

Children in Digital Age – Serbian Perspective

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ABSTRACT

In the digital age, the protection of children's rights has emerged as one of the most pressing and complex challenges facing modern societies. While fundamental human and children's rights are clearly defined through international documents such as the UN Convention on the Rights of the Child, and integrated into national legal systems like the Constitution of the Republic of Serbia, the digital environment introduces entirely new risks and opportunities for children. This calls for a reinterpretation of existing rights in the context of the internet and digital technologies, along with the development of adequate legal and institutional mechanisms for protection.

This paper analyzes the general and specific legal framework concerning children's rights in Serbia, with a special focus on their application in the digital sphere. It reviews key legal instruments – including family law, criminal law, and other specialized regulations – as well as the General Protocol for the Protection of Children, which collectively form the institutional basis for child protection. Special attention is given to rights such as the right to privacy, the right to be forgotten, the right to education and information, and the right to freedom of expression and to be heard – all of which acquire new dimensions in the digital context.

Beyond legal analysis, the paper explores the role of parents, educational institutions, and other stakeholders in the child protection system. Although Serbia has developed a relatively comprehensive institutional framework, several challenges remain – such as overlapping competencies, the absence of a specialized law on children's rights, and low awareness of digital risks among both children and adults. The paper highlights that effective protection requires not only legal regulation but also continuous education, multisectoral cooperation, and proactive engagement by all actors involved in a child's life.

In conclusion, the digital age demands a holistic approach to safeguarding children's rights, recognizing and addressing the unique risks posed by modern technologies. Despite legislative and institutional efforts, practice still reveals gaps in understanding and implementing children's rights in digital contexts – a key issue to be addressed moving forward, both in Serbia and globally.

KEYWORDS

children's rights, digital age, Republic of Serbia, child protection, privacy, right to be forgotten, internet safety, legal framework, institutional mechanisms

1. Definitions and Taxonomic Rationale

Around the world, the digital revolution has changed how people grow and mature, as well as how they build relationships and are educated. Serbia is no exception, as this global phenomenon knows no boundaries.¹ Greater Internet access across demographics, including children, is now forcing traditional societies to confront the challenges of this parallel “digital world”. Global society must balance the pros and cons of digital life, transcending national and cultural differences, especially to protect children, a particularly vulnerable group. This chapter presents the legal framework of children’s rights in Serbia.

1.1. General Regulations on Children’s Rights

It is impossible to analyse children’s rights in the digital age without referencing the United Nations Convention on the Rights of the Child (CRC), adopted in 1989 and ratified shortly thereafter by the then Socialist Federal Republic of Yugoslavia, and later in Serbia.² Thus, the CRC became an important part of Serbia’s legal system. Moreover, human and minority rights are guaranteed by generally accepted rules of international law, confirmed by international treaties, as well as laws guaranteed by the Constitution of the Republic of Serbia (“Constitution”); these frameworks are directly applied. In particular, Serbia is a signatory to two Council of Europe conventions: the Convention on Cybercrime the Budapest Convention³ and the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention),⁴ which define the legal mechanisms and instruments that states can use to combat sexual violence against children in cyberspace.⁵

The law may prescribe the manner of exercising these rights only if it is expressly provided for by the Constitution or if it is necessary for the exercise of a particular right owing to its nature. However, the law must, in no case, affect the essence of the guaranteed right. Provisions on human and minority rights are interpreted in favour of promoting the values of a democratic society, in accordance with valid international standards on human and minority rights, and in line with the practice of international institutions that supervise their implementation⁶, which specify

1 In Serbia, 86% of children and teenagers aged 9 to 17 use the Internet daily. See: UNICEF, 2023.

2 Zakon o ratifikaciji Konvencije Ujedinjenih nacija o pravima deteta, Official Gazette of SFRY – International Treaties, No. 15/90 and Official Gazette of FRY – International Treaties, No. 4/96 and 2/97. The CRC will not be analysed in detail in this chapter.

3 Zakon o ratifikaciji Konvencije o visokotehnoškom kriminalu, *Official Gazette of Republic of Serbia – International Treaties*, No. 19/2009.

4 Zakon o potvrđivanju Konvencije Saveta Evrope o zaštiti dece od seksualnog iskorišćavanja i seksualnog uznemiravanja, *Official Gazette of Republic of Serbia – International Treaties*, No. 1/2010.

5 Šapić, 2016, p. 2.

6 Art. 18 para. 3 of the Constitution.

the legal definition of “international law”. However, the concept of children’s rights, which began to be introduced into Serbia’s normative system after 2000, through full or partial elaboration in most laws relating to children, was confirmed by the new Constitution in 2006 and has been implemented with modest success in terms of institutional competence.

According to the Constitution, children enjoy human rights appropriate to their age and mental maturity.⁷ The Constitution guarantees the child the right to a personal name, registration in the birth register, the right to know his origin, and the right to preserve his identity. It explicitly provides for the equal status of children born in and out of marriage and protects children from psychological, physical, economic, and any other form of exploitation or abuse.⁸

1.2. Special Regulations on Children’s Rights

Soon after adopting the Constitution, Serbian lawmakers began preparing for special regulation on children’s rights, leading to the Draft Law on the Rights of the Child and the Protector of the Rights of the Child (Draft Law or DLRC).⁹ The Draft Law passed the stage of public discussion in June 2019 and was then referred to the Parliamentary Committee for the Rights of the Child, but it was withdrawn from the procedure in 2021.¹⁰ The action plan for the implementation of the Government Programme 2023–2026¹¹ does not provide for the adoption of this law either, indicating a missed opportunity to establish comprehensive and easily implementable legal regulation on children’s rights. As a result, important regulations on children’s rights remain scattered across numerous laws or simply do not exist yet.

By adopting the Family Act of 2005,¹² Serbia incorporated provisions of the CRC into its domestic legal system and became part of the global children’s rights framework. The CRC was adopted in 1989, around the time Internet providers emerged, and does not contain any reference to the digital environment, which shapes childhood today. The Serbian Family Act similarly lacks this focus. Thus, we pose the question: Does the Family Act offer a strong legal foundation for protecting children’s rights in a modern life transformed by technology? The CRC or the Family Act, in their current forms, do not address the critical questions¹³ of how to protect children’s rights in the digital environment and how to ensure children’s safety in a virtual world?

While some laws have been revised and bylaws adopted to better protect children’s rights in the digital age, with a particular focus on online peer violence,¹⁴

7 On the relationship between human rights and children rights in theory, see: Vučković-Šahović, 2001, pp. 14–19.

8 Art. 64 of the Constitution.

9 *The Draft Law on the Rights of the Child and the Protector of the Rights of the Child*. Available at: <https://www.paragraf.rs/dnevne-vesti/070619/070619-vest15.html> (Accessed: 20 November 2023).

10 Paunović, 2023, p. 9.

11 Brnabić, 2023.

12 *Porodični zakon*, *Official Gazette of Republic of Serbia*, No. 18/2005, 72/2011 - dr. zakon i 6/2015.

13 Šahović, 2021, pp. 165–166.

14 Dinić, 2022, pp. 39–43.

there is no specific law in Serbia regulating children's rights in the digital environment or addressing digital violence as a *sedes materie*. Other laws do contain special provisions on these issues, the most important being the Law on Primary Education and Upbringing.¹⁵ For the clear application of these provisions, the Rulebook on the Protocol of Action in Response to Violence, Abuse and Neglect was adopted in 2010¹⁶ and amended in 2020.¹⁷ These regulations express the commitment to building a system that protects children's rights and safety, as set out in the General Protocol of the Government for the Protection of Children from Violence and Neglect ("General Protocol").¹⁸ Of crucial importance is the Regulation on Safety and Protection of Children During the Use of Information and Communication Technologies¹⁹ and the Law on Special Measures to Prevent the Commission of Criminal Offences Against Sexual Freedom Against Minors,²⁰ while the Criminal Code²¹ sets out legal penalties with respect to child victims.²²

2. Children's Rights on the Internet

The most prominent outcome of digitalisation is the global network: the Internet. The Internet was created not merely for global communication and information exchange, but also exists as a "parallel world". Its initial users were assumed to be adults, but increasing technological access, especially through smartphones and PCs, has enabled children to participate online. This fact has had a dual impact on children's rights. First, children can express themselves and exercise their rights in the digital world. Second, the digital universe can endanger children's rights. The legal endeavour to shape the Internet is driven by the need to make the digital environment safe for children. In legal terms, children's rights should be protected at least as much online as they are in the physical world.

Serbia has no special legal regulation on the protection of children's rights in the digital age and no dedicated law addressing digital harm. However, this new environment and the new forms of injury it creates have been recognised by the national

15 Zakon o osnovnom obrazovanju I vaspitanju, *Official Gazette of Republic of Serbia*, No. 55/2013, 101/2017, 10/2019, 27/2018 – other law, 129/2021 i 92/2023.

16 Pravilnik o protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje I zanemari- vanje, *Official Gazette of Republic of Serbia*, No. 30/2010.

17 Pravilnik o protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje I zanemari- vanje, *Official Gazette of Republic of Serbia*, No. 46/2020.

18 Zaključak Vlade Republike Srbije 05 broj: 011-5196/2005.

19 Uredba o bezbednosti I zaštiti dece pri korišćenju informaciono-komunikacionih tehnolo- gija, *Official Gazette of Republic of Serbia*, No. 13/20.

20 Zakon o posebnim merama za sprečavanje vršenja krivičnih dela protiv polne slobode mal- oletnih lica, *Official Gazette of Republic of Serbia*, No. 32/13.

21 Krivični zakonik, *Official Gazette of Republic of Serbia*, No. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019.

22 Čović, 2017, pp. 48–52.

legislature. Besides the Draft Law, existing laws do contain provisions for the protection of children in the digital environment. Moreover, many existing provisions adopted before the digital age can also be applied online.

2.1. The Constitution and Children's Rights

The Constitution includes several provisions relevant to children's rights in the digital age. Human rights, as defined in the Constitution, are directly applicable. Legislation may regulate the manner in which these rights are exercised only if explicitly provided for by the Constitution or necessary owing to the nature of the rights themselves. Such legislation must not affect or modify the essence of children's rights and protections.

According to Art. 64 of the Constitution, a child is entitled to human rights appropriate to their age and mental maturity. Every child shall be protected from psychological, physical, economic, or any other form of exploitation or abuse, regardless of whether they were born within or outside marriage. The rights of the child and their protection are to be regulated by law. According to Art. 65, both parents have equal rights and obligations to raise, support, and educate their children. However, these rights may be revoked from one or both parents only by a court ruling if it is in the best interests of the child and in accordance with the law. Art. 66 para. 1 provides for special legal protection of families, mothers, single parents, and all children, and is ensured through various laws and bylaws.

2.2. General Protocol

On 10 February 2022, the legislature adopted the General Protocol²³ to safeguard the well-being of children by preventing abuse and neglect, establishing a prompt and coordinated response to protect children from further harm, and providing therapeutic assistance to the child and their family. The General Protocol applies to all children at risk and ensures that all actions and decisions are guided by the child's best interests. Special protocols further regulate the roles and procedures for institutions such as social welfare services for children, the police, educational institutions, the healthcare system, and judicial authorities.

2.3. Family Law and Children's Rights

The Family Act is the main legislation regulating children's rights. Art. 6 of the Family Act sets out the general principle that all parties must be guided solely by the best interests of the child in all activities concerning the child. The child is not merely a family member whose interests are left to the family's discretion; instead, the child is the future of the state, and their protection serves the public interest. The state

23 See: Conclusion of the Government [Online]. Available at: <http://efaidnbmnnnibpcajpc-glcleftindmkaj/>; <https://zadecu.org/wp-content/uploads/2022/03/Zakljucak-Vlade-o-usvajanju-Ops%CC%8Cteg-protokola.pdf> (Accessed: 20 October 2023); Text of the General Protocol [Online]. Available at: <https://www.paragraf.rs/propisi/opstiprotokolzazastituceodzlostavljanjaizanmarivanja.html> (Accessed: 20 October 2023).

is obliged to take every necessary measure to protect the child from neglect, physical, sexual, and emotional abuse, and any form of exploitation²⁴, as well as measures against any individual or parent(s) responsible for such harm. The state must respect, protect, and promote the rights of the child²⁵ regardless of whether the child was born within or outside marriage²⁶. An adopted child is entitled to the same rights in relation to their adoptive parents as a biological child²⁷. The state must also provide protection for a child without parental care within a family environment whenever possible²⁸. To improve children's protection, the Family Act also guarantees rights recognised by the CRC, namely the child's right to know his origin²⁹, live with his parents³⁰, maintain relations with the parent the child does not live with³¹, proper and complete development³², education³³, undertake legal affairs (business capacity of the child)³⁴, and freely express his opinion³⁵.

2.4. Criminal Law and Children's Rights

The Criminal Code prescribes more severe penalties for crimes if the victim is a child.³⁶ Crimes committed against children are prosecuted accordingly, and punishment is prescribed specifically in these cases.³⁷

The Criminal Code also recognises digital crimes against children. For example, any person who takes a photo, film, video, or other recording of another person without their authorisation, in a way that reasonably interferes with that person's personal life, or who hands over or shows such a recording to a third party or otherwise enables a third party to access it, has committed the crime of unauthorised photography and could be punished by a fine or imprisonment for up to one year.³⁸ Moreover, whoever publishes or displays a document, portrait, photograph, film, or phonogram of a personal nature without the consent of the person involved, and thereby significantly interferes with that person's personal life, shall be punished by a fine or imprisonment for up to two years.³⁹

24 Art. 6 para. 2 of FA.

25 Ibid., Art. 6 para. 3.

26 Ibid., Art. 6 para. 4.

27 Ibid., Art. 6 para. 5.

28 Ibid., Art. 6 para. 6.

29 Ibid., Art. 59.

30 Ibid., Art. 60.

31 Ibid., Art. 61.

32 Ibid., Art. 62.

33 Ibid., Art. 63.

34 Ibid., Art. 64.

35 Ibid., Art. 65.

36 Mainly crimes against mental and physical integrity (e.g. Arts. 119/3, 121/6, 134/3 Criminal Code).

37 Arts. 180, 183, and 185 of the Criminal Code (mainly against sexual freedom). See more: Stevanović and Kolaković-Bojović, 2021, pp. 61–77.

38 Art. 144 para. 1 of Criminal Code.

39 Ibid., Art. 145 para. 1.

Displaying, obtaining, and possessing pornographic material and exploiting a minor for pornography⁴⁰ could be committed in various ways: selling and distributing pornography, using minors to produce pornography (child pornography), spreading such material, or accessing websites that host such content. The prescribed punishment is imprisonment (from six months to five years, depending on the specific offence) or a fine. Using a computer network or other technical means to commit crimes against the sexual freedom of a minor is punished cumulatively by a fine and imprisonment for up to five years⁴¹. If the victim is a child, the punishment is more severe: imprisonment for up to eight years.

Crimes against minors often provoke strong public reactions and an expectation of swift and severe punishment, especially as a deterrent. In response, the legislature adopted the Law on Special Measures to Prevent Criminal Offences Against Sexual Freedom Against Minors (hereinafter: LSM),⁴² adding an additional layer of child protection. This law prescribes special measures against perpetrators of crimes against the sexual freedom of minors specified and regulates the maintenance of a registry (“Register”) of convicted offenders, commonly known as “paedophiles”. The Register contains identifying information about each offender, including name, social security number, address, employment, distinguishing features (e.g. birthmarks, tattoos), photographs, details of the offence, sentencing history, legal consequences of the conviction, implementation of special measures prescribed by law, and DNA profile⁴³. These records are permanent and may not be deleted⁴⁴. Every person in the Register must report to the police and the Directorate for the Execution of Criminal Sanctions⁴⁵. Offenders convicted of sexual crimes against minors cannot have their sentences reduced or suspended, and they cannot be released on parole⁴⁶. There is no statute of limitations for prosecuting these crimes or executing the sentence⁴⁷. Perpetrators are prohibited from visiting or remaining in the vicinity of kindergartens or schools⁴⁸ and must seek professional counselling and keep the police informed of any intention to move or travel abroad⁴⁹. The consequences of their crimes include termination of any occupation involving collaboration or work with minors and prohibition of obtaining public office⁵⁰. Every four years from the start of the extraordinary measures, the court that made the first-instance decision decides on the need for further

40 Ibid., Art. 185.

41 Ibid., Art. 185b.

42 With the adoption of this law, part of the obligations assumed by the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse was implemented into domestic legislation.

43 Art. 13 LSM.

44 Ibid., Art. 14 para. 3.

45 Ibid., Art. 8.

46 Ibid., Art. 5 paras. 1-2.

47 Ibid., Art. 5 para. 3.

48 Ibid., Art. 9.

49 Ibid., Arts. 10 and 12.

50 Ibid., Art. 6.

enforcement, for up to 20 years after the sentence.⁵¹ Data in the Register is not public and is protected in accordance with data protection laws, but may be accessed by courts, prosecutors, and police when legally necessary. Authorities and entities that work with minors are obliged to request information on whether a potential employee is on the Register. In line with international agreements, this data may also be shared with foreign authorities⁵².

The protection of children's rights is a priority of criminal law. Recognising the digital world as a "way of life" – both nationally and internationally – will expand the framework for children's rights protection. In this regard, education and child-rearing laws, as well as the Rulebook on the Protocol of Action in Response to Violence, Abuse and Neglect, are particularly relevant.

3. Particular Children's Rights in Serbia

The digital world is parallel to the real world, and thus, all principles valid in the real world could be transmitted to the digital. This claim has practical value. We limit our discussion on children's rights in the digital world to the most serious issues.

3.1. Right to Privacy and Right to Be Forgotten

Privacy is a multifaceted concept that permeates children's family relationships, school life, friendships, entertainment, and communication, among other areas. It cannot be regulated by one law alone but requires a framework of laws depending on the specific relationships or activities relevant to the child's privacy.

The right to privacy of children is not explicitly mentioned in the Family Act but is part of Serbian law. It arises from the Constitution, which provides that children are entitled to all human rights appropriate to their age.⁵³ The Draft Law, for example, stipulates the right to privacy as the right to protection of personal, private, and family life⁵⁴. Every child has the right to be protected from arbitrary or unlawful interference with his privacy, as well as with the privacy of his family, home, and correspondence.⁵⁵ The law regulates the means and methods to protect the privacy of the child, his family, home, and correspondence. For instance, it is forbidden to expose any child to the public, through any means such as media, for any advantage, benefit, profit, or influence, or in public performances, for third parties. Participation or appearance of a child in public debates or in public media is allowed only with the consent of the child and his legal representatives⁵⁶. Despite being a draft law, its provisions are already a part of the Serbian legal system through other laws.

51 Ibid., Art. 7 para. 3.

52 Ibid., Art. 15.

53 Art. 64 para. 1 of the Constitution.

54 Art. 20 para. 1 of DLCR.

55 Todorović and Šapić, 2021, p. 10.

56 Art. 20 paras. 2–5 of DLCR.

The right to privacy, for example, is guaranteed by the Constitution in Arts. 40, 41, and 42. Art. 40 guarantees the inviolability of the home, Art. 41 guarantees the secrecy of letters and other means of communication, and Art. 42 regulates the protection of personal data. As noted earlier, the provisions of the CRC are also part of Serbian law since ratification by Serbia.

The right to privacy in the digital context is more complex, especially in relation to children. Information technologies have opened new channels of communication and enabled contact via email, chat applications, audio or video calls, and social networks, radically changing the way interpersonal relationships are established and maintained. Information technologies increasingly shape social reality, making the Internet the most frequently used communication channel.⁵⁷ The global network (or digital world) has eliminated physical boundaries and made the flow of information fast, easy, and cheap. Importantly, traditional public spaces have been replaced by Internet communities, dislocating the physical into the virtual. Privacy in the digital world is a vulnerable right. While legislation cannot reverse digitalisation, it can create a more reliable and safer world for children through new regulations, prohibitions, and restrictions. Two issues are key: regulating the accessibility of a child's life on the Internet and implementing preventive and repressive measures against harm to children's privacy.

A vast amount of children's data is uploaded by children themselves or by their parents and family members, such as photos or videos on social networks or through digital communication channels (Viber, WhatsApp, etc.).⁵⁸ While social networks require users to truthfully share their age, this method is not effective and cannot be regulated by national authorities responsible for child protection.⁵⁹ Parents, who are naturally and legally obliged to raise their children, should be aware of the potential risks to children in the digital world and take appropriate action. There is no legislation regulating children's freedom to create a digital presence. However, the Law on Protection of Personal Data⁶⁰ specifies that a minor who has reached the age of 15 can independently give consent for the processing of personal data in the use of information society services. For minors under 15 years, parental consent, or consent by the appropriate legal representative, is mandatory⁶¹. For example, educational institutions often obtain parental consent before sharing students' personal data. This law applies to personal data that is processed, in whole or in part, in an automated manner, as well as to the non-automated processing of personal data that is a part of a data collection or intended for a data collection. However, it does not apply to the processing of personal data carried out by a natural person for personal needs, i.e., the needs of his household. This latter type generates major cases of infringements of children's right to privacy. Even more problematic is when parents upload children's

57 Stepanović, 2020, p. 31.

58 Cendic, 2020, pp. 72–73.

59 Krivokapić, Adamović, 2016, pp. 209–212.

60 Zakon o zaštiti podataka o ličnosti, *Official Gazette of Republic of Serbia*, No. 87/2018.

61 Art. 16 paras. 1–2 of law on Protection of Personal Data.

private content on social networks, a practice known as “sharenting”.⁶² No law or institution protects children from parents who overshare, and most children over 15 years seldom challenge their parents.

Given the provisions on the right to erasure of personal data available on the Internet (or the “right to be forgotten”, Art. 30 LPPR), the right to privacy of children presents a vulnerability. It should be noted that the right to be forgotten is not a stand-alone right⁶³ but is linked to the right to privacy and limited to specific kinds of data.⁶⁴ The Law on Protection of Personal Data regulates this right. Under this law, a person is entitled to demand the erasure of their personal data, whether processed in an automated or non-automated manner, as part of or intended for a data collection. Minors are entitled to the erasure of personal data if such data are collected in connection with the use of information society services⁶⁵. Although the law explicitly provides the right to erasure of data only in cases where a minor of 15 years has consented to data processing, the *ratio legis* of the provision also justifies its application when consent regarding the use of information society services for a child under 15 years is given by a parent exercising parental rights or another legal representative.⁶⁶

In the case of media communication, under the Law on Public Information and Media,⁶⁷ only information from one’s private life, i.e., personal records (letters, diaries, notes, digital records, etc.), character records (photographs, cartoons, films, videos, digital records, etc.), and recorded images and voice recordings (tape, gramophone, digital, etc.), may not be published without the consent of the person whose private life the information concerns, if the person can be identified in the publication⁶⁸. A minor must not be made recognisable in information that may harm his right or interest. Consent is also required for the direct transmission of an image or voice via television, radio, and similar media. Information and records cannot be published without the consent of the person to whom they refer if such publication violates his right to privacy or any other right. Consent should be given for each publication, with the purpose and method of publication clearly stated. Consent is not valid for repeated publication or for publication in another way or for another purpose than that for which it was originally given (Art. 80). Given that the law applies only to the scope of public information, its reach is limited in the sphere of extensive

62 This practice may not be in the best interests of a child, and, therefore, the State authority has powers to regulate it. For instance, in a particular case, if “sharenting” is not in the best interests of a child, in accordance with Art. 80 of FA, the guardianship authority can perform corrective supervision over the exercise of parental rights by making decisions that warn the parents of deficiencies in the exercise of parental rights or referring them for consultation to a family counselling service or an institution specialised in mediating family relations. Kovaček-Stanić, 2022, p. 69.

63 Krivokapić, 2017, p. 12.

64 Midorović, 2019, pp. 293–296; Lučić, 2021, pp. 154–156.

65 Art. 30 paras. 2–6 of Law on Protection of Personal Data.

66 Ibid., Art. 16 para. 2.

67 Zakon o javnom informisanju i medijima, *Official Gazette of Republic of Serbia*, No. 92/2023.

68 Art. 80 of Law on Public Information and Media.

Internet communication.⁶⁹ Thus, repressive measures, particularly criminal law and its general preventative function, could play a more significant role in the protection of children's right to privacy.

3.2. Right to Privacy and Right to Education

The digitalisation of modern society has a profound impact on the law and its interpretation. The explanation of the right to privacy only partially reveals the complexity of the digital age. The right to education offers further insights for safeguarding the essential meaning of children's rights in this era.⁷⁰

According to Art. 71 of the Constitution, every person has the right to education. Art. 63 para. 1 of the Family Act specifically states that every child has the right to education, in line with his or her abilities, wishes, and inclinations. While primary education is compulsory and free⁷¹ in public schools, higher education is not mandatory, though still free of charge⁷². Access to higher education is granted to every person under equal conditions.⁷³ This legal framework ensures that every child has the opportunity to contribute to public and private life in the future.⁷⁴ The Constitution does not clearly define this right, particularly because the content of the right evolves with changing social and cultural contexts. Consequently, the right to education must be adapted to the digital age. Education should be understood as a process that enables children to develop professional and social competencies. The Law on Primary Education and Upbringing prescribes general cross-curricular competencies for the end of primary education and upbringing. The primary competency is to enable children to participate responsibly in a democratic society. Other competencies include aesthetic and communication competencies, a responsible attitude towards the environment and health, and entrepreneurial thinking. Digital competencies include the ability to work with data and information, solve problems, and collaborate.⁷⁵ Children must be able to communicate with others without compromising their rights. Put simply, the right to education obliges the state, educational institutions, and society to equip children with digital literacy. This encompasses technical skills, collaboration in the digital environment, understanding digital communication rules, and protecting personal data and privacy.⁷⁶

Both personal data and children's privacy are threatened in an unsafe digital environment, particularly with the rise of distance learning and online learning platforms. The COVID-19 pandemic accelerated digitalisation, revealing the vulnerabilities to children's privacy. Teachers shifted to online platforms, while parents and

69 Grigorov, 2020, pp. 113–114.

70 Đukanović and Božović, 2020, pp. 85–87.

71 Art. 5/1 of Law on primary education and upbringing.

72 Art. 71 para. 2 of the Constitution.

73 Ibid., Art. 71 para. 3.

74 Lee, 2013, p. 5.

75 Art. 21a para. 3 of Law on Primary Education and Upbringing.

76 Council of Europe, 2018.

teachers often lacked guidance on processing children's data. These problems existed even when the Law on Primary Education introduced a unique information system in education⁷⁷, which collects and processes, among other data, information on students. The Rulebook on the Unified Education Information System⁷⁸ also regulates the type of data processed and how it is managed. These regulations are harmonised with the Law on the Protection of Personal Data, but challenges remain. Although the authorisation to access data is regulated, it is unclear whether such entities are permitted, and under what conditions, to demand the erasure or modification of data.

3.3. Right to Information and Right to Education

Education in the digital age cannot be separated from the global network. Digital competence drives education, reflecting the essential value of our era: information. Art. 51 of the Constitution guarantees the right to information, entitling every individual to be informed truthfully and completely, in a timely manner, about matters of public importance. The public media are obliged to respect this right. The right to information also includes the right of every individual to access data held by state authorities and organisations entrusted with public authority, provided such data has public relevance. Special laws regulate this right and obligation. However, the right to information in the digital age extends beyond explicit constitutional provisions. It must include the environment in which information is disseminated and, regarding children, material of social, cultural, and scientific value.

Naturally, freedom of the media and the right to information are functionally connected. Art. 50 of the Constitution, titled "Freedom of the Media", states that every citizen has the freedom to establish newspapers and other forms of public media without prior permission, in a manner defined by the law. The same applies to establishing television and radio stations. The Law on Public Information and Media, the main regulatory framework, includes provisions for the special protection of children.⁷⁹

To protect the free development of children's personalities, the content and distribution of media should not harm their moral, intellectual, emotional, or social development⁸⁰. Printed media with pornographic content must not be publicly displayed in ways accessible to minors. If printed media contain pornographic content, neither the front nor back page may include it; such publications must display a visible content warning and age disclaimer. The provisions of the special law on electronic media also apply to pornographic audio and audio-visual content, including content

77 Art. 175 para. 1 of Law on Primary Education and Upbringing.

78 Pravnilnik o jedinstveno informacionom sistemu prosvete, *Official Gazette of Republic of Serbia*, No. 81/19.

79 Arts. 88, 89, 91/2, 112, 113/2, 152/1/3 of LPIM.

80 Art. 77 of the LPIM.

distributed online⁸¹. When a minor is included in information, he or she must not be identifiable, ensuring his or her rights and interests are safeguarded.⁸²

These regulations focus mainly on shielding children from harmful content, but they do not address access to beneficial content. Legislators have recognised the need to regulate children’s right to information in a more affirmative manner: Art. 24 of the Draft Law prescribes the obligation of public entities, as well as other legal and natural persons, to enable and encourage access to information (domestic and international) that could help improve, realise, and protect children’s rights. The nature of such content is left to the editorial policy of the media. Importantly, Internet platforms (including social networks) are not considered media under this framework and, therefore, are not subject to these provisions.

Despite the digitalisation of education and the Internet as the primary source of information, children and even adults find it difficult to navigate vast amounts of content and identify relevant information. Much online content is created by adults for adults. This makes digital literacy an even more essential educational goal. Educators must provide children with the knowledge, skills, and attitudes necessary to use digital technology effectively and safely in an environment flooded with data. Children must be able to process this data to perform various tasks, solve problems, communicate with others (online or offline, or even with machines such as artificial intelligence), manage collected information, create and share content, and build knowledge. These activities must be carried out efficiently, with autonomy and a critical mindset, in both professional and private contexts.⁸³ In this regard, education should be a joint endeavour between institutions and parents, particularly since children now spend more time online than they do in schools. This makes it challenging to clearly separate education and upbringing, requiring parents to be more involved in their child’s education. Given the overwhelming volume of data children are exposed to, both educational institutions and parents must empower children to access and use relevant information safely and effectively.⁸⁴

3.4. Freedom of Expression and Right to Be Heard

The Internet provides vast amounts of information with educational potential. In terms of a child’s personal development, the information capacity of the Internet enables children to make decisions, form opinions, and participate in social, educational, and cultural activities.⁸⁵ Therefore, children’s freedom of expression carries significant weight in the digital environment.

Art. 46 para. 1 guarantees freedom of expression, as well as the freedom to seek, receive, and impart information and ideas through speech, writing, art, or by other

81 Ibid., Art. 78.

82 Ibid., Art 80 para. 2.

83 Gillett-Swan and Sargeant, 2018, pp. 122–123.

84 Ibid., p. 125.

85 For more details on impact of digital platforms and social media on the freedom of expression in Serbia, see: Savčić, 2021, pp. 115–122.

means. To clarify this provision in relation to children's competence, Art. 65 para. 1 of the Family Act provides that a child who can form his own opinion has the right to freely express that opinion. Accordingly, all the information a child needs to form his opinion must be made available to the child.

Beyond the general framework in the Constitution that defines the range of rights and freedoms of children in line with their competence,⁸⁶ the Family Act further specifies that freedom of expression includes the right to be heard. This right applies in all matters concerning the child and in all proceedings in which his rights are at issue, in accordance with the child's age and maturity^{87,88}. Furthermore, the Family Act explicitly states that a child who has reached the age of 10 may freely and directly express his opinion in any judicial and administrative procedure concerning his rights.⁸⁹ A child aged 10 or older may also seek redress from a court or administrative body to exercise his right, either independently or through another person or institution.⁹⁰ The court or other body is not obliged to accept the child's opinion, but any decision that differs from the child's expressed view must be clearly argued.

The right to be heard is not merely an affirmation of respectful treatment towards children; it has further practical implications. It enables adults to better represent a child's interests, which depends on the right to be heard. Adults need to understand how children perceive their problems, but more importantly, how they view potential solutions to different issues. The current situation in Serbia is not encouraging: children are rarely involved in decision-making and public policy. One reason is the complexity of such participation,⁹¹ given the diversity of children's age, family, social, cultural, and economic backgrounds. However, the predominant obstacle is the significant influence of adults.⁹² Children come from different social environments that shape their values and attitudes in different ways, so issues of interest to children can vary widely.

Participation requires a certain level of capacity from the child⁹³ and is, therefore, of exceptional interest to policymakers concerned with children's rights. Nevertheless, neither the Law on the Elementary Education System and Upbringing nor the Law on the Higher Education System and Upbringing explicitly address children's participation. While these laws contain provisions on student parliaments or other forms of assembly, they do not establish a clear stance on students' participation in policymaking and decisions related to children's matters. In other words, there is no special article that enshrines the principle of participation as a general principle of action in all situations concerning children within the education system. Since

86 Kraljić and Drnovšek, 2022, p. 109.

87 Jugović, 2021, p. 23.

88 Art. 65 para. 3 of FA.

89 Ibid., Art. 65 para. 4.

90 Ibid., Art. 65 para. 5.

91 Centar za prava detet, 2020.

92 Pešić, 1999, p. 38.

93 Novaković, 2012, pp. 192–195.

schools regulate student parliaments independently, the nature and content of participation vary.

In conclusion, apart from rules concerning children’s position in various proceedings, there is no reliable mechanism to uphold the right to be heard. The Citizen Protector of the Republic of Serbia has established a panel of young councillors, and the Citizen Protector of the Province of Vojvodina has formed the Children’s Council. These bodies recognise the need for children’s participation in public policy, opinion-forming, and decision-making. However, their results remain ambiguous. Society, especially the youth, remains largely unaware of this right – whether due to ignorance or the limited impact of children’s opinions.

4. Institutional Framework and Measures for the Protection of Children In The Digital Age

4.1. Role of Parents

We must first recognise the complexity of protecting children in the digital environment, reach a consensus on the importance of children’s safety, adopt a multidisciplinary approach to children’s development and upbringing, and ensure cooperation and coordination among all stakeholders. Every stakeholder must have a clear understanding of their role in creating a trustworthy environment for children.

The key stakeholder is the parent, who is not just a biological relation but is also legally bound to their child and obliged to protect him in both traditional and digital contexts. Parents must understand their role in a digitised world, where children live with and through devices that provide unrestricted access to digital content and communication. Parents can influence how and for what purpose digital devices are used. They should be more active online and know how to use other digital technologies (e.g. computer games).⁹⁴ They should set time limits for digital activity and restrict access to certain content.⁹⁵ They must also be observant enough to notice any changes in their child’s behaviour and address any problems before it is too late.

4.2. Role of Educational Institutions

School is a “second home”, making educational institutions important actors. They have a significant impact on the socialisation of children. Both kindergartens and schools (particularly schools) are places where children interact with people beyond their families and with individuals for whom they are not the most important or beloved beings. Here, children develop their social skills and form their personalities. Schools have the capacity to foster tolerance and respect among children. Educational

94 Kuzmanović et al, 2019, p. 38.

95 Research shows that parents, owing to concerns about harmful consequences, strictly limit their children’s use of technology. However, risk avoidance is different from harm avoidance. A singular focus on avoidance of risk online means that parents may be compromising the digital literacy and skills of their child – a requisite in modern life. Kuzmanović et al., 2019, p. 42.

institutions should also help children learn to respond to routine challenges and embarrassment – both offline and online. Education laws and the Rulebook on Procedures in the Institution in Response to Violence, Abuse and Neglect (“Protocol Rulebook”) provide for the prohibition of all forms of violence in educational institutions.⁹⁶

Violence and abuse can take physical, psychological (emotional), social, and electronic forms. The Protocol Rulebook states that information technologies can be considered abusive if their use causes injury to another person or endangers their dignity, regardless of how the abuse occurred (e.g. through email, SMS, MMS, websites, chat platforms, including forums and social networks). Every educational institution in Serbia is obligated to establish a special team for protection against discrimination, violence, abuse, and neglect. The team is required to ensure preservation of children’s rights in the institutional setting,⁹⁷ especially through a plan that is consistent with the Rules of Conduct.

According to the Rules of Conduct, the prevention of violence, abuse, and neglect consists of measures and activities that create a safe and stimulating environment in the institution and foster an atmosphere of cooperation, respect, and constructive communication. Intervention consists of measures and activities that cease such harm, ensure the safety of participants (i.e. victims, offenders, and witnesses), reduce the risk of repetition, mitigate the consequences for all participants, and monitor the effects of the measures taken.

Whenever suspicion arises or there is awareness that a scholar is a victim of violence, the institution needs to take measures, regardless of the place where the injury occurred. This rule is of importance in the case of digital violence, which usually occurs when children are out of school.

96 Pravilniko protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje I zanemari-vanje, *Official Gazette of Republic of Serbia*, No. 46/2019 and 104/2020. Note also the “Special Proto-col for the Protection of Children and Students from Violence, Abuse and Neglect in Educational Institutions”, the first document to directly address protection of children from violence in the educational system, was adopted in 2009.

97 The most important are: preparation a program for protection; providing information to scholars, employees, and parents about planned activities, and the possibility of seeking sup-port and help from the protection team; participation in trainings and projects for developing the competencies of employees needed for prevention and intervention in situations of violence, abuse, and neglect; making proposals on the measures for prevention and protection, as well as consulting and participation in risk assessment and decision making in cases of suspicion or occurrence of violence, abuse, and neglect. Further, the team monitors and evaluates the effects of the measures taken to protect scholars and makes appropriate proposals on the mea-sures to the director. Since the object of the team is to prevent or solve problems, cooperation with experts from other competent authorities, organisations, services, and the media, for the comprehensive protection of scholars from violence, abuse, and neglect, is necessary. The team documents, maintains, and stores all information on the activities undertaken and reports them to the relevant experts and authorities. Naturally, parents are included in the preventive and intervention measures and activities.

All forms of violence, including digital, as well as the measures and activities that educational institutions are obliged to implement, are classified into three levels, with the recognition that the same forms of violence can appear at multiple levels. The first level refers to less serious forms of violence, and the third level requires the activation of an external protective network and the involvement of other services and institutions.

Relating to the forms of violence and abuse that occur through the abuse of information technology and other communication platforms, the first level includes harassment via phone, SMS, or MMS; the second level includes advertising, recording, and sending videos; abuse of blogs, forums, and chats; recording, with a camera, individuals against their will; recording violent scenes with a camera; and distribution of such recordings and images; the third level includes recording of violent scenes, distribution of such recordings and images, and child pornography.

The measures to be taken depend on the level of violence and abuse. At the first level, as a rule, activities are undertaken by the class head teacher or educator in cooperation with the parent. The purpose of the planned measure is to enhance educational work with the class community, the group of students, and individually. If the measures fail and the violent behaviour is repeated, the institution intervenes with activities provided for the second or third level.

At the second level, the head teacher shall cooperate with experts (pedagogy and psychology), the team for protection, and the director for undertaking measures. Participation of parents is mandatory. If the enhanced educational work at the second level is not effective, the director initiates an educational disciplinary procedure and imposes a measure, in accordance with the law.

At the third level, activities are undertaken by the director with the team for protection, parents and competent authorities, and other organisations and services (the centre for social work, health service, police, and other organisations and services). If the presence of parents is not in the best interest of the student, that is, it can harm him, endanger his safety, or interfere with the procedure in the institution, the director informs the competent centre for social work, the police, or the public prosecutor.

Third-level violence or abuse alerts society to the seriousness of the injury or endangerment. The director of the institution must submit a report to the competent authorities, organisations, and services, and notify the competent ministry within 24 hours. Before notification, the parents should be interviewed, unless the protection team, the competent public prosecutor, police, or the centre for social work assesses that the best interests of the child may be endangered. If the violence requires immediate intervention through measures and activities, the director informs the parents and the centre for social work, which, in turn, coordinates activities with all participants in the protection process. If there is a suspicion that a violent event may have elements of a criminal offence or misdemeanour, the director notifies the parents and submits a criminal complaint to the competent public prosecutor's office, that is, a request to initiate misdemeanour proceedings to the competent misdemeanour court.

4.3. Role of Educational Institutions

In accordance with the procedures prescribed by the General Protocol, health workers participate in all stages of the child protection process, together with other services. The specific roles played by healthcare workers in such a process are defined by the Special Protocol of the Health Care System for the Protection of Children from Abuse and Neglect.⁹⁸ A child victim of violence, including violence committed in a digital environment, who, after exposing the abuse, is most often faced with misunderstanding or condemnation from the family, threats from the abuser, and inconveniences of the judicial investigation procedure, can find relief, comfort, and encouragement through regular contact with a healthcare worker whom he trusts and with whom he has already achieved good contact in a crisis. A health worker can play a very important therapeutic role in the process of psychological recovery of the child and breaking the cycle of violence.⁹⁹

The task of the police in the process of protecting children from all forms of violence is to provide security protection for the life and physical integrity of a minor who may be an actual or potential victim of any form of violence or careless treatment, as well as to determine, in each specific case, whether there are elements of criminal offence or misdemeanour that it is competent to act on. All cases of violence in which minors are potential or real victims take priority in this work. Police intervention is fast and efficient, and officers are specially trained to protect the identity of the minor victim and to conduct interviews with the victim. In the course of pre-criminal proceedings, the police cooperate with the centre for social work and all other authorised services, namely citizens' associations, in order to provide adequate protection to minors from abuse and neglect. Regarding digital violence, the Department of High Technology Crimes both detects and processes the crimes committed.¹⁰⁰

The criminal procedure in Serbia is created to protect children, as perpetrators of crime, and children as victims.¹⁰¹ With respect to the last, the Code on Criminal Procedure and the Law on minor perpetrators of criminal acts and criminal protection provide several provisions, whose aim is to protect the rights and interests of the minors in the criminal procedure. This role belongs to all entities involved in the criminal procedure. That is, when conducting proceedings for criminal acts committed that are to the detriment of minors, the public prosecutor, investigating judge, and judges in the panel will treat the victim considering his age, personality traits, education, and the circumstances in which he lives, trying to avoid possible harmful consequences of the procedure for his personality and development. Minors are

98 See: <http://www.batut.org.rs/download/novosti/Protokol%20zastite%20dece%20od%20zlostavljanja.pdf> (Accessed: 23 November 2023).

99 Išpanović-Radojković et al., 2011, pp. 64–65.

100 Zakon o organizaciji i nadležnosti državnih organa za borbu protiv visokotehnoškog kriminala, *Official Gazette of Republic of Serbia*, No. 61/2005, 104/2009 10/2023 i 10/202.

101 Zakonik o krivičnom postupku, *Official Gazette of Republic of Serbia*, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021, Art. 56, 94/2, 143/1, 162/1, 193/3,4, 304, 363/1/3.

heard with the help of a psychologist, pedagogue, or other professional. The hearing can be conducted a maximum of two times, and more times in exceptional cases if it is necessary to achieve the purpose of the criminal procedure. If a minor is heard more than twice, the judge is obliged to take exceptional care towards the protection of the personality and development of the minor.¹⁰² The procedure is urgent, and all entities that are involved in it are obliged to conduct themselves in accordance with it (Art. 157).

The Protector of Citizens is a special body that protects, promotes, and improves children's rights.¹⁰³ With its competencies, the Protector of Citizens acts on complaints from citizens and children in cases of rights violations in various areas of children's rights, or does so on his own initiative when he learns and receives information about an eventual violation of children's rights. In all procedures for controlling the work of administrative bodies, the Protector of Citizens follows the principle of the best interests of the child.

Finally, regarding the institutional framework of protection of children in the digital environment,¹⁰⁴ an important role belongs to the National Contact Centre for Children's Safety on the Internet (NCC). NCC was established in 2017 and is based on the Regulation on the Safety and Protection of Children During the Usage of Information and Communication Technologies, as part of the Ministry for Trade, Tourism and Telecommunication. Nowadays, the competent ministry is the Ministry for Information and Telecommunication. The aim of the NCC is to create a user-friendly environment for the prevention of and to respond to child endangerment in the digital environment; it provides citizens the opportunity to contact its toll-free phone number or through its online platforms Pametno I bezbedno¹⁰⁵ and Čuvam te.¹⁰⁶ Based on the application, and depending on the type of threat to the rights and interests of the child, the ministry forwards the complaint as soon as possible to the competent body^{107,108}. After receiving the application, the bodies undertake the appropriate procedure within their competence. Employees in competent institutions learn about the risks and harmful consequences that can occur when children use information and

102 Zakon o maloletnim učiniocima krivičnih dela I krivičnopravnoj zaštiti maloletnih lica, *Official Gazette of Republic of Serbia*, No. 85/2005, Art 152.

103 Zakon o zaštitniku građana, *Official Gazette of Republic of Serbia*, No. 105/2021, Art. 2 para. 4.

104 Center for Children's Right, as an association of citizens, significantly participates in the education, prevention, and protection of children's rights, particularly regarding the digital world. See: <https://cpd.org.rs/> (Accessed: 22 November 2023).

105 See: <https://www.pametnoibezbedno.gov.rs/> (Accessed: 22 November 2023).

106 See: <https://cuvamte.gov.rs/> (Accessed: 22 November 2023).

107 A competent body includes, but is not limited to, a public prosecutor, a centre for social work, an inspection for information security, the Ministry for Education, or the administrator of the website in the event that the information from the application refers to inappropriate or harmful content.

108 Art. 6 of the Regulation.

communication technologies, and are trained to aid children, in multiple ways, in the event of harmful consequences¹⁰⁹.

5. Summary

Protecting children has been a worldwide task during the whole of the last century. Adopting the CRC sheds light on the road to a unified approach to accepting children as the most valuable and vulnerable group. Even though the CRC sets children's rights, soon after its adoption, global society is faced with a new challenge: How do we make the digital world, which is truly global and unfamiliar even to adults, safe for children? By way of explanation, legal activity has intensified to assure children's rights in a world without boundaries. The goal is twofold: interpretation of children's rights in accordance with the new digital environment and combating the risks in virtual life.

Ratification of the CRC in Serbia brought a significant change in understanding children's rights. The Constitution guarantees human rights to children, in accordance with their capacity. Rights are regulated in detail through laws and bylaws, each within its *sedes materiae*. Despite the Draft Law, its eventual adoption has been put on hold. In the age of uncertainty, this approach should be considered one of inconsistency. The understanding and the thorough application and protection of children's rights demands extensive education and training, not just for competent bodies but for parents as well. Moreover, effective action requires collaboration among all institutions and persons involved in the care of the children and in their protection. Despite a well-developed institutional mechanism of protection, the full exercise of children's rights remains off the radar because the relevant competencies are scattered across different fields of care, and there exists weak awareness of the potential risk of the Internet.

109 Ibid., Art. 7.

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