



## **Human Rights Law Clinic Papers 2021**

# **Permissible Restrictions on Children's Civil and Political Rights**

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## **i. List of Abbreviations**

CRC: Committee on the Rights of the Child

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

HRC: Human Rights Committee

IACtHR: Inter-American Court of Human Rights

ICCPR: International Covenant on Civil and Political Rights

UNCRC: United Nations Convention on the Rights of the Child

## **ii. Table of Cases**

### Committee on the Rights of the Child:

R.K. v. Spain CRC/C/82/D/27/2017, 5 November 2019

### Human Rights Committee:

F.A. v. France (CCPR/C/123/D/2662/2015), 16 July 2018

Leirvåg et al. v. Norway (CCPR/C/82/D/1155/2003), 3 November 2004

Nepomnyashchiy v. Russian Federation (CCPR/C/123/D/2318/2013), 17 July 2018

Singh v. France (CCPR/C/106/D/1852/2008), 1 November 2012

Waldman v. Canada (CCPR/C/67/D/694/1996), 3 November 1999

### European Court on Human Rights:

*Alekseyev v. Russia*, App Nos. 4916/07, 25924/08 and 14599/09, (ECtHR, 21 October 2010)

*Bayev and Others v. Russia* App No. 67667/09 (ECtHR, 20 June 2017)

*Christian Democratic People's Party v. Moldova* App No. 28793/02 (ECtHR, 14 February 2006)

*Dahlab v. Switzerland* App No. 42393/98 (ECtHR, 15 February 2001)

*Dogru v. France* App No. 27058/05 (ECtHR, 4 December 2009)

*Grzelak v. Poland* App No. 7710/02 (ECtHR, 22 November 2010)

*Handyside v UK* App No. 5493/72 (ECtHR, 7 December 1976)

*Hasan and Chaush v. Bulgaria* App No. 30985/96 (ECtHR, 26th October 2000)

*Lautsi and Others v Italy* App No. 30816/06 (ECtHR, 18 March 2011)

*N.F. v. Italy* App No. 37119/97 (ECtHR, 2 August 2001)

*Observer and Guardian v UK* App No. 13585/88 (ECtHR, 26 November 1991)

*Sekmadienis Ltd. v. Lithuania* App No. 69317/14 (ECtHR, 30 January 2018)

*The Sunday Times v UK (No 1)* App No. 6538/74 (ECtHR, 26 April 1979)

Inter-American Court on Human Rights:

*The Last Temptation of Christ (Olmedo Bustos et al) v. Chile* IACHR Series C No 73 (5 January 2001)

### **iii. Table of Legal Instruments**

European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950 Council on Europe, as amended by Protocols Nos. 11 and 14).

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577 (UNCRC)

OAS American Convention on Human Rights, "Pact of San Jose" (22 November 1969) (ACHR)

## 1. Introduction and Background

In 2020, Child Rights Connect published “The Rights of Child Human Rights Defenders: Implementation Guide”.<sup>1</sup> This was designed to provide information on how best to implement the provisions of the CRC to allow children to effectively participate as human rights defenders. However, despite the CRC being the most widely adopted UN treaty,<sup>2</sup> there remains a significant gap in both the research and substantive jurisprudence regarding the justification and implementation of the permissible restrictions on children’s civil and political rights provided in the UNCRC and ICCPR. The lack of guidance emphasises the importance of this research and the need to provide clarification on additional restrictions applied to children’s rights, such as restrictions on account of their age.<sup>3</sup>

This memorandum seeks to provide guidance on when permissible limitations and restrictions on children’s civil and political rights have or could be justified under the United Nations Convention on the Rights of the Child (UNCRC)<sup>4</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>5</sup> The research gap in this area, as identified in Child Rights Connect’s Implementation Guide,<sup>6</sup> exemplifies the lack of consideration as to how these limitations have applied to children’s civil and political rights in practice. The memorandum will focus on the rights to; freedom of expression; freedom of association and assembly and freedom of thought, conscience, and religion. These three rights were recommended by the client primarily due to their usefulness in the advancement of protections of child human rights defenders. We aim to research how the limitations under these three rights could be applied using examples relevant to children, such as manifesting religion in schools, participating in protests, and receiving information. As the three rights in question are qualified rights, they can be limited when the restriction is “prescribed by law and necessary” to the legitimate aims pursued.<sup>7</sup> Therefore, the three elements of this test are whether the restriction is; prescribed by law; pursues a legitimate aim and; is necessary and proportionate to the aim pursued.

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<sup>1</sup> L Lundy, ‘The Rights of Child Human Rights Defenders: Implementation Guide’ Child Rights Connect 2020.

<sup>2</sup> As per ratification status on OHCHR, ‘Ratification Status for CRC – Convention on the Rights of the Child’ <[tinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en](http://tinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en)> accessed 19/04/2021.

<sup>3</sup> L Lundy (n 1) 52.

<sup>4</sup> United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577 (UNCRC).

<sup>5</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>6</sup> L Lundy (n 1) 52.

<sup>7</sup> Art 18, ICCPR. See also Art 19 and 21 which use terms like “provided by law” (art 19) and “in conformity with the law” (art 21).

This memorandum will be divided into six sections. This section briefly discusses the background of children’s rights within international human rights law; section 2 shall list the applicable laws and standards that are relevant to this research; sections 3, 4 and 5 will provide the main analysis of the three-part test of legality, legitimate aims, and necessity and proportionality. Each section will use jurisprudence from the CRC and ICCPR alongside relevant Concluding Observations, General Comments, and academic literature to form guidance as to when restrictions could be permissible in cases involving children. Regional mechanisms including the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) will be used draw analogies in decisions on similar rights to show how the CRC or HRC could deal with restrictions in child cases in the absence of clarification by these international mechanisms. The jurisprudence of the ECtHR is particularly important, as, whilst the decisions of the CRC are not binding on the decisions of the ECtHR, the UNCRC has a “profound influence” on the decisions of the ECtHR in cases involving children,<sup>8</sup> therefore the court’s decisions could be an indication of when restrictions under the UNCRC may be permissible.

Section 6 will conclude our findings, that whilst there may be little deviation between when restrictions may be permissible for children when compared to adults, there are some specific differences in thematic issues which are explored in section 4, such as children’s online activity, their choice of religious education, and disproportionate restrictions on children’s participation in protests. This demonstrates that there are cases where children face tighter permissible restrictions than adults. However, we conclude that the CRC has failed to clarify key principles that could affect whether or not restrictions are permissible, such as the best interests of the child and the child’s evolving capacities.

## 2. Applicable Law and Standards

The applicable legal provisions for the purposes of this brief are as follows: For the right to freedom of expression, we will focus on Article 13 of the UNCRC and Article 19 of the ICCPR.<sup>9</sup> For freedom of peaceful assembly and of association, we will be discussing Article 15 of the UNCRC and Article 21 of the ICCPR.<sup>10</sup> Finally, for the right to freedom of thought, conscience, and religion, we will be referring to Article 14 of the UNCRC and Article 18 of the ICCPR.<sup>11</sup>

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<sup>8</sup> European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law relating to the rights of the child* (FRA 2015), <[fra.europa.eu/sites/default/files/fra\\_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf)> p 30.

<sup>9</sup> See appendix for full transcription of the rights.

<sup>10</sup> See appendix.

<sup>11</sup> See appendix.



Other key provisions include Article 3 of the UNCRC on the best interests of the child principle and Article 5 of the UNCRC on the evolving capacities of the child. These two latter provisions are significant to distinguishing between how permissible restrictions are applied to adult's cases and to children's cases.

### 2.1. Best Interests & Evolving Capacities

Article 3 of the UNCRC stipulates that, in all cases concerning children, "the best interests of the child shall be a primary consideration".<sup>12</sup> The CRC's development of the best interests principle on a "case-by-case basis"<sup>13</sup> has been inconsistent,<sup>14</sup> resulting in difficulties understanding how the principle should be implemented. For example, whilst the best interests principle and the evolving capacities of the child are supposed to be primary considerations in the CRC's decision-making, the CRC has so far failed to explain how these principles interact with each other, and they have not clarified what happens when the best interests of the child may contradict considerations of their evolving capacities, or vice versa.<sup>15</sup>

Article 5 of the UNCRC prescribes that "the evolving capacities of the child" should be considered "in the exercise by the child" of their civil and political rights.<sup>16</sup> This could mean that the permissibility of a restriction on children's rights could depend on a subjective reading of their capability. The Committee has not fully addressed evolving capacities of the child principle in their jurisprudence, meaning there is little clarification on how considerations of the child's evolving capacities should be considered in civil and political rights cases.<sup>17</sup> Whilst the CRC has provided guidance as to which ages they categorise children as young<sup>18</sup> and adolescents,<sup>19</sup> there is little clarification as to how this impacts the permissibility of restrictions to children's civil and political rights.

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<sup>12</sup> Article 3(1), UNCRC.

<sup>13</sup> Committee on the Rights of the Child, 'General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration' (2013) UN Doc CRC/C/GC/14, para 32.

<sup>14</sup> S Langlaude, 'Children and Religion under Article 14 UNCRC: A Critical Analysis' (2008) 16(4) *International Journal of Children's Rights* 475, 493.

<sup>15</sup> *ibid.*

<sup>16</sup> UNCRC, Article 5.

<sup>17</sup> S Langlaude (n 14) 494.

<sup>18</sup> Below the age of 8 years old. Committee on the Rights of the Child, 'General Comment No. 7 on Implementing Child Rights in Early Childhood (2005) UN Doc CRC/C/GC/7/Rev.1, para 4.

<sup>19</sup> Between the ages of 10 and 18. Committee on the Rights of the Child, 'General Comment No. 20 on the implementation of the rights of the child during adolescence' (2016) UN Doc CRC/C/GC/20, para 5.

### 3. Prescribed by Law

#### 3.1. When is a restriction “prescribed by law”?

In order for the restriction to be permissible, it must first be established that the restriction is “prescribed by law”, such as a specific piece of legislation enacted by a state parliament that can be referenced by the state.<sup>20</sup> This can also be provided for in the common law of some domestic courts.<sup>21</sup> Whether the state’s limitation or restriction of a right satisfies the principle of legality is straightforward, however there are some considerations. For example, the legal restriction must not be vague or overly broad.<sup>22</sup> Additionally, the potential restrictions should be “sufficiently precise”.<sup>23</sup> Furthermore, the law must not allow for “unfettered or sweeping discretion on those charged with their enforcement”.<sup>24</sup> This is demonstrated in *Bayev and Others v. Russia*, where the ECtHR held that Russia’s law preventing the promotion of homosexuality was so vague that it left the law “open to abuse” with the potential for “unlimited scope of their application”.<sup>25</sup> Similarly, the CRC’s Concluding Observations on Russia’s 4<sup>th</sup>-5<sup>th</sup> Periodic State Report<sup>26</sup> expressed concern that the “vague definitions of propaganda used (may) lead to the targeting and ongoing persecution of the country’s LGBTI community”.<sup>27</sup> The ECtHR has also supported the need for precision of the law “to enable the citizen to regulate his conduct”.<sup>28</sup>

#### 3.2. How the “prescribed by law” principle applies to children

Although ascertaining whether a restriction is prescribed by law is the same between children and adults, there may be some additional considerations in child cases. The ECtHR has held that the limitation; needs a basis in domestic law; must be accessible and the effects must be

<sup>20</sup> Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran, *International Human Rights Law* (3rd edn OUP 2018) 111. Citing OC-6/86, The Word ‘Laws’ in Article 30 of the American Convention on Human Rights, IACtHR Series A No 6 (9 May 1986).

<sup>21</sup> *ibid* 111.

<sup>22</sup> UNCHR, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (2014) UN Doc A/69/335, para 46.

<sup>23</sup> Human Rights Committee, ‘General Comment No. 37 on the right of peaceful assembly’ (2020) UN Doc CCPR/C/GC/R.37, para 44. See also Human Rights Committee, ‘General Comment No. 34 on Article 19: Freedoms of opinion and expression’ (2011) UN Doc CCPR/C/GC/34, para 25.

<sup>24</sup> Human Rights Committee, ‘General Comment No. 37 on the right of peaceful assembly’ (2020) UN Doc CCPR/C/GC/R.37, para 44. Citing *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.7 and Human Rights Committee, ‘General Comment No. 34’, para 25.

<sup>25</sup> *Bayev and Others v. Russia* App No. 67667/09 (ECtHR, 20 June 2017) [83].

<sup>26</sup> Committee on the Rights of the Child, ‘Concluding Observations on the 4th – 5th Periodic State Report of the Russian Federation’ (24th February 2014) CRC/C/RUS/CO/4-5.

<sup>27</sup> *ibid* para 24.

<sup>28</sup> *The Sunday Times v UK (No 1)* App No. 6538/74 (ECtHR, 26 April 1979) [49].

foreseeable.<sup>29</sup> Additionally, the ECtHR clarified “that a law is “foreseeable” if it is formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct”.<sup>30</sup> Whilst this case involved an adult, the principle of accessibility and understanding is relevant to the issue of whether or not children can reasonably be expected to understand the legislation in question and the limitations on the rights they have. This could indicate that laws aimed at children need to be written with more clarity. However, it has been shown that it is also sufficient that appropriate guidance and advice is provided to the child. For example, *Dogru v. France*,<sup>31</sup> concerned the expulsion of an 11-year old girl for refusing to remove a religious headscarf during physical education. The ECtHR established that a restriction can be regarded as prescribed by law where the child “was made aware of the content of those rules and undertook to comply with them, with her parents’ agreement”.<sup>32</sup> It was decided that, when she enrolled in the school, she was made aware of the rules regarding religious clothing, therefore the provisions were made sufficiently clear.<sup>33</sup> The court reasoned that the relevant provisions were accessible as they had been “duly published and of confirmed case-law of the *Conseil d’Etat*.”<sup>34</sup> Similarly, she was made aware of the content of the rules upon enrolling at the school, therefore could reasonably foresee that wearing a headscarf during physical education “was liable to result in her expulsion from the school”.<sup>35</sup> The ECtHR considered the fact that the author enrolled in the school “with her parents’ agreement” was a relevant factor,<sup>36</sup> however, they did not clarify whether or not these were decisive factors, or whether or not the domestic laws would be considered “prescribed by law” were these not explained to a child.

In the absence of any clear clarification by the CRC or ICCPR of how something could be prescribed by law in children’s cases, the ECtHR seems to confirm that it will apply similarly to children where it can be established that the provision has been communicated to the child, or that they have been given appropriate advice.<sup>37</sup> Furthermore, in *Dogru*, the ECtHR seems to indicate that parental agreement could constitute appropriate advice. Children are affected by the laws of the state, therefore reasonable steps should be taken to ensure that they have appropriate representation or facilities that will allow them to fully understand the extent of

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<sup>29</sup> *N.F. v. Italy* App No. 37119/97 (ECtHR, 2 August 2001) [29]. Also see the cited case of *Hasan and Chaush v. Bulgaria* App No. 30985/96 (ECtHR, 26th October 2000) [84] for the original ruling.

<sup>30</sup> *N.F. v. Italy* (n 29) [29].

<sup>31</sup> *Dogru v. France* App No. 27058/05 (ECtHR, 4 December 2009).

<sup>32</sup> *ibid* [59].

<sup>33</sup> *ibid*.

<sup>34</sup> *ibid*.

<sup>35</sup> *ibid*.

<sup>36</sup> *ibid*.

<sup>37</sup> *N.F. v. Italy* (n 29) [29].

their rights, and the laws that could potentially restrict them.<sup>38</sup> However, it is unlikely that the CRC or HRC would find that a state has not met the prescribed by law criteria simply because a child cannot understand the law. Where the law is sufficiently clear and specific to the restriction in question, it will be reasonable to conclude that the CRC or HRC would find that it satisfies the prescribed by law requirement. The CRC has clarified that failing to provide a “qualified legal representative and, if need be, an interpreter ... as soon as possible ... and free of charge”<sup>39</sup> for minors would violate the best interests principle, and their other rights.<sup>40</sup>

## 4. Legitimate Aim

The permissible legitimate aims for restricting civil and political rights are found within the wording of the rights themselves. For example, Article 13(2)(b) of the UNCRC lists “...protection of national security or of public order (ordre public), or of public health or morals”.<sup>41</sup> Article 14(3) includes the protection of public safety and “the fundamental rights and freedoms of others”,<sup>42</sup> Article 15(2) includes the same aims.<sup>43</sup>

Where the state tries to justify a restriction using a legitimate aim, the restriction must be applied with the aim of “facilitating the right, rather than seeking unnecessary and disproportionate limitations on it”.<sup>44</sup> This section will show that there is little difference between how legitimate aims are dealt between adult and children.

### 4.1. Public Health, Morals & Order

Two of the most broad and ill-defined of the legitimate aims are “public morals” and “public order”. These limitations are “most often abused” by states for protection of the state as opposed to the rights of the population.<sup>45</sup> The HRC has clarified that public morals cannot not be used to protect a “single social, philosophical or religious tradition”,<sup>46</sup> including, but not limited to, “expressions of sexual orientation”.<sup>47</sup> This is an important clarification in relation to children as childhood is a time where ideas of sexuality and gender become prominent and

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<sup>38</sup> L Lundy (n 1) p 31.

<sup>39</sup> R.K. v. Spain (CRC/C/82/D/27/2017) 5 November 2019, para 9.8.

<sup>40</sup> *ibid.* In this case the other right was the right to be heard under Article 12 of the UNCRC.

<sup>41</sup> UNCRC, Art 13(2)(b).

<sup>42</sup> UNCRC, Art 14(3).

<sup>43</sup> UNCRC, Article 15(2).

<sup>44</sup> UN Doc CCPR/C/GC/R.37 (n 24) para 36.

<sup>45</sup> S Joseph and M Castan, ‘Freedom of Expression – Articles 19 and 20’ in *The International covenant on civil and political rights: cases, materials, and commentary* (3rd Edn OUP 2013), p 1366 at para 18.64.

<sup>46</sup> UN Doc CCPR/C/GC/R.37 (n 24) para 46.

<sup>47</sup> *ibid.*

the receipt of information relating to these topics is essential to ensure a positive upbringing. Both the HRC and the ECtHR has reinforced this, holding that public morals could not be invoked in order to ban promotion or education of same-sex relationships.<sup>48</sup> Providing further clarification on the meaning of public morals, the ECtHR stated that public support for the restriction of a right cannot alone be used to restrict a right on moral grounds, that the rights of minority groups are not “conditional on its being accepted by the majority”.<sup>49</sup> The ECtHR considers that a legal definition of morality may not be possible nor appropriate due to the fact that morals are “broad and subject to change over time”.<sup>50</sup> Whilst this is the case, it is recommended that states strike a balance between the best interests principle and the parents right to consider appropriate education and information required in order for the child to “explore his or her sexuality fully and safely”.<sup>51</sup> Therefore, the legitimate aim of public morals has no fixed definition, but it has been clarified that it cannot be used as a tool to enable majority opinion to infringe on the rights of a group or individual.

The aim of protecting public order is commonly used in relation to freedom of expression, and states have tried to use it in order to “penalize and prevent the expression of views offending religious sensibilities”.<sup>52</sup> For example, the HRC has been critical of the way Turkey has repeatedly tried to cite public order to justify restrictions on the free speech of “human rights defenders and media professionals”, including through “the criminalization of defamation”.<sup>53</sup> This suggests that prosecuting journalists or other individuals for being critical of the government does not fall under the aim of public order.<sup>54</sup> Similarly, the HRC has criticised the use of public order aims to restrict freedom of expression where the speech “may offend the beliefs of majority populations”.<sup>55</sup> Overall, the HRC is clear that “laws that punish or prevent criticism of religion or belief, or that censor expression that may offend the sensibilities of adherents to a particular belief” are not pursuing a legitimate aim as they fundamentally undermine freedom of expression.<sup>56</sup>

#### 4.2. Public Safety & The Rights and Freedoms of Others

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<sup>48</sup> *Bayev and Others v. Russia* (n 25) [65] and *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013) 17 July 2018, para 7.5.

<sup>49</sup> *Bayev and Others v. Russia* (n 25) [70].

<sup>50</sup> *Sekmadienis Ltd. v. Lithuania* App No. 69317/14 (ECtHR, 30 January 2018) [66].

<sup>51</sup> *Bayev and Others v. Russia* (n 25) dissenting view.

<sup>52</sup> Human Rights Council, ‘Report of the Special Rapporteur on freedom of religion or belief’ (2019) UN Doc A/HRC/40/58, para 32.

<sup>53</sup> Human Rights Committee, ‘Concluding Observation on the initial report of Turkey’ (2012) UN Doc CCPR/C/TUR/CO/1, para 24.

<sup>54</sup> *ibid.*

<sup>55</sup> UN Doc A/HRC/40/58 (n 52) para 27.

<sup>56</sup> *ibid* para 35.

Public safety, and the rights and freedoms of others are often cited where states attempt to restrict freedom of religion.<sup>57</sup> *Singh v. France* saw the HRC dealing with whether or not the restriction on the child's freedom of religion regarding wearing turbans in school pursued the legitimate aim of protecting the rights and freedoms of others, and of protecting public safety.<sup>58</sup> In this case, the HRC decided that the aim of protecting the rights of others through the principle of secularism was a legitimate one,<sup>59</sup> but that they saw no reason why wearing religious headscarves was a threat to this aim.<sup>60</sup> Therefore, the HRC decided that whilst the aim was legitimate, the banning of such religious clothing was a disproportionate restriction on the child's freedom of religion under Article 18 of the ICCPR.<sup>61</sup> Understanding where children's right to religious expression can be justifiably limited is important, particularly in the context of schools where religious expression can form an integral part of the child's identity, and can serve as a form of education and religious plurality.

## 5. Necessary and Proportionate

### 5.1. Introduction

The test of proportionality and necessity is outlined in the HRC's General Comment No. 34 which prescribes that restrictions "must be appropriate to achieve their protective function",<sup>62</sup> that is, they must be "necessary" to achieve one or more of the legitimate aims that were explored in the previous section. Secondly, "they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected".<sup>63</sup> This section will explore the circumstances where a restriction may be considered necessary and proportionate in regard to children's civil and political rights. It will be divided into the following subheadings: internet, assembly and religion as these themes correspond some of the most prevalent issues affecting the specified rights found in our research, such as access to information online, wearing of religious dress and protests.

### 5.2. Internet

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<sup>57</sup> *Singh v. France* (CCPR/C/106/D/1852/2008) 1 November 2012, para 8.2.

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid* para 8.6.

<sup>60</sup> *ibid* para 8.7.

<sup>61</sup> *ibid.*

<sup>62</sup> Human Rights Committee, 'General Comment No. 34 on Article 19: Freedoms of opinion and expression' (2011) UN Doc CCPR/C/GC/34, para. 34.

<sup>63</sup> *ibid.*

The rapid development of the internet has become an integral element of children's daily lives.<sup>64</sup> However, restrictions on content-access, as well as blanket bans on internet use for children has caused growing concerns around the extent to which children's rights are limited in this area. In particular, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has raised concern over the growing use of blockers and monitoring of children's activities,<sup>65</sup> as well as stating that blanket bans on material are disproportionate to the goal of protection,<sup>66</sup> particularly where parents and schools can use software to provide more pinpoint restrictions of content.<sup>67</sup> Similarly, the CRC has discouraged States from introducing age limits on the right to be heard.<sup>68</sup> Whilst this is in reference to Article 12 of the UNCRC, it would be reasonable to infer that this would apply to Article 13 as well.<sup>69</sup>

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has acknowledged the "potential and benefits" of the internet, whilst highlighting the worrying increase of states restricting internet activity or to monitor "activists and critics".<sup>70</sup> For example, Singapore's mandatory order allowing "school officials and teachers to go through a student's web search history... both during and outside of school hours"<sup>71</sup> is concerning with its aim to restrict children's access to "objectionable material".<sup>72</sup> Although the order is not a blanket ban, it presents the opportunity for arbitrary restriction of children's access to materials, which could extend to genuinely educational material that is objectionable to the opinion of the state, such as information relating to LGBTQTI groups,<sup>73</sup> or, information that may be specific to children but are uncomfortable for them to discuss with parents, such as "teenage pregnancy" or "parental divorce".<sup>74</sup> Thus, the HRC has clarified that restrictions

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<sup>64</sup> Committee on the Rights of the Child, 'General Comment No. 25 (2021) on children's rights in relation to the digital environment' UN Doc CRC/C/GC/25, para 1.

<sup>65</sup> Human Rights Council, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (2011) UN Doc A/HRC/17/27, para 23.

<sup>66</sup> *ibid* para 44.

<sup>67</sup> *ibid* para 27.

<sup>68</sup> Committee on the Rights of the Child, 'General Comment No. 12 on the right of the child to be heard' (2009) UN Doc CRC/GC/12, para 21. However, this is referencing art 12, not 13 of the CRC.

<sup>69</sup> Lucy Smith, 'Convention on the Rights of the Child: freedom of expression for children' in Tarlach McGonagle and Yvonne Donders (eds) *The United Nations and Freedom of Expression and Information: Critical Perspectives* (CUP 2015), 154.

<sup>70</sup> UN Doc A/HRC/17/27 (n 65) para 23.

<sup>71</sup> Hye Jung Han, 'Singapore Spying on Students' Laptops' (Human Rights Watch, 5 February 2021) <[www.hrw.org/news/2021/02/05/singapore-spying-students-laptops](http://www.hrw.org/news/2021/02/05/singapore-spying-students-laptops)> accessed 8 February 2021.

<sup>72</sup> *ibid*, citing Matthew Mohan, 'Singapore: Application installed on students' device does not track personal information: MOE' (CNA, 1 February 2021) <[www.channelnewsasia.com/news/singapore/students-laptop-dma-device-application-track-information-moe-14085914](http://www.channelnewsasia.com/news/singapore/students-laptop-dma-device-application-track-information-moe-14085914)> accessed 8 February 2021.

<sup>73</sup> Hye Jung Han (n 71).

<sup>74</sup> UN Doc A/69/335 (n 22) para 40.

on the internet could be proportionate and therefore permissible where they are limited solely to specific content as opposed to entire websites.<sup>75</sup>

Similarly, the HRC's decision in *Nepomnyashchiy v. Russian Federation*, where Russia argued that criminalising "gay propaganda" was justified on the grounds of "Protection of children from factors that negatively influence their physical, intellectual, mental, spiritual or moral development".<sup>76</sup> The Committee directly referenced the right for children to receive information under freedom of expression in the UNCRC, stating that banning "promotion of non-traditional sexual relations with minors" can worsen negative stereotypes and is therefore "a disproportionate restriction of their rights under the covenant".<sup>77</sup> Furthermore, the CRC has clarified that the child's rights cannot be "compromised by a negative interpretation" of the best interests principle.<sup>78</sup> This means that the CRC will not allow states to use the best interests of the child as grounds to prevent children from having access to information that isn't empirically harmful. This is similarly reflected in the regional mechanisms, where the ECtHR stated that it was unnecessary for Russia to ban the promotion of homosexuality on the grounds that it "could be harmful if seen by children".<sup>79</sup> The ECtHR affirmed that there was no "scientific evidence" that the promotion of homosexuality was harmful to minors.<sup>80</sup> Therefore, Russia banning gay pride events to protect the interests of children was not accepted by the ECtHR.<sup>81</sup>

The CRC's General Comment 25 on children's rights and the digital environment<sup>82</sup> acknowledges the need for further clarification on the use of the internet and children. It reiterated that restrictions on Article 13 UNCRC<sup>83</sup> must be provided by law, necessary and proportionate.<sup>84</sup> Additionally, the Committee's Concluding Observations on the Republic of Korea raised concerns "about allegations that Internet chat rooms, set up independently by teenagers, have been arbitrarily closed down by the authorities",<sup>85</sup> emphasised that arbitrary blocking of access to specific sites is disproportionate. This could indicate that wide-reaching bans on children's access to information and ability to form associations would not be

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<sup>75</sup> UN Doc CCPR/C/GC/34 (n 62) para 39.

<sup>76</sup> *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013) 17 July 2018, para 4.1.

<sup>77</sup> *ibid* para 7.5.

<sup>78</sup> UN Doc CRC/C/GC/14 (n 13) para 4.

<sup>79</sup> *Alekseyev v. Russia*, App Nos. 4916/07, 25924/08 and 14599/09, (ECtHR, 21 October 2010) [78].

<sup>80</sup> *ibid* [86].

<sup>81</sup> *ibid*.

<sup>82</sup> Committee on the Rights of the Child, 'General Comment No. 25 on children's rights in relation to the digital environment' (2021) UN Doc CRC/C/GC/2021.

<sup>83</sup> The right to freedom of expression.

<sup>84</sup> UN Doc CRC/C/GC/2021 (n 82) para 59.

<sup>85</sup> Committee on the Rights of the Child, 'Concluding Observations: Republic of Korea' (2003) UN Doc CRC/C/15/Add.197, para 36.



permissible. It is foreseeable that the CRC would permit forms of monitoring such as the use of parental controls or monitoring of appropriate educational content within schools. However, the use of monitoring by schools should be exclusively within school hours, related to school activity and should not be extended to children's private lives outside of the school environment as the CRC has emphasised that children should be protected from "digital surveillance."<sup>86</sup>

The CRC has also recognised and promoted the importance of implementing measures "to protect children from access to harmful information, including electronic and audiovisual exposure".<sup>87</sup> This also includes "internet games harmful to children".<sup>88</sup> Additionally, the Committee is welcoming of "parental control software for internet use",<sup>89</sup> whereby parents can exercise a degree of control over what information children can access online. From this it can be drawn that there are circumstances where restrictions on children's right to "seek, receive and impart information and ideas" under Article 13(1) can be permissible,<sup>90</sup> so long as it is not a blanket ban, or that it is not arbitrary in nature. The Council of Europe has also produced a guide on "Parenting in the Digital Age", which suggests that reasonable forms of monitoring include communicating with children about their online activity.<sup>91</sup>

The regional systems have followed a narrow approach regarding children's right to receive information.<sup>92</sup> The ECtHR requires that restrictions must be convincingly established,<sup>93</sup> evidencing a "pressing social need"<sup>94</sup> and "relevant and sufficient" reasons for the interference.<sup>95</sup> For example, in *Handyside v UK*,<sup>96</sup> which concerned the ban on a book written for school-age children which questioned social norms such as sexuality and drugs, the ECtHR offered a margin of appreciation to UK judges regarding the appropriateness and

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<sup>86</sup> UN Doc CRC/C/GC/2021 (n 82) para 60.

<sup>87</sup> Committee on the Rights of the Child, 'Concluding Observation: France' (2009) UN Doc CRC/C/FRA/CO/4, para 53.

<sup>88</sup> *ibid.*

<sup>89</sup> *ibid* para 52.

<sup>90</sup> UNCRC, Article 13(1).

<sup>91</sup> E Milovidov, 'Parenting in the Digital Age: Positive parenting strategies for different scenarios' (Council of Europe 2020) <[rm.coe.int/publication-parenting-in-the-digital-age-2020-eng/1680a0855a](https://rm.coe.int/publication-parenting-in-the-digital-age-2020-eng/1680a0855a)> accessed 29 March 2021, p 17.

<sup>92</sup> K Tryklib, 'The Principle of Proportionality in the Jurisprudence of the European Court of Human Rights' (2020) 4 ECLIC 128, 136.

<sup>93</sup> *Observer and Guardian v UK* App No. 13585/88 (ECtHR, 26 November 1991) [59].

<sup>94</sup> *The Sunday Times v UK (No 1)* (n 28) [62].

<sup>95</sup> *ibid.*

<sup>96</sup> *Handyside v UK* App No. 5493/72 (ECtHR, 7 December 1976).

effects of such a publication on children.<sup>97</sup> However, the ECtHR has provided a firmer stance on the extent to which it will permit restrictions on the right to receive information where there is no empirical evidence that the information could be harmful to children, as demonstrated in *Bayev and Others v Russia*,<sup>98</sup> in the Court's refusal to accept the protection from harm of children as a justification to ban the spreading of information concerning LGBTQI issues. Moreover, the Inter-American system strictly holds that "prior censorship" is a disproportionate restriction on the right of freedom of expression. As seen in *The Last Temptation of Christ v Chile*,<sup>99</sup> where a film was banned on the grounds that it would not be suitable for children.<sup>100</sup> The Court emphasised that more reasonable restrictions, such as controlling the entrance of children to the cinema rather than a blanket ban of the showing of the film may have been permissible.<sup>101</sup>

The evolving capacities principle is significant in relation to the digital environment.<sup>102</sup> Restrictions on accessible content should differ significantly from, for example, an 8-year-old to a 16-year-old. The CRC has recently confirmed that "age-appropriate measures" to restrict access to digital content can be permissible where it is "informed by the best and most up-to-date research available",<sup>103</sup> furthermore, age restrictions should consider "children's competence and understanding".<sup>104</sup> For example, content which may be deemed inappropriate for younger children may not be inappropriate for adolescents. Access to vital information surrounding sexual health, particularly for the LGBTQI community, is essential for the effective development of children and to engage fully with their right to freedom of expression.<sup>105</sup>

The CRC has further clarified that children should be protected from harm caused by the use of their freedom of expression, such as through participation in online forums. However, this should not be a total restriction on their expression. For example, states should protect children from online "cyberaggression",<sup>106</sup> except where the speech is restricted by criminal

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<sup>97</sup> *ibid* [52].

<sup>98</sup> *Bayev and Others v. Russia* (n 25).

<sup>99</sup> *The Last Temptation of Christ (Olmedo Bustos et al) v. Chile* IACHR Series C No 73 (5 January 2001).

<sup>100</sup> *ibid*.

<sup>101</sup> *ibid*.

<sup>102</sup> UN Doc CRC/C/GC/2021 (n 82) para 19.

<sup>103</sup> *ibid* para 19.

<sup>104</sup> *ibid*, para 20.

<sup>105</sup> H Thorgeirsdóttir, 'Article 13: The Right to Freedom of Expression', in A Alen and J VandeLanotte and others (eds) *A Commentary on the United Nations Convention on the Rights of the Child* (Leiden: Martinus Nijhoff, 2006), 19.

<sup>106</sup> UN Doc CRC/C/GC/2021 (n 82) para 25.

legislation that is compatible with Article 13.<sup>107</sup> Special Rapporteur Frank La Rue has provided legitimate areas in which restrictions could be permissible; child pornography; hate speech; defamation; direct and public incitement to commit genocide and the advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>108</sup> Therefore, it seems as though restrictions on children's right to impart information may only be permissible where it constitutes harmful hate speech.

### 5.3. Assembly

The right to freedom of peaceful assembly and association under the UNCRC and ICCPR encompasses the important act of protest. The ability of children to participate in protests is essential to the exercise of their civil and political rights. However, there are specific concerns regarding the involvement of children in protests, such as age limits and the use of deterrent devices.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stated that age limits on public demonstrations are "without exception, contrary to article 15".<sup>109</sup> This can be distinguished from the approach of the CRC on the right to freedom of expression, where the introduction of age limits is merely "discouraged"<sup>110</sup> whereas the CRC's stance on age limits in relation to freedom of assembly is that it is "without exception" a violation of the children's right to freedom of assembly. Unfortunately, the CRC has not provided clarification on why age limits on one right seems less proportionate than the other.

Within the regional systems, the ECtHR has confirmed that children have the right to attend public gatherings, including protests.<sup>111</sup> In this case, Moldova tried to justify its one-month ban on demonstrations by the Christian Democratic Peoples' Party by arguing that children attending public demonstrations was "in breach of Article 15 of the UNCRC".<sup>112</sup> The ECtHR clarified that it was "a matter of personal choice for the parents to decide whether to allow their children to attend those gatherings and it would appear to be contrary to the parents' and children's freedom of assembly to prevent them from attending such events".<sup>113</sup> The ECtHR further acknowledged the relevance of the fact that the demonstrations were criticising

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<sup>107</sup> *ibid*, para 60.

<sup>108</sup> UN Doc A/HRC/17/27 (n 65) para 24.

<sup>109</sup> Human Rights Council, 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (2014) UN Doc A/HRC/26/29, para 24.

<sup>110</sup> See section 4.2 above.

<sup>111</sup> *Christian Democratic People's Party v. Moldova* App No. 28793/02 (ECtHR, 14<sup>th</sup> February 2006) [74].

<sup>112</sup> *ibid* [22].

<sup>113</sup> *ibid* [74].

government policy on schooling which is particularly relevant to children.<sup>114</sup> This would suggest, at least under the regional system, that bans on children attending public demonstrations would be contrary to their freedom of peaceful assembly. Furthermore, it provides some clarification on how parent's rights can affect children's rights, that is, where parents allow their children to join demonstrations, it is unlikely that restrictions on their right to freedom of assembly will be permissible. Similarly, even where the parents have not provided permission for the children to attend public demonstrations, the ECtHR has clarified that gatherings that are held in a public place can be attended by "anyone, including children".<sup>115</sup> This suggests that children's right to assembly is protected even where they do not have their parents' permission, so long as the gathering is public.

The HRC's position towards blanket bans in relation to freedom of assembly clearly establishes that restrictions relating to this right should be "last resort"<sup>116</sup> and that any restrictions on the right should be the "least intrusive" possible.<sup>117</sup> Furthermore, the CRC has clarified other non-permissible restrictions in relation to freedom of assembly that are less restrictive than blanket bans but still pose a significant threat to the ability for children to exercise their right. For example, the Committee expressed concern at certain measures used in France intended to deter protests, such as the use of "high frequency ultra-sound and flash ball devices and other harmful devices" during public demonstrations.<sup>118</sup> The CRC found that high frequency devices are "particularly painful for children"<sup>119</sup> due to the fact that children are more sensitive to high frequencies.<sup>120</sup> Therefore, such measures further restrict children's ability to engage with peaceful assembly under Article 15 of the UNCRC.<sup>121</sup> Whilst this is not an outright ban on freedom of assembly for children, the fact that children are impacted by such measures due to their heightened sensitivity to sound has a deterring effect which could be considered a disproportionate restriction and therefore non-permissible. Similar measures used in the UK have also been criticised by the CRC in their concluding observations, recommending that the UK prohibits the use of "devices used to disperse gatherings of young

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<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> UN Doc CCPR/C/GC/R.37 (n 24) para 37.

<sup>117</sup> *ibid.*

<sup>118</sup> UN Doc CRC/C/FRA/CO/4 (n 87) para 49.

<sup>119</sup> *ibid* para 47.

<sup>120</sup> 'Mosquito Devices and The Rights of Children and Young People - CYPCS' (The Children and Young People's Commissioner Scotland, 2021) <[cypcs.org.uk/positions/mosquito-devices/#:~:text=Mosquito%20devices%20are%20machines%20that,of%20international%20human%20rights%20law](https://cypcs.org.uk/positions/mosquito-devices/#:~:text=Mosquito%20devices%20are%20machines%20that,of%20international%20human%20rights%20law)> accessed 17 April 2021.

<sup>121</sup> UN Doc CRC/C/FRA/CO/4 (n 87) para 49.

people (so-called “mosquito devices”).<sup>122</sup> In addition, restrictive measures such as “allowing police to remove children and young people who assembly peacefully in groups” in Australia have been discouraged in the CRC’s concluding observations.<sup>123</sup> The CRC’s approach demonstrates an intention to provide significant protection to the right of freedom of assembly for children and suggests that limitations on the right would rarely be justified.

#### 5.4. Religion

Issues surrounding whether the restriction is “necessary and proportionate” has frequently been brought up in relation to blanket bans on the wearing of religious clothing under the right to manifest religion.<sup>124</sup> The CRC has expressed its concern on blanket bans, specifically bans on teachers wearing headscarves in public schools and the negative effect this could have on a “child’s understanding of the right to freedom of religion”.<sup>125</sup> The HRC has stated that the wearing of religious headscarves by teachers does not “adversely affect the fundamental rights and freedoms of others”<sup>126</sup>, nor does it “prohibit(s) parents from freely guiding their children in the exercise of their freedom of conscience and religion”.<sup>127</sup> Additionally, the Special Rapporteur for freedom of religion has emphasised that “general or far-reaching prohibitions” on the wearing of religious headscarves or symbols should be a “last resort”.<sup>128</sup>

The CRC suggests that the schools, rather than the state, should make decisions regarding school dress codes, including religious dress.<sup>129</sup> This approach would encourage the “participation of children”<sup>130</sup> which recognises the importance of the right of the child to be heard.<sup>131</sup> This is arguably significant, particularly in relation to the disproportionate impact that the banning of religious dress has on Muslim girls in France,<sup>132</sup> which the CRC suggests close

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<sup>122</sup> Committee on the Rights of the Child, ‘Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland’ (2016) UN Doc CRC/C/GBR/CO/5, para 37(a).

<sup>123</sup> Committee on the Rights of the Child, ‘Concluding Observations: Australia’ (2012) UN Doc CRC/C/AUS/CO/4, para 39.

<sup>124</sup> UNCRC Art 14 ICCPR, Art 18.

<sup>125</sup> UN Committee on the Rights of the Child, ‘Concluding Observations: Germany’ (2004) UN Doc CRC/C/15/Add.226, para 30.

<sup>126</sup> F.A. v. France (CCPR/C/123/D/2662/2015) 16 July 2018, para 8.7.

<sup>127</sup> *ibid.*

<sup>128</sup> UN General Assembly, ‘Elimination of all forms of religious intolerance – Note by the Secretary-General’ (2021) UN Doc A/70/286, para 52.

<sup>129</sup> UN Committee on the Rights of the Child, ‘Concluding Observations: France’ (2004) UN Doc CRC/C/15/Add.240, para 26.

<sup>130</sup> *ibid.*

<sup>131</sup> UNCRC, Art 12.

<sup>132</sup> Sandra Feder, ‘French ban on headscarves in public schools hindered Muslim girls’ ability to finish school’ (Stanford University: School of Humanities and Sciences, 25 August 2020) <<https://humsci.stanford.edu/feature/stanford-scholars-report-french-headscarf-ban-adversely-impacts-muslim-girls>> accessed 11 May 2021; International Center for Advocates Against Discrimination (ICAAD), ‘When Discrimination Masquerades as Equality: the Impact of France’s Ban

monitoring of.<sup>133</sup> Putting such a decision in the hands of the school allows for more direct participation from children and for thorough consideration of their views in relation to decisions directly impacting their daily lives and education.

Furthermore, the CRC has stated that blanket bans on religious garments in schools and public places is “counterproductive” and “neglecting the principle of the best interests of the child”.<sup>134</sup> This confirms the CRC’s requirement for the consideration of the best interests of the child arguing that blanket bans in relation to the right to manifest religion risks an increase in religion discrimination, removing the opportunity for children to be educated in other belief systems<sup>135</sup> and are thus, likely to be considered a disproportionate measure.

In contrast, the ECtHR has justified restrictions on health and safety grounds regarding the wearing of a headscarf during physical education classes.<sup>136</sup> In this case, the child applicant had refused to remove her headscarf for the classes on seven occasions and was therefore not allowed to take part.<sup>137</sup> Despite the applicant’s proposal to wear a hat or balaclava instead, and the refusal of the teacher to state how the wearing of a headscarf posed a risk to her safety,<sup>138</sup> the court did not find this a disproportionate measure.<sup>139</sup> Although the issue supposedly concerned the risk to health and safety in schools, the Court emphasised that the wearing of a headscarf is a “powerful external symbol” that may have a “proselytising effect”, which justified the restriction on the right to manifest religion.<sup>140</sup> Not only does this seem irrelevant to the health and safety claims, but it also seems at odds with the conclusions of *Lautsi v Italy*,<sup>141</sup> in which the display of crucifixes in classrooms was deemed a “passive symbol”.<sup>142</sup> Furthermore, the ECtHR emphasised that the extent of the restriction and whether the pupil had compromised or “overstepped the limits of the right to express and manifest her religious beliefs on school premises” fell within the margin of appreciation.<sup>143</sup> The Court took the view that given the ban was only in relation to physical education classes and schooling

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of Religious Attire in Public Schools’ (July 2014) Shadow Report by the International Center for Advocates Against Discrimination prepared for the UNHRC on the occasion of its briefing on France, Country Report Task Force, 9.

<sup>133</sup> UN Doc CRC/C/15/Add.240 (n 129) para 26.

<sup>134</sup> *ibid* para 25.

<sup>135</sup> *ibid*.

<sup>136</sup> *Dogru v France* (n 31) [6] – [8], [73].

<sup>137</sup> *ibid* [7].

<sup>138</sup> *ibid* [44].

<sup>139</sup> *ibid*.

<sup>140</sup> As it has in *Dahlab v Switzerland* App No. 42393/98 (ECtHR, 15 February 2001) [85].

<sup>141</sup> *Lautsi and Others v Italy* App No. 30816/06 (ECtHR, 18 March 2011).

<sup>142</sup> *ibid* [72].

<sup>143</sup> *Dogru v France* (n 31) [75].

could continue in “correspondence” classes, the ban was not “a ban in the strict sense” and was therefore permissible.<sup>144</sup>

In addition to restrictions on the wearing of religious clothes, the rights of parents and choices surrounding religious education is an area where restrictions on children’s rights may be permissible where they would not be for adults. Article 14(2) UNCRC states that the “rights of the parents”<sup>145</sup> must be respected in line with the child’s evolving capacities.<sup>146</sup> For example, in *Grzelak v. Poland*,<sup>147</sup> the ECtHR found a violation of the child’s freedom of religion where the parents had requested that the child receive an alternative ethics class instead of religious teaching at the school.<sup>148</sup> The violation was found due to the school’s refusal to provide ethics classes, as there was not enough interest from other students, resulting in the child having no alternative teaching and not receiving a grade for the class.<sup>149</sup> The significance of this case is that the Court found a violation where the parents wanted an alternative education. In line with Article 18(4) ICCPR, which provides the right for parents and legal guardians to “ensure the religious and moral education of their children in conformity with their own convictions”,<sup>150</sup> the approach of the Court demonstrates a stronger approach towards protecting the child’s right when it is in-line with the rights and convictions of the parent. However, the ECtHR also stated that the “parents’ religious or philosophical views” will not always “be given automatic priority...particularly outside school.”<sup>151</sup> Here, the ECtHR is directly referencing the states “obligation to respect parents’ religious or philosophical views”,<sup>152</sup> found in both the UNCRC and ICCPR, this could therefore present a useful interpretation of this provision, despite it not coming from the CRC or HRC.

The HRC stated in its General Comment No. 22 that “public education that includes instruction in a particular religion or belief is inconsistent with article 18 (4) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians”.<sup>153</sup> This suggests that the HRC would have decided similarly to the ECtHR in *Grzelak* and although the HRC’s jurisprudence is limited in this area, the approach is reflected in the HRC’s decision in *Leirvåg et al. v. Norway*.<sup>154</sup> Here, the HRC found a violation of Article

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<sup>144</sup> *ibid* [74] – [76].

<sup>145</sup> Or equivalent guardian.

<sup>146</sup> UNCRC, Article 14(2).

<sup>147</sup> *Grzelak v. Poland* App No. 7710/02 (ECtHR, 22 November 2010).

<sup>148</sup> *ibid* [101].

<sup>149</sup> *ibid*, [12], [88], [101].

<sup>150</sup> ICCPR, Art 18(4).

<sup>151</sup> *Bayev and Others v. Russia* (n 25) [81].

<sup>152</sup> *ibid*.

<sup>153</sup> Human Rights Committee, ‘General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (1993) UN Doc CCPR/C/21/Rev.1/Add.4, para 6.

<sup>154</sup> *Leirvåg et al. v. Norway* (CCPR/C/82/D/1155/2003) 3 November 2004.

18(4) where a mandatory religious subject only offered partial exemption “from certain limited segments of the teaching”<sup>155</sup> for students whose parents did not want them to have lessons that included Christian worship.<sup>156</sup> Whilst the applicants in the case were adults, the case shows that parents have the right to decide on the religious education of their children, with the HRC taking little consideration in this case of the opinions of the child. However, the wording of Article 14(2) of the UNCRC alternatively states that the parents right to “provide direction to the child” in the exercise of their right “in a manner consistent with the evolving capacities of the child”.<sup>157</sup> This seems allow more weight to the child’s views than the ICCPR as they “evolve”, however, the CRC has not provided clear guidance on when the child is considered to be sufficiently evolved in order to allow them to make autonomous decisions on their own religious education. Furthermore, the evolving capacities concept has not been mentioned by the CRC in relation to the choice and manifestation of religion or belief.<sup>158</sup> The general approach of the Committee indicates adolescents are to be considered more evolved, autonomous, and able to have more freedom to exercise their rights without input from parents or legal guardians,<sup>159</sup> meaning they could face less restrictions than younger children. This is a point that requires clear clarification through future general comments, jurisprudence or concluding observations.

## 6. Conclusion

This memorandum has attempted to demonstrate examples of permissible restrictions under the UNCRC. Due to a lack of clear examples of this in jurisprudence involving children, we have used guidance from adult cases, and examples from regional mechanisms in conjunction with the principles of the UNCRC in order to demonstrate when the limitations may be justifiable. What we have found is that the factors that distinguish child cases from adult cases are the principles unique to the UNCRC, such as the best interests of the child principle, and the balancing of rights between the parent and the child. However, these principles have been poorly developed by the CRC, leading to a lack of clarity over how they affect whether or not a limitation on a child’s civil and political rights will be justifiable. Therefore, far more clarification is required by the CRC in order to provide a clearer construction of the permissible restrictions to children’s civil and political rights.

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<sup>155</sup> *ibid*, para 2.3. A similar decision was reached in the earlier HRC case of *Waldman v. Canada* (CCPR/C/67/D/694/1996) 3 November 1999, para 10.6.

<sup>156</sup> *ibid*, para 14.7.

<sup>157</sup> UNCRC, Art 14(2).

<sup>158</sup> *S Langlaude* (n 14) 494.

<sup>159</sup> UN Doc CRC/C/GC/20 (n 19) para 18.





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## Appendix – Table of Rights

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|-------------------------------------|---|
| <p><b>Freedom of Expression</b></p> | <p><b>Article 19 ICCPR</b></p> <p>1. Everyone shall have the right to hold opinions without interference.</p> <p>2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</p> <p>3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> <p>(a) For respect of the rights or reputations of others;</p> <p>(b) For the protection of national security or of public order (ordre public), or of public health or morals.</p> <p><b>Article 13 UNCRC</b></p> <p>1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.</p> <p>2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:</p> |
|-------------------------------------|---|



|   |  |
|---|--|
|   | <p>(a) For respect of the rights or reputations of others;<br/>or</p> <p>(b) For the protection of national security or of public order (ordre public), or of public health or morals.</p>   |
| <p><b>Freedom of Thought,<br/>Conscience and Religion</b></p> | <p><b>Article 18 ICCPR</b></p> <p>1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.</p> <p>2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.</p> <p>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.</p> <p>4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.</p> <p><b>Article 14 UNCRC</b></p> |

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|  | <p>1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.</p> <p>2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.</p> <p>3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.</p> |
| <p><b>Freedom of Association and Peaceful Assembly</b></p> | <p><b><i>Article 21 ICCPR</i></b></p> <p>The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.</p> <p><b><i>Article 15 UNCRC</i></b></p> <p>1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.</p>  |

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|--|--|
|  | <p>2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.</p> |
|--|--|