freedom to receive and disseminate information and ideas. Therefore, the obligation of data protection is imposed, which must be processed fairly and legitimately.<sup>97</sup> In addition, in relation to the right to access information, there is also the right to respect private and family life and communication,<sup>98</sup> which is necessary to ensure in the digital environment when information becomes easily accessible.<sup>99</sup> The unavailability of information in the digital age would mean discrimination *per se*, especially if a significant part of the information is placed online and there is no access to the Internet, which again raises the issue of children's vulnerability and availability of information.<sup>100</sup> In the conditions of digitalization of society, the right of children to communicate through modern technologies is especially relevant. Today, children are required to participate in groups on various messaging platforms through which important information on the issue of education, extracurricular activities and the like is exchanged. As a rule, the issue of the right to access the Internet reemerges here – if this right is not available, it entails the issue of other rights of the child in the digital environment, which is

<sup>96</sup> Čović, A., *op. cit.*, note 6, p. 15, 16

<sup>97</sup> Articles 8 and 11 of CFR, *op. cit.*, note 21

<sup>98</sup> *Ibid.*, art. 7 of CFR

<sup>99</sup> Vojković, G., *Opća uredba o zaštiti osobnih podataka*, in: Velki, T.; Šolić, K. (eds.), *Izazovi digitalnog svijeta*, Fakultet za odgojne i obrazovne znanosti Sveučilišta Josipa Jurja Strossmayera u Osijeku, Osijek, 2019, pp. 175-202, p. 179

<sup>100</sup> Bisson, C.; Bochet, J., *Ljudska prava u digitalno doba: međunarodni i europski pravni okvir*, in: Luatti, L. (ed.), *III. Susret ljudskih prava: Ljudska prava u doba digitalnog građanstva*, Vodnjan, Istarska županija, 2017, pp. 12-23, p. 18

characterized by the speed of information dissemination and the importance of its quick application.

The right to access information and the right to speak are extremely important rights for children because they enable children to become fulfilled social beings, as well as to express views on issues related to them by any means, including modern digital technologies.<sup>101</sup> The Council of Europe recognized the importance of the right of access to information in Recommendation CM/Rec (2018)/7. It is the duty of the state to ensure that children have complete freedom of expression and access to information on all issues important to them, regardless of the medium used.<sup>102</sup> However, the obligation to provide access to information and express opinions in the digital environment includes developing children's awareness of the proper use of information and expressing their views so that certain actions or consumption of their rights would not endanger the rights of others.<sup>103</sup> Information must be available to children in an understandable and adapted way and therefore a large amount of information available to children will not be a guarantee of protection of this right if its content is not easily accessible, written in a way understandable to children and adapted to age and maturity of children. As a rule, children need to be provided with information that is crucial for their development and interests, which includes information on health, education, sexuality, as well as the rights they face in the digital environment.<sup>104</sup> Ensuring the availability of information to children must also be correlated with restricting access to certain information. Such action is in the best interests of the child as it filters content that is harmful to children, which would in fact harm their rights. However, this possibility is not unlimited either, but must be in line with international and European standards of restricting fundamental human rights.<sup>105</sup> As a specific example of data endangerment, phishing based on identity theft is cited, leading the victim (in this case a child) to reveal sensitive personal data on a fake website.<sup>106</sup>

The right to access information and freedom of expression fall into the category of democratic rights and any restriction thereof potentially restricts the social activities of children. Therefore, any restriction of the right to access information and express an opinion must be proportionate, i.e. it must pass a proportionality test

<sup>101</sup> Djeca imaju pravo na informaciju, slobodu izražavanja mišljenja i na privatnost, [<https://www.medijskapismenost.hr/djeca-imaju-pravo-na-informaciju-slobodu-izrazavanja-misljenja-ali-i-na-privatnost/>], Accessed 16 February 2022

<sup>102</sup> Point 16 of the Recommendation CM/Rec(2018)/7, *op. cit.*, note 27

<sup>103</sup> *Ibid.*, point 17 of the Recommendation CM/Rec(2018)/7

<sup>104</sup> *Ibid.*, point 18 of the Recommendation CM/Rec(2018)/7

<sup>105</sup> *Ibid.*, point 20 of the Recommendation CM/Rec(2018)/7

<sup>106</sup> Borić Letica, I.; Velki, T., *op. cit.*, note 49, p. 88

which assesses the usefulness of some information, or the possibility of expressing an opinion and the legitimacy of denying that right, guided by the best interests of the child.<sup>107</sup> Consequently, neither digitalization nor the COVID-19 pandemic should be used as an excuse to prevent the implementation of this right, because such an environment requires the availability of as many information sources as possible so that children can maintain their role as active participants in society. Speaking of protecting children's privacy, the General Data Protection Regulation (hereinafter: GDPR) is important at European Union level. One of the rights provided by the GDPR is the right to be forgotten, according to which every person, and especially children as a vulnerable group, have the right to have their data removed from the Internet, in the context of the digital environment.<sup>108</sup> This right starts from the fact that children, compulsorily or voluntarily, use digital technologies and the Internet, often unknowingly making numerous personal data available. Thus, no matter how much attention is paid to the child and the protection of his/her rights and interests, the child is not and cannot be fully aware of the dangers arising from sharing data on the Internet as a globally available service. It is therefore essential to ensure that children have the right to be forgotten so that the right to access information and express opinions does not adversely affect their privacy.<sup>109</sup> The GDPR pays special attention to children under the age of 16 in order to protect their data. Therefore, children under the age of 16 may use certain online services for which personal information is required, only with parental consent, while this consent is not required for preventive or counseling services offered exclusively to the child.<sup>110</sup>

In order to strengthen the protection of the privacy of children in the digital environment, the Council of Europe has adopted a Declaration on the need to

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<sup>107</sup> The right of access to information and the freedom of expression of children should thus be restricted only if it is for the purpose of protecting the rights of others, national security, public order or public health. Briefing: Children's rights in the digital age, [<https://home.crin.org/issues/digital-rights/childrens-right-digital-age>], Accessed 16 February 2022

<sup>108</sup> Brian, S.; Brian, O., *Children's rights online: challenges, dilemmas and emerging directions*, in: van der Hof, S.; van den Berg, B.; Schermer, B. (eds.), *Minding Minors Wandering the Web: Regulating Online Child Safety*, Information technology and law series, Vol. 24, 2014, pp. 19-38, p. 24

<sup>109</sup> Lievens, E.; Vander Maelen, C., *A Child's Right to be Forgotten: Letting Go of the Past and Embracing the Future?*, *Latin American Law Review*, No. 2, 2019, pp. 61-79, p. 65, 66. The right to protection of children's privacy is not only related to the actions of children, but also to parents who, by sharing content about children, can significantly contribute to the violation of the child's right to privacy. Thus, in this case, digital services can conflict the parent's right to freedom of expression and the child's right to privacy. More about it: *Ibid.*

<sup>110</sup> Art. 8 GDPR, [<https://gdpr-info.eu/art-8-gdpr/>], Accessed 20 February 2022



protect the privacy of children in the digital environment.<sup>111 112</sup> The Declaration thus starts from the fact that personal data can be used for the benefit of children, but also points out that there are challenges to their protection, especially when it comes to artificial intelligence. The Declaration points to the negative aspects of digitalization and the consequences that the COVID-19 pandemic has left on the issue of children's privacy, given that it has intensified the use of digital technologies and the Internet. The preventive approach of the Declaration is based on the fact that the protection of children's right to access information and their privacy should be enabled by conducting technology risk assessments on children's rights, interstate coordination of competent authorities and taking advantage of digital technologies for children. The child, in accordance with his or her best interests, must be able to express his or her views on all matters relevant to him or her, both physically and digitally. Information service providers should therefore pay much more attention to children and their consent to the use of certain digital content, which would further affect the more responsible approach of children in relation to the use of information. By contrast, children would *de facto* cease to be perceived as a vulnerable social group that deserves special care from all social actors, especially in the digital environment.

#### 4. CYBER VIOLENCE

Although the paper has repeatedly pointed out that the digital environment provides a number of benefits for children, especially in terms of exercising their rights (such as the right to education, the right to access information, etc.), this environment also characterizes side effects that may threaten children's rights. In this case, we are talking about cyber threats characterized by the use of the Internet and digital technologies and their execution by children or adults. Cyber violence includes cyberbullying, grooming, hate speech, misinformation, child trafficking,

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<sup>111</sup> Declaration by the Committee of Ministers on the need to protect children's privacy in the digital environment, Decl(28/04/2021), Adopted by the Committee of Ministers on 28 April 2021 at the 1402<sup>nd</sup> meeting of the Ministers' Deputies

<sup>112</sup> The European Court of Human Rights in the *K.U. v Finland* (2872/02) stressed the importance of protecting a child's privacy online. Namely, an unknown person published the data of a 12-year-old child on a dating page without his knowledge, which violated the child's privacy. The court pointed out that in this case it is a potential threat to the welfare of the child, with special emphasis on the age of the child and his vulnerability. This decision of the European Court of Human Rights is also important because it obliged the legislators to react to social changes, first of all, technical development and adjust the legislation accordingly. Fenton-Glynn, C., *Children and the European Court of Human Rights*, Oxford University Press, Oxford, 2021, p. 50.; Pöysti, T., *Judgement in the case of K.U. v Finland*, Digital Evidence and Electronic Signature Law Review, Vol. 6, 2009, pp. 34-45, p. 34

and a number of other threats<sup>113</sup> which are committed through the Internet and threaten a child's dignity. Therefore, cyber violence could be divided into *i*) violence posed by adults, which are mainly acts related to sexual predation towards children, and *ii*) violence posed by children to other children (e.g. hate speech in the digital environment). Such forms of violence, committed in the circumstances of the digital environment, are collectively called digital violence. Simply put, it is violence committed through digital technologies, i.e. their intentional use for the purpose of harming one or more persons.<sup>114</sup>

Understanding importance of protecting children from modern forms of violence started at the beginning of the 21st century when the Council of Europe's Cybercrime Convention<sup>115</sup> defined criminal offenses related to child pornography involving the use of computer systems. The Convention criminalized the acts of *i*) producing, *ii*) offering, *iii*) distributing, *iv*) procuring and *v*) possessing child pornography through a computer system.<sup>116</sup> With the development of modern technologies, new dangers in the digital environment are developing to the detriment of children, so in addition to the aforementioned acts of the Convention on Cybercrime, the criminal offense of sex grooming has also developed. Sex grooming has the following characteristics: it takes place in cyberspace, it is done by using digital technologies, all with the purpose of using the vulnerability of children as a social group in the digital environment.<sup>117</sup> In the countries of the European Union, between 8 and 39% of children between the ages of 12 and 16 have received a message of sexual content, with messages of such content being equally targeted at both boys and girls.<sup>118</sup> On the other hand, an increasingly common problem of children in the digital environment is cyberbullying, which is intentional and repeated harm through electronic text.<sup>119</sup>

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<sup>113</sup> Livingstone, S.; Bulger, M. E., *A global research agenda for children's rights in the digital age*, Journal of Children and Media, Vol. 8, No. 4, 2014, pp. 317-335, p. 322

<sup>114</sup> Zečević, I., *Odgoj i obrazovanje djece o sigurnoj uporabi digitalnih tehnologija: vodič za nastavnike*, Save the Children in North West Balkans, Sarajevo, 2021, p. 24

<sup>115</sup> Convention on Cybercrime, Official Gazette, International Agreements, No. 9/2002; European Treaty Series – No. 185

<sup>116</sup> *Ibid.*, art. 9 of the Convention on Cybercrime

<sup>117</sup> Herceg Pakšić, B., *Virtualna komunikacija i izazovi kaznenog prava novog doba*, in: Velki, T.; Šolić, K. (eds.), *Izazovi digitalnog svijeta*, Fakultet za odgojne i obrazovne znanosti Sveučilišta Josipa Jurja Strossmayera u Osijeku, Osijek, 2019, pp. 155-174, pp. 162-163

<sup>118</sup> Smahel, D. *et al.*, *op. cit.*, note 92, p. 83

<sup>119</sup> Duvnjak, I.; Šincek, D., *Vršnjačko nasilje u digitalnom svijetu*, in: Velki, T.; Šolić, K. (eds.), *Izazovi digitalnog svijeta*, Fakultet za odgojne i obrazovne znanosti Sveučilišta Josipa Jurja Strossmayera u Osijeku, Osijek, 2019, pp. 105-122, p. 107

The most common form of cyber violence is online hate speech, which directly violates a child's dignity in the digital environment. Hate speech is any speech that expresses hatred towards a certain social group according to gender, age, origin, etc.<sup>120</sup> Hate speech can also be corroborated by statistical indicators. At the level of European countries, between 4 and 48% of children between the ages of 12 and 16 receive a hate speech message at least once a month, whereas between 11 and 31% of them receive such content several times a year.<sup>121</sup> This issue has also been recognized at the level of the European Union, which has regulated this cyber-crime against children by the Directive on combating the sexual abuse and sexual exploitation of children and child pornography,<sup>122</sup> encouraging harmonization of this issue at Member State level.<sup>123</sup> Why is it important to link children's rights in the digital environment and these cyber violence? Primarily, in this way, digital technology and the environment, which provides many opportunities for children, are viewed in a negative context, which prevents children from exercising their rights in a safe way. The consequences of cyber violence are far-reaching, which is why they can be an incentive for states to act more persistently in protecting the modern rights of children which need to have equal legal status as the "regular" ones. Ensuring safe access to the Internet and the use of digital technologies without violence is in the best interests of the child. Hitting a child, calling them names, kicking and the like in the real world is equivalent to cyberbullying, grooming and other unwanted forms of digital violence in the digital environment, which equally insult the child's dignity and the right to protection from all forms of violence as another international standard.<sup>124</sup>

In accordance with the aforementioned issue of cyber threats that violate the rights of children in the digital environment, the recommendations of the European Network of Ombudsperson for Children (ENOC) are also important. According to the report, violence against children in the digital environment can be prevented through national and interstate cooperation, creating modern policies that would define a clear way to combat sexual offenses related to digital technologies,

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<sup>120</sup> Herceg Pakšić, B., *op. cit.*, note 117, pp. 157-159

<sup>121</sup> Smahel, D. *et al.*, *op. cit.*, note 92, p. 66

<sup>122</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, Official Journal of the European Union, L 335/1, 17 December 2011

<sup>123</sup> More about it: Herceg Pakšić, *op. cit.*, note 119, pp. 164-165

<sup>124</sup> More about it: Hrabar, D., *op. cit.*, note 37, pp. 53-72. The increasing incidence of violence in the digital environment obliges the European Court of Human Rights to reconsider the right to respect for private (and family) life and the right to freedom from inhuman or degrading treatment. Fenton-Glynn, *op. cit.*, note 112, p. 399

providing tailored information to children and necessary support.<sup>125</sup> Recommendation CM/Rec(2018)/7 places special emphasis on general measures to protect children in the digital environment and measures aimed at protecting children from sexual abuse. The Council of Europe is thus committed to creating child protection mechanisms to protect children from exposure to certain digital content, whereby states should establish systems to determine the age of children and thus reduce their exposure to harmful content. With regard to hate speech, the Council of Europe is committed to strengthening the role of businesses in developing policies aimed at combating online hate speech as a means of seriously endangering children's rights.<sup>126</sup> Since sexual abuse of children through the Internet is a more serious offense, the Council of Europe places the responsibility of the protection of children on judicial authorities that should establish unique digital prints (so-called hashes) to identify perpetrators of criminal offences of online sexual exploitation via the Internet faster and easier.<sup>127</sup>

Taking into account that between 10 and 45% of children between the ages of 9 and 11 use social networks on a daily basis,<sup>128</sup> it is justified to strive for effective measures to protect their rights in the digital environment. Although these statistics could point to the fact that the European Union's GDPR has not achieved the desired effect on children's data protection on the Internet,<sup>129</sup> in the digital environment it is extremely difficult to regulate and prevent every area, including this one. Even though it is generally perceived that social networks can endanger children's rights by unwanted actions (which, unfortunately, is the rule in most cases), endangering children's rights is possible just by accessing the Internet, whether it is used for educational or other purposes. All this calls into question the statement that the right to the Internet is a modern right of children. Given the stated dangers arising from its use, should the Internet be characterized as a modern right of children? The answer is yes because the entire digital environment has many benefits for children, especially in special situations such as the COVID-19 pandemic where "forced" digitalization of education has taken place. However, in order for this right to be purposeful, it is necessary for states to establish mechanisms for its protection. Numerous European family legislations in the context of parental responsibility and upbringing of children state the right, duty and responsibility of

<sup>125</sup> European Network of Ombudspersons for Children (ENOC), Position Statement on „Children's Rights in the Digital Environment“, p. 5, Available at: [<http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf>], Accessed 16 February 2022

<sup>126</sup> Points 55-60 of the Recommendation CM/Rec(2018)/7, *op. cit.*, note 27

<sup>127</sup> *Ibid.*, points 61-66 of the Recommendation CM/Rec(2018)/7

<sup>128</sup> Smahel, D. et al., *op. cit.*, note 92, p. 28

<sup>129</sup> *Ibid.*, p. 29

parents to supervise the child on social networks, i.e. in the digital environment.<sup>130</sup> While the state sets the basic framework for protection through its legislation, parents set a strategy of active, restrictive mediation or sharing, thus providing guidance to children on the proper use of digital technologies and related content.<sup>131</sup>

## 5. CONCLUSION

The modern digital environment has affected many areas, including children's rights. As a rule, the digital environment has brought many benefits to children, such as faster information flow or more accessible education, but also many challenges in protecting these rights. The negative implications of digitalization, such as digital deprivation and social alienation, are not negligible. This actually means that in some cases this process is carried out formally, and not substantively, which results in the neglect of the child as a social being. Digitalization has not given rise to new rights, but requires the adaptation of existing rights to the modern environment, guided by the established standard of the best interests of the child. The Council of Europe and the European Union have adequately responded to the challenges of protecting children's rights in the digital environment, with the COVID-19 pandemic only intensifying the process, as evidenced by the following facts. First, these organizations realized the importance of regulating the digital environment at the beginning of the 21st century when the Convention on Cybercrime was adopted, which for the first time set guidelines for the development of virtual crimes against children. On the other hand, these organizations are characterized by an interdisciplinary approach to the protection of children's rights in the digital environment, which is especially evident in emphasizing the role of business entities in providing an appropriate level of protection of children's rights in the digital environment.

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<sup>130</sup> An example of the above is Croatian Family Law Act, Official Gazette, No. 103/2015, 98/2019. Thus, in order to protect the rights of the child and act in the best interests of the child, Article 95 states that parents have the right, duty and responsibility to monitor the child in his association with other persons, as well as communication on social networks and other forms of electronic communication prohibit socializing and communication that is not in the best interests of the child. The following can be concluded from this provision. Monitoring of teaching through distance learning tools is the realization of the child's right to education, guaranteed by international law. However, excessive use of social networks, which can potentially lead to some form of digital violence, falls within the scope of the parent's obligation to monitor the child and in his best interest to prevent/limit the use of resources that are not in his best interests. The importance of this provision is also reflected in the fact that states have begun to realize that today it is necessary to protect the best interests of the child and his well-being not only in the real but also in the digital environment that brings many challenges.

<sup>131</sup> Borić Letica, I.; Velki, T., *op. cit.*, note 49, pp. 90, 91

There are more and more questions about whether European soft law sufficiently protects the rights of children in the digital environment. Its effectiveness stems from the analyzed documents, but also from specific statistical indicators, given that states thus receive clear guidelines on how to protect children's rights, and the modality of this arrangement depends on the state itself. In that case, can we talk about absolute equality of children in the European Union? The principle of equality is a guideline that seeks, through available mechanisms at Member State level, to harmonize, as far as possible, the rights of children and to guarantee fundamental rights to everyone. Such a level of equality could be achieved, for example, by guaranteeing the right to access the Internet. Based on that, children would exercise other rights, which would ensure equality, more precisely, a precondition for equality in the exercise of children's rights.

Although it was pointed out earlier that digitalization does not create new rights, children's right to access the Internet leaves a lot of room for discussion. It is clear that today this right is not fully guaranteed, but the states are still being called upon to provide all the necessary instruments for its implementation. Non-implementation of the right to access the Internet also leads to increasing discrimination against children, because many rights in the digital environment are related to access to the Internet, especially the right to education and access to information. Discrimination against children in the digital environment leaves numerous consequences, not only in legal, but also in psychological and social terms. The inability to exercise any of the child's rights runs counter to his or her best interests, and so does the inability to access the Internet. All this speaks in favor of the fact that access to the Internet should be recognized as a right and constitute one of the rights in the modern catalog of children's rights. Cataloging the rights of children in the digital environment is certainly desirable, but at the level of the European Union, it is currently done through soft law documents. It is paradoxical to talk about modern children's rights, such as the right to access the Internet, while in some parts of the world children still do not have guaranteed fundamental rights such as the right to education or an adequate standard of living.

Cyber violence pose major challenges in protecting children's rights in the digital environment, primarily because of their "invisibility", which prevents a prompt response to prevent violations of children's rights. The problem also lies in the fact that often only children are taught how to protect themselves from cyber violence, but not the parents who are the first to be called and required to protect their rights and interests. De facto, parents in these cases do not have sufficient knowledge of how to protect the interests of their children who are generally aware of these dangers. Future legal regulation of these issues should be more focused on

defining ways to protect children from cyber threats in order to prevent exposure to these threats.

Thus, the *pro futuro* challenges regarding children's rights in the digital environment are the need for their cataloging, the elimination of inequalities in access to digital rights, and a stronger response to cyber violence. In addition, documents of the Council of Europe and the European Union, in accordance with the participatory rights of children, increasingly advocate their involvement in the processes of creating policies for the protection of children's rights. Therefore, future research questions in this area need to focus on the participation of children in the processes of making relevant policies to protect and promote their rights in the digital environment.

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