

# The child's right to information on sensitive topics

*Ensuring a child-rights approach by balancing the right to information and the best interests of the child*

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## **Abstract**

Barns rett til informasjon er en grunnleggende del av retten til å bli hørt og få sin mening vektlagt. I tillegg er det en selvstendig rettighet. Likevel mangler barn ofte informasjon om forhold som gjelder dem direkte. Særlig gjelder det informasjon som kan virke skremmende eller av andre grunner er av negativ karakter. For eksempel informasjon om et negativt utfall i en utlendingssaker, helseinformasjon eller informasjon i saker om samvær med en forelder. En av grunnene til at et barn ikke informeres ser ut til å være et ønske om å beskytte barnet. I denne artikkelen diskuteres hvordan harmonisere retten til informasjon og beskyttelse for å sikre en barnerettslig tilnærming.

## **Keywords**

Right to information – sensitive topics – participation – best interests of the child

## 1 Introduction

According to article 13 of the United Nations Convention on the Rights of the Child ('CRC'), children have the right to seek, receive and impart information. This right to information is closely linked to children's right to be heard and have their views respected according to CRC article 12, often described as a right to participation.<sup>1</sup> The right to participation is one of the most significant rights of the convention.<sup>2</sup> The Committee on the Rights of the Child ('CRC Committee') has stated that the right 'constitutes one of the fundamental values of the Convention'.<sup>3</sup> The right 'demands a shift in the perception and treatment of children from that of passive objects in need of adult protection to active participants in decision-making processes affecting them at all levels of society'.<sup>4</sup> Participation clearly depends on information, as information is essential for children to be able to participate. Despite the importance of information, children may lack information in cases or topics of major concern to themselves.

This paper is about a child's right to receive information. Information has been defined in different ways. There is no single unified definition.<sup>5</sup> The Oxford Dictionary describes information as 'facts provided or learned about something or someone'.<sup>6</sup> In addition to facts, information may contain knowledge, ideas, history and observations. It may be neutral and fact-based, but it might also have subjective elements and be built on ideas and beliefs. Floridi explains that information typically includes the following phase: occurrence (discovering authoring, etc.), transmission, (accessing, retrieving, transmitting, etc.), processing and management (collecting, modifying, organising, filtering, updating, sorting, etc), and usage (monitoring, analysing, explaining, planning etc).<sup>7</sup> The analysis in this paper concentrates on information about topics affecting a child in a negative manner, such as decisions that can have a negative effect on a child's life, or information that may scare or discomfort the child, hereafter described as sensitive information.

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<sup>1</sup> Stephanie Rap, 'Participation of Children in Asylum Procedures', *Safeguarding Children's Rights in Immigration Law*, Mark Klassen, Stephanie Rap, Peter Rodrigues and Ton Liefwaard (eds.) Intersentia 2020, 25.

<sup>2</sup> Laura Lundy, John Tobin and Aisling Parkes, 'The Right to Respect for the Views of the Child', in *The UN Convention on the Rights of the Child*, John Tobin (ed.) Oxford 2019, 398.

<sup>3</sup> UN Committee on the Rights of the Child, General Comment No. 12 para 2.

<sup>4</sup> Lundy, Tobin and Parkes, 2019: 398.

<sup>5</sup> See Luciano Floridi, 'Philosophical Conceptions of Information', in *Formal Theories of Information. From Shannon to Semantic Information Theory and General Concepts of Information*, Giovanni Sommaruga (ed.), Springer 2009, 13.

<sup>6</sup> Oxford English Dictionary, Oxford University Press 2010 (3. edition).

<sup>7</sup> Luciano Floridi, *Information: A Very Short Introduction*, Oxford University Press 2010, chapter 1.

Information about a negative outcome in a child's migration case is an example of sensitive information. In Norway, there is no system ensuring that a child is informed and understands the outcome of his or her migration case. There have been cases where children are unaware of their lack of residence permits until the National Police Immigration Service ('NPIS') arrests and deports them. Such lack of information, in a situation where the child has no control, may contribute to harmful stress, which overwhelms the child to such an extent that common coping strategies prove insufficient.<sup>8</sup> The risk for harmful stress is especially high if the child already has experience traumatic events, such as children in asylum cases often have.<sup>9</sup> As Derluyn and Broekaert clarify, there it is a contrast between a legal and a psychological perspective in this context, where the legal process might create precarious situations and uncertainty for children in the asylum process.<sup>10</sup> Such long-lasting uncertainty about residence permit and the child's future may worsen already existing psychological problems.<sup>11</sup>

This paper is a part of a joint reach project between UiT The Arctic University of Norway and NPIS, focusing on children's rights in migration cases, including asylum cases. Consequently, a lack of information in migration cases has inspired the research questions in this paper. However, the problem of children lacking information is also present in other cases or situations and the analysis in this paper is therefore of a broader character.

Another example derives from the European Court of Human Rights Grand Chamber judgement of 10 September 2019, where the central question was whether the right to family life was violated in a child welfare case.<sup>12</sup> In this case, the court allowed the boy's biological mother to lodge a complaint on behalf of her son. However, the boy did not receive information about the case.

A third example is illustrated by a verdict from the Supreme Court of Norway of December 2019, HR-2019-2301-A. In the verdict, the main question before the court was whether a seven-year-old boy had an absolute right to receive information and to be heard in a

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<sup>8</sup> National Police Immigration Service, 'Safe, Secure and Responsible. Police Guidelines for Asylum Cases Involving Children', 2018, 9,11,14 and 16.

<sup>9</sup> See for instance Sherry Grogan and Kathleen Pace Murphy, 'Anticipatory Stress Response in PTSD: Extreme Stress in Children', *Journal of Child and Adolescent Psychiatric Nursing* 2011, 59 and Ilse Derluyn and Eric Broekaert, 'Unaccompanied refugee children and adolescents: The glaring contrast between a legal and a psychological perspective', *International Journal of Law and Psychiatry* 2008, 321.

<sup>10</sup> Their study is from Belgium, but there are many similarities in the Norwegian asylum system.

<sup>11</sup> Derluyn and Broekaert, 2008, 322. See also Trang Thomas and Winnie Lau, 'Psychological Well Being of Child and Adolescent Refugee and Asylum Seekers: Overview of Major Research Findings of the Past Ten Years', *Australian Human Rights Commission*: <https://humanrights.gov.au/our-work/psychological-well-being-child-and-adolescent-refugee-and-asylum-seekers#iii> (Web page last visited 01.06.2022).

<sup>12</sup> S. L. v. Norway (Application No. 37283/13).

case concerning right to contact between the child and his father. After an examination of the Norwegian legislation, the Supreme Court stated that in principle, the child's right to information and to be heard, seems absolutely, but there must be an exception in very exceptional situations.<sup>13</sup> This exception was justified as being in the best interests of the child. The reasoning in the 2019 verdict shared similarity with a judgement from 2004, in which the Supreme Court argued that the child needed protection from the conflict between his parents and should not have to decide if he would express his opinion.<sup>14</sup> In both cases, the argumentation seems to be based on protecting the child.

As these examples show, some children do not know there are ongoing cases about their rights, and the best interests of the child may be used as an argument for not informing them. This demonstrates the need for discussing how to balance participation and protection in a way that ensures a child rights approach. This issue is especially relevant where the information concerns circumstances that may have a *negative* effect on the child's rights, interests and life because this may create a wish to protect the child.

This paper explores children's right to information about matters affecting them and how participation and protection can be balanced in a way that ensures a child rights approach. Some situations where children may lack information are unaffected by the child's views. Consequently, the topic is participation as an end in itself, not as a means to an end.

Since this paper is about information that may scare or discomfort the child, one interesting question is whether there are any exceptions from this main rule; is there information of such character that it is not in the child's best interests to receive? Moreover, if there is, how can participation and protection be balanced in a way that ensures a child rights approach?

I have a Norwegian perspective, meaning that Norwegian law has inspired my research questions and is the point of departure for my analysis. The CRC is a part of Norwegian law. The whole convention is implemented in the Human Rights Act<sup>15</sup> and, if a provision of the CRC conflicts with another provision in national legislation, the rights in the CRC shall take precedence.<sup>16</sup> General Comments from the Child committee is as a main rule added great weight, although there have been some variations in caselaw.<sup>17</sup>

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<sup>13</sup> HR-2019-2301-A para 70 and 75, see also para 86.

<sup>14</sup> Rt. 2014 pp 811.

<sup>15</sup> Act of 21 May 1999 No. 30 on Human Rights.

<sup>16</sup> See Karl Harald Søvig, 'Incorporating the Convention in Norwegian Law', in *Children's Rights in Norway. An implementation Paradox?* Malcom Langford, Marit Skivenes and Karl Harald Søvig (eds.) Oslo 2019, 269–299 and Trude Haugli, 'Constitutional Rights for Children in Norway', in *Children's Constitutional Rights in the*

In this paper, I analyse the right to information in the CRC by building on a child rights approach where statements from the committee is important, and I assess whether the most relevant Norwegian legislation contribute to safeguard this right.<sup>18</sup>

## 2 The right to information

The CRC contains several rights related to participation, including the general right to seek, receive and impart information laid out in article 13, and access to information from a diversity of national and international sources in article 17. The wording ‘the child’ in the two articles makes it clear that they contain individual rights. Even though both rights belong to every child, especially article 17 appears to mainly govern information of a general character, concerning children in general, or groups of children. However, article 13 and other articles in the CRC are assumed to contain a right to both individual and general information.<sup>19</sup> Also article 12 is relevant for information at an *individual level* concerning a specific child.

This paper deals mainly with information at an individual level. However, it is difficult to draw a clear line between information of general and individual character, *inter alia*, because some information of more general character could clearly affect a specific child. Furthermore, general information can function as an important supplement to individual information and contribute to understanding. NPIS, in collaboration with the Norwegian Directorate of Immigration and the Immigration Appeals Board, has made a multilingual website to inform children in migration cases.<sup>20</sup> For children in general, news and health information especially adapted to children are available.<sup>21</sup> Such websites and medias may offer children valuable information of a general character consistent with article 17, but a child also needs individual information about their own case or situation.

After article 13, the child shall have ‘the right to freedom of expression; this right shall include freedom to seek, receive and impart information’. In this paper, it is the right to ‘receive’ information, which is relevant. The wording in article 13 closely connect the right to

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*Nordic Countries*, Trude Haugli, Anna Nylund, Randi Sigurdson and Lena R.L Bendiksen (eds.) Brill 2019, 40–42, [https://doi.org/10.1163/9789004382817\\_004](https://doi.org/10.1163/9789004382817_004).

<sup>17</sup> See for instance HR-2020-661-S para 80. See also Mona Martnes, *Barnets Beste. Rettighetens innhold i saker om opphold på humanitært grunnlag og utvisning*, Universitetsforlaget 2021, 29-40, <https://doi.org/10.18261/9788215049991-2021-02>.

<sup>18</sup> For an examination of other human rights conventions and the right to information, see Maeve McDonagh, ‘The Rights to information in International Human Rights Law, *Human Rights Law Review* 2013, 25-55.

<sup>19</sup> John Tobin, and Aisling Parkes, ‘Article 13. The Right to Freedom of Expression’ in *The UN Convention on the Rights of the Child*, John Tobin (ed.) Oxford 2019, 443 and Geraldine Van Bueren, *The International Law on the Rights of the Child*, The Hague 1998, 136.

<sup>20</sup> See [asylbarn.no](http://asylbarn.no) (Web page last visited 01.06.2022).

<sup>21</sup> See <https://nrksuper.no/serie/supernytt> (Web page last visited 01.06.2022).

receive information to the right to freedom of expression. A right to information is a prerequisite for children, as well as adults, to take part in public exchange of information and ideas of all kinds. According to the CRC Committee article 13 and article 12 is closely linked.<sup>22</sup> They ‘should be understood as ‘allied rights’ with each performing distinct yet overlapping and complementary functions’.<sup>23</sup>

Article 12 states that a child who is capable of forming his or her own views has the right to express those views freely but does not explicitly mention a right to information. Nevertheless, information is clearly a prerequisite for meaningful participation.<sup>24</sup> A child must have knowledge about the case and understand the issue before being able to form views on it. A right to participate without a right to information would be ineffective. The duty to inform a child before deciding the outcome of a case is therefore an essential and integrated part of the right to participation. The child must be ‘informed about the matters, options and possible decisions to be taken and their consequences’.<sup>25</sup>

A duty to inform an individual child about a concrete case, must as a minimum, have the same area of application as article 12, meaning that in *all matters affecting a child capable of forming his or her own views*; the decision-maker must give such information required for the child to form views on the issues affecting him or her. The examples I mentioned in the introduction are situations and cases clearly affecting the child.<sup>26</sup> When the information is sensitive because of the way it affects the child, the right applies in the case or situation.

For effective ensuring the right to participation, the information must be *child-friendly*.<sup>27</sup> The child must understand the information and how to use it, and the environment must not be hostile, insensitive or inappropriate for his or her age’.<sup>28</sup> A child-friendly environment presupposes time and resources.<sup>29</sup> The information must be ‘diversity-sensitive and age-appropriate’ and consideration ‘needs to be given to the fact that children will need differing levels of support and forms of involvement according to their age and

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<sup>22</sup> General Comment No. 12 para 68.

<sup>23</sup> Tobin and Parkes, 2019: 438.

<sup>24</sup> General Comment No. 12 para 25, Helen Stalford, Liam Cairns and Jeremy Marshall, ‘Achieving Child Friendly Justice through Child Friendly Methods: Let’s Start with the Right to Information’, *Social Inclusion* 2017, 207–218 (210) and Stephanie Rap, ‘The Right to information of (Un) Accompanied Refugee Children. Improving refugee Children’s Legal position, Fundamental Rights` Implementation an Emotional Well-being in the Netherlands’, *International Journal of children`s Rights* 2020, 322–351 (326).

<sup>25</sup> General Comment No. 12 para 25.

<sup>26</sup> See General Comment No. 12 para 89–97 and 123–124.

<sup>27</sup> General Comment No. 12 para 34.

<sup>28</sup> General Comment No. 12 para 34.

<sup>29</sup> General Comment No. 12 para 134 (e).

evolving capacities’.<sup>30</sup> As Liefwaard points out, for information to be child-friendly, it ‘should be provided in a manner adapted to the child’s age, maturity and specific circumstances’.<sup>31</sup> The UNHCR guidelines on international protection (UNHCR guidelines) states the necessity of informing the child in person, and in the presence of ‘their guardian, legal representative, and/or other support person’.<sup>32</sup> An important benefit with informing the child in person is the possibility to assess whether the child understand the information, and that the child can ask questions. Informing the child in person may therefore contribute to making it child friendly. However, this may vary according to the child’s age, maturity, capacity etc.

Stalford, Cairns and Marshall describe three distinct layers of information on the rights of children that support a genuinely participatory process in justice proceedings.<sup>33</sup> The first is information as ‘practical and procedural’, including information about the case, the process and the roles of the various actors.<sup>34</sup> The second is ‘foundational rights-based information’.<sup>35</sup> This is information about what should happen based on the rights they have. Since both substantive and procedural rights are important, the information should cover both types of rights. The third layer is ‘agency asserting information’.<sup>36</sup> This is where children can use the information and be able to participate in the process in a meaningful way. This last layer contributes to understanding, not just knowledge.

Children clearly must be informed before the hearing processes, but this is not enough to cover the three distinct layers. The Guidelines states that children and their parents should be informed promptly and adequately from their first involvement with the justice system or other competent authorities (such as the police or immigration authorities) and throughout that process.<sup>37</sup> The CRC Committee has highlighted that ‘the decision maker has to inform the child of the outcome of the process and explain how her or his views were considered’.<sup>38</sup> The Committee elaborate that feedback is a guarantee that the views of the child is taken seriously and that the ‘information may prompt the child to insist, agree or make another proposal or, in

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<sup>30</sup> General Comment No. 12 para 134 (a) and (e). See also the Council of Europe Guidelines on Child-friendly Justice (‘The Guidelines’): 20–21.

<sup>31</sup> Ton Liefwaard, ‘Access to Justice for Children: Towards a Specific Research and Implementation Agenda’, *International Journal of Children’s Rights*, 2019, 195–227 (216).

<sup>32</sup> UNHCR guidelines: 77.

<sup>33</sup> Stalford, Cairns and Marshall, 2017: 211.

<sup>34</sup> Stalford, Cairns and Marshall, 2017: 211, see also The Guidelines: 20–21.

<sup>35</sup> Stalford, Cairns and Marshall, 2017: 211.

<sup>36</sup> Stalford, Cairns and Marshall, 2017: 212.

<sup>37</sup> The Guidelines: 29.

<sup>38</sup> General Comment No. 12 para 45, see also para 41.

the case of a judicial or administrative procedure, file an appeal or a complaint'.<sup>39</sup> As Lundy states, the implementation of Article 12 can be monitored by 'procedural safeguards which make the process more open and transparent and which create the conditions in which it makes it uncomfortable for adults to solicit children and young people's opinions and then ignore them' and for that purpose, feedback is important.<sup>40</sup>

If the decision is negative 'particular care will need to be taken in delivering the message to the child and explaining what next steps may be taken in order to avoid or reduce psychological stress or harm'.<sup>41</sup> For instance, a child should be provided with detailed information about a refusal on family reunification to the child and/or to his or her family, in a child-friendly manner, on the reasons for the refusal and on the child's right to appeal.<sup>42</sup> The same applies if the child and/or the family is seeking asylum. Informing the child about an outcome of a case might also be necessary to ensure the right to be heard in another decision, as a consequence of the first decision. For instance, when a child's application for asylum is refused, this leads to new decisions that affect the child, where the child's views shall be given weight. One decision is whether to appeal or complain about the decision. Another is about possible arrangement for leaving the country, including whether the child shall receive assistance through a programme for returning. This illustrates that participation is a process that must take place in different levels of a case and in each one of the levels, information is essential.

There is little doubt that a child has the right to child-friendly information about matters affecting his or her, also after a decision is made. This right also applies when the issues are of sensitive character. In fact, the duty to provide the child with information is one of the core obligations of states parties and a basic requirement for the implementation of the right of the child to participate.<sup>43</sup>

### 3 Who has the duty to inform the child?

States shall respect, protect and fulfil the rights recognised in the CRC and other human rights instruments. This indicates that, in the first place, it is the state's responsibility to ensure the child's right to information. However, as Vandenhoele states, 'in children's rights law, an

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<sup>39</sup> General Comment No. 12 para 45.

<sup>40</sup> Laura Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal*, 2007, 927-942 (939), DOI: 10.1080/01411920701657033.

<sup>41</sup> UNHCR Guidelines: 77.

<sup>42</sup> General Comment No. 12 para 124.

<sup>43</sup> General Comment No. 12 para 48 and 134 (a).



intermediary level of parents or legal guardians has been included'.<sup>44</sup> The question is whether the including of guardians influences the states' duties.

Article 18 of the CRC places the primary responsibility for the upbringing and development of the child on the parents (or legal guardians). After article 5, states 'shall respect the responsibilities, rights and duties of parents [...] to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention'. When the child's capacities evolve, the parents must gradually leave to the child to exercise his or her rights. As Sutherland states, article 5 'seeks to regulate the role of the parties in what is a triangular relationship', between the child, the parents and the state.<sup>45</sup> Article 3 (2) is also concerned with both the state and the parents' role. Article 3 and 5 underline that parents have both rights and duties.<sup>46</sup> They shall protect and care for the child, and have responsibility for the upbringing and development, in the best interests of the child. Further, they shall provide the child appropriate direction and guidance in the exercise of the rights. Parents have a 'substantial amount of discretion to determine what they believe is in their child's best interests'.<sup>47</sup> However, they are 'holders of what has been defined as limited and functional rights'.<sup>48</sup> Parents rights are limited both by the evolving capacities of the child and the child's full range of rights recognised in the CRC.<sup>49</sup>

Article 3 (2), 5 and 18 indicate that parents may be given the main responsibility to inform their child. However, because of the duty to fulfil, the state must take 'all appropriate legislative and administrative measures to nurture parental resources – both in terms of personal skills and availability of support facilities'.<sup>50</sup> The rights and duties of the parents do not absolve the state from its responsibilities to the child.<sup>51</sup> Particularly when states use their authorities, the duty to respect and protect the rights implies that the authorities must *ensure* that the child receives information. This is supported by the CRC Committee, which places

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<sup>44</sup> Wouter Vandenhoe, 'Distinctive characteristics of children's human rights law', in *Children's Rights Law in the Global Human Rights Landscape*, Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds.), Oxfordshire 2017, 29.

<sup>45</sup> Elaine, E. Sutherland, 'The Enigma of Article 5 of the United Nations Convention on the Rights of the Child', *International Journal of Children's Rights*, 2020 s. 447–470 (454).

<sup>46</sup> Roberta Ruggiero, Diana Volonakis and Karl Hanson, 'The inclusion of 'third parties': the status of parenthood in the Convention on the Rights of the Child', *Children's Rights Law in the Global Human Rights Landscape*, Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds.), Oxfordshire 2017, 75.

<sup>47</sup> Liefgaard, 2019: 205.

<sup>48</sup> Ruggiero, Volonakis and Hanson, 2017: 75.

<sup>49</sup> Ruggiero, Volonakis and Hanson, 2017: 75 and Sutherland, 2019: 448.

<sup>50</sup> Ruggiero, Volonakis and Hanson, 2017: 75.

<sup>51</sup> Sutherland, 2020: 459.

the duty both on ‘those who are responsible for hearing the child’ and the child’s parents or guardian.<sup>52</sup> The Guidelines on child-friendly justice state that as a rule ‘both the child and parents or legal representatives should directly receive the information’.<sup>53</sup> It elaborates that ‘[p]rovision of the information to the parents should not be an alternative to communicating the information to the child’.<sup>54</sup>

An additional argument for placing the duty on the states is that the child has the right to express its views freely, without any pressure, manipulation or undue influence and from its own perspective.<sup>55</sup> If there is a conflict of interests between child and parents, there may be a risk that information from the parents influences the child in a way that restrains his or her opinion. Even without a conflict of interests, parents may omit to inform their child. In some cases, such as migration cases, both parents and children might be in a vulnerable situation. For various reasons, parents may have problems accepting denial of their residence permit application and the fact that they must leave the country. In addition, language barriers could cause problem for parents to understand the decision. Parents may wish to protect their children and avoid information that might be upsetting or scary. Many of the same elements may apply to situations where a parent or a child is sick, or in a child welfare case.

Being in a vulnerable situation and, at the same time, having the responsibility to care for a child in a vulnerable situation may impair the parents’ capacity to ensure the child’s need for information. Thus, one could not expect parents in such situation to ensure the right of the child to information alone, without any support. Consequently, the rights and duties of the parents do not exempt the state from its duty to respect, protect and fulfil the rights of the child to information. This duty necessitates procedural regulations or guidelines at administrative level to ensure that the child receives information. In addition, legislation at national level elaborating the state authority’s duties is important.

#### **4 Norwegian legislation**

Since the CRC is a part of Norwegian law, the participation rights in the convention are part of Norwegian law and influence all legal fields concerning children. The main rule is that children have the right to information in accordance with CRC articles 12, 13 and 17. In addition to the rights in the CRC, children’s right to be heard is implemented in article 104 (1)

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<sup>52</sup> General Comment No. 12 para 25 and 41.

<sup>53</sup> The Guidelines: 21.

<sup>54</sup> The Guidelines: 21.

<sup>55</sup> General Comment No. 12 para 22.

of the Norwegian Constitution.<sup>56</sup> This provision is based on article 12 of the CRC. However, as Nylund shows, the Constitution is rather vague, and the main progress in the area of children's participation rights in Norway ensues from a shift in the view of children, not the Constitution.<sup>57</sup> Norwegian legislation contains several provisions regulating children's right to information in different ways, something that indicates more progress in some legal fields than other.

The Public Administration Act<sup>58</sup>, which is applicable to many different cases, including migration cases, contains provisions about information to parties before, during and after a decision. However, the right to information does not apply to all children and is slightly more restricted compared to adults. The main rule is that the guardians (often parents) represent children in administrative cases, as in court proceedings.<sup>59</sup> Only children over age 15 shall receive prior notice about an administrative case, cf. Section 16 (1) of the Public Administration Act. The right to access case documents applies for all, but children under age 15 have no access to confidential information, cf. Section 18 of the Public Administration Act. When the case is determined, the organ deciding the case shall ensure parties are informed as soon as possible, but only children over age 15 receive information directly from the decision-maker cf. Section 27 (1) of the Public Administrative Act. Thus, although all children shall have the opportunity to be heard after Section 17 (1) of the Public Administration Act, children under 15 may have less information on which to build their opinion, will not always know about the case in advance and will not receive information directly after the decision.

Why a 15-year age limit is chosen is unclear. Previously, the age limit for prior notice was 14. The provision about informing children over age 15 after a decision was adopted in 2003. At the same time, the age limit for receiving prior notice was raised from 14 to 15. In the preparatory work, the Ministry stated that the 14-year age limit was chosen randomly, and that 15 would harmonise with the age limit to access confidential information.<sup>60</sup> The 15-year limit to access confidential information was explained by younger children lacking understanding about the importance of not bringing such information further, and that

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<sup>56</sup> The Norwegian Constitution 17 may 1814.

<sup>57</sup> Anna Nylund, 'Children's Right to Participate in Decision-making in Norway: Paternalism and Autonomy', in *Children's Constitutional Rights in the Nordic Countries*, Trude Haugli, Anna Nylund, Randi Sigurdson og Lena R.L Bendiksen (eds.) Brill 2019, 221.

<sup>58</sup> Act of 10 February 1967 relating to procedure in cases concerning the public administration.

<sup>59</sup> Section 2-4 (1) of the Act of 17 June 2005 No. 90 relating to mediation, see also Haugli, 2019: 53.

<sup>60</sup> Proposition No. 45 (2002–2003) para 5.3.3.2.

children under 15 do not have criminal liability and therefore cannot be convicted for breaking the duty of confidentiality.<sup>61</sup> Even though a 15-year limit for access to confidential information may be necessary to protect other people's private lives, it is not an argument for the same age limit for receiving prior notice and information after a decision.<sup>62</sup> In the preparatory work, there was not any through discussion about these questions, just some brief comment about maturity and some doubt about children under 15 receiving personal information in writing from an administrative body. The result is that a child under age 15 largely depends on receiving information from his or her guardians.

The current act regulating the relationship between children and their parents, The Children Act<sup>63</sup> has a general provision stating that children 'who has reached the age of seven and younger children who are able to form their own points of view must be provided with information and opportunities to express their opinions before decisions are taken concerning personal matters affecting the child'. The act also states in Section 33 that children shall have growing self-determination as they get older and this off course presuppose that parents inform their child. However, the act does not explicitly mention the right to information, neither in general nor when an administrative case affects the child.

The current Child Welfare Act<sup>64</sup> contains a general provision about the child's participation, stating that the child shall have sufficient and adapted information, section 1-6. This provision applies to the entire decision-making process, including questions about contact rights.<sup>65</sup> The act also includes a separated provision about rights during the casework, where the child's right to information and to be heard is stated, section 6-3 (1). Like the provision in the Children Act, the provision applies for children who has reached age seven and younger children who are able to form their own opinions. In addition, section 6-3 (2) states that a child may appear and exercise rights as a party if he or she has reached age 15 and understands the subject-matter of the case. In especially cases, younger children may appear as a party, section 6-3 (2).

An interesting provision about information to children, is section 10a (1) of the Health Personnel Act.<sup>66</sup> This provision states that health personnel shall contribute to ensuring a

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<sup>61</sup> Proposition No. 45 (2002–2003) para 5.3.3.2.

<sup>62</sup> A new Public Administration Act will likely be adopted soon. However, the question about lowering (or raising) the age limit for children's right to information is handed over to a committee working on an Official Norwegian Report (NOU) for a new act relating to children and parents, NOU 2019: 5, para 22.2.4.

<sup>63</sup> Act of 8 April 1981 No. 7 relating to Children and Parents Section 31 (2).

<sup>64</sup> Act of 17 July 1992 No. 100 relating to Child Welfare Services. A new act will entry into force in 2023.

<sup>65</sup> Proposition No. 169 L (2016–2017) para 17.1.

<sup>66</sup> Act of 2 July 1999 No. 64 relating to Health Personnel.

minor child's *need for information* when a parent or sibling is a patient with mental illness, addiction or serious illness or injury. The provision applies if the patients' state of health will, or most likely will, have considerable consequences for the child.<sup>67</sup> Health personnel shall work on clarifying the child's need for information and follow-up, and when necessary contribute to giving information about the patient's illness, treatment and the possibility to visitation cf. Section 10a of the Health Personnel Act (2) and (3). Information shall be adapted to the child's individual capability cf. Section 10a (3). The preparatory work states that in the assessment of the child's *need for information and follow-up*, one important feature is the extent to which a parent or sibling's illness creates insecurity, vulnerability, fear or problem with coping mechanisms for the child.<sup>68</sup> The health personnel's duty is connected to the parent's ability to ensure the child's needs. Health personnel should normally try to ensure the child's need if the parents are unable to do so.<sup>69</sup> The provisions are examples of regulation of sensitive information, without any age limit and reflect an opinion that a child in a vulnerable situation needs information. Information about parent or sibling's illness may be frightening, but the situation already creates insecurity, vulnerability and fear etc. Notwithstanding, the child must live with the situation, and information may help. In addition, the Patient and User Rights Act<sup>70</sup> contains provisions about children's right to information. Section 3-1 of the act states that '[c]hildren who are able to form their own views should be given information and heard'. The provision I have mentioned illustrated that health law seems to be the legal field that goes furthest in regulating the child's right to information in Norway.

In sum, children have the right to information pursuant to Norwegian law, but the legislation varies. Some provisions include an age limit, others do not. Often the child's guardians represent and receive information on behalf of the child. The variation in the legislation may make it difficult for states authorities to know when and how they must inform a child to fulfil their duties after the CRC. This applies especially for children under 15. In addition, the legislation offers little guidance in how to balance other rights with the right to information. The child's right to have its best interest decided and emphasised as a primary consideration has a rather strong position in Norwegian legislation and practice, although the impact varies slightly depending on the legal field.<sup>71</sup> In accordance with the

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<sup>67</sup> Proposition No. 84 (2008–2009) pp. 40.

<sup>68</sup> Proposition No. 84 (2008–2009) pp. 40.

<sup>69</sup> Proposition No. 84 (2008–2009) pp. 40.

<sup>70</sup> Act of 2 July 1999 No. 63 on Patient and User Rights.

<sup>71</sup> See CRC article 3 (1) and the Norwegian Constitution article 104 (2). See further Trude Haugli, 'Hensynet til barnets beste', in *Barnekonvensjonen. Barns rettigheter i Norge*, Njål Høstmælingen, Eline Saga Kjørholt and

character and aim of the right (and principle), it is not restrained with age-limits. Together with the diffuse and a bit blurred regulation of the right to information, the strong position of the best interest of the child may lead to a paternalistic approach in some cases or situations. Therefore, it is necessary to discuss how to balance the right to information and the best interests of the child.

## 5 Balancing the right to information and the best interests of the child

### 5.1 *Child rights approach*

The CRC Committee has urged states to build on a ‘rights-based approach’ or ‘child rights approach’.<sup>72</sup> The concept of ‘child rights approach’ is related to the ‘the human rights-based approach’.<sup>73</sup> According to the CRC Committee, the process of realising children’s rights is as important as the result in a child rights approach.<sup>74</sup> This statement indicates that the way children are treated in the process contributes to ensuring a child rights approach. The best way to implement the approach is by ‘respecting, protecting and fulfilling all the rights’ in the CRC.<sup>75</sup>

The child’s right to have his or her best interests treated as a primary consideration in all actions, expresses one of the fundamental values of the CRC and the ‘full application of the concept of the child's best interests requires the development of a rights-based approach’.<sup>76</sup> Such approach clarifies the connection between the rights in the CRC. The child's best interests are aimed at ensuring full and effective enjoyment of all the rights recognised in the convention and, at the same time, all the rights in the convention are in the ‘child's best interests’.<sup>77</sup> An assessment of what is in a child’s best interest must respect and protect other rights relevant to the case. As the CRC Committee has stressed, ‘no right could be compromised by a negative interpretation of the child's best interests’.<sup>78</sup>

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Kirsten Sandberg (eds.) Universitetsforlaget 2020, 67-78 and Kirsten Sandberg, ‘Best Interests of the Child in the Norwegian Constitution’ in *Children’s Constitutional Rights in the Nordic Countries*, Trude Haugli, Anna Nylund, Randi Sigurdson and Lena R.L. Bendiksen (eds.) Brill 2019, doi.org/10.1163/9789004382817\_003.

<sup>72</sup> UN Committee on the Rights of the Child, General Comment No. 20 para 4, UN Committee on the Rights of the Child, General Comment No. 21 para 12 and UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/ Committee on the Rights of the Child, Joint General Comment No. 3/22 para 32 (k).

<sup>73</sup> See General Comment No. 21 para 11, UNICEF, *Child Rights Education Toolkit: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools* (2014) 21 and UNSDG, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies*, (2003).

<sup>74</sup> General Comment No. 21 para 10.

<sup>75</sup> UN Committee on the Rights of the Child, General Comment No. 13 para 59, see also General Comment No. 21 para 11).

<sup>76</sup> UN Committee on the Rights of the Child, General Comment No. 14 para 1 and 5.

<sup>77</sup> General Comment No. 14 para 4.

<sup>78</sup> General Comment No. 14 para 4.

A right-based approach is important for preventing a paternalistically interpretation of the best interests of the child.<sup>79</sup> Although children are vulnerable and dependent in various degrees, solely focusing on protecting the child's interest, without considering the child's view may cause more vulnerability.<sup>80</sup> In Sigurdson's opinion, which I agree on, a 'characteristic of a vulnerable person is inability to secure his or her interests and rights'.<sup>81</sup> A paternalistic approach to the best interests' standard may have such an effect, increasing the child's vulnerability, especially if such an approach leads to the child lacking knowledge about matters affecting him or her, and thereby cannot secure his or her interests and rights. Therefore, the best interests of the child must be interpreted in a way that contribute to securing interests and rights, and not in a way that undermines any rights.

The link between articles 3 and 12 of the CRC is particularly strong. The two articles are complementary 'there can be no correct application of article 3 if the components of article 12 are not respected'.<sup>82</sup> In addition to the best interests of the child, also participation are fundamental in a child rights approach.<sup>83</sup> The close link between article 12 and 13 assumes that in principles, information about matters affecting the child is in the child's best interest.<sup>84</sup> Further, informing a child is an important part of treating the child as a subject, not an object. Treating a child as a subject in legal processes or actions contribute to protecting the child's dignity, and human dignity is the basis on which human rights could be said to

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<sup>79</sup> John Eekelaar, 'The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determinism', *International Journal of Law and the Family*, 1994, 42–61 (43–44) and Michael Freeman, 'Article 3. The best interests of the Child' in *A Commentary on the United Nations Convention on the Rights of the Child*, André Alen, Johan Vande Lanotte and others (eds.) Leiden 2007 6–7.

<sup>80</sup> Eekelaar, 1994: 43–44 and Jonathan Herring, *Vulnerability, Childhood and the Law*, Oxford 2018 17–25.

<sup>81</sup> Randi Sigurdson, 'Children's Right to Respect for Their Human Dignity' in *Children's Constitutional Rights in the Nordic Countries*, Trude Haugli, Anna Nylund, Randi Sigurdson and Lena R.L. Bendiksen (eds.) Brill, 32 2019, 24, doi.org/10.1163/9789004382817\_003.

<sup>82</sup> General Comment No. 12 para 74, see also General Comment No. 14 para 43.

<sup>83</sup> See General Comment No. 13 para 59 and General Comment No. 20 para 4.

<sup>84</sup> See also UN Committee on the Rights of the Child, General Comment No. 3 para 20, UN Committee on the Rights of the Child, General Comment No. 4 para 8, 16, 36 (b) and 40, UN Committee on the Rights of the Child, General Comment No. 5 para 24, UN Committee on the Rights of the Child, General Comment No. 6 para 25, UN Committee on the Rights of the Child, General Comment No. 9 para 37, General Comment No. 14 para 77, UN Committee on the Rights of the Child, General Comment No 15 para 15 and 114 (d), General Comment No. 20 para 59 and 63, UN Committee on the Elimination of Discrimination against Women/Committee on the Rights of the Child, Joint general recommendation/general Comment No. 31/18 para 68; General Comment No. 21 para 17, General Comment No. 3/22 para 35, UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/ Committee on the Rights of the Child, Joint General Comment No. 4/23 para 17 (j) and 36 and UN Committee on the Rights of the Child, General Comment No. 24 para 18 (b), 47–48 and 95 (i).

exist.<sup>85</sup> Information about rights and matters affecting the child is a presumption for access to justice, and further an effective protection of the rights through such processes.

A child rights approach requires that both the right to information, participation and the best interests of the child are respected, protected and fulfilled. This means that the general starting point is that both the right to information and the best interest must be safeguarded for ensuring a child rights approach. However, since the topic in this paper is sensitive information, one relevant question is whether there is any exception from the right to information, inter alia restricted to age as in some Norwegian legislation and/or based on the content of the information?

### 5.2 *Are there any limitations in the right to information?*

Based on the wording, Article 12 of the CRC is an absolute right for children capable of forming their views, and by that not restricted by any specific age limit. Neither is it restricted to any specific content, the only criteria are that the ‘matters [is] affecting the child’. Article 13, on the other hand, can be restricted. The right to freedom of expression, including freedom to ‘seek, receive and impart information’, can be subject to limitation if the three conditions in article 13 ss. 2 are satisfied. The limitation must be provided by law, pursue one of the purposes in 13 ss. 2 (a) or (b) (legitimate aim) and necessary to achieve that purpose (the requirement of proportionality). According to the wording, the limits in article 13 are connected to content, not age. This paper will not examine the restriction clause in article 13 in depth. However, a question is which consequences arise from article 12 giving children an absolute right, while the right in article 13 can be restricted. In addition, there is a question of whether a child’s freedom of expression could be restricted to protect the child’s own interests.

Tobin and Parkes stated that ‘[t]he principle of international system coheres demands that article 13 be interpreted in light of the other articles under the Convention’.<sup>86</sup> They elaborate that this ‘means that a child’s right to freedom of expression can be restricted where this is necessary to secure the child’s best interest or where the information is injurious to his or her well-being (art. 17 (3))’.<sup>87</sup> Article 17 (e) states that parties shall ‘[e]ncourage the development of appropriate guidelines for the protection of the child from information and

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<sup>85</sup> Christopher McCrudden, ‘Human Dignity and Judicial Interpretation of Human Rights’, *The European Journal of International Law* 2008, 655–724 (680), doi: 10.1093/ejil/chn043 and Sigurdson, 2019, 24, doi.org/10.1163/9789004382817\_003.

<sup>86</sup> Tobin and Parkes, 2019: 469.

<sup>87</sup> Tobin and Parkes, 2019: 469.



material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18'. As mentioned earlier in this paper, article 17 concerns general information and may therefore not be of direct relevance for information about matters affecting a particular child. This is supported by the fact that there are some differences between general information and individual information that might be important. Individual information normally serves a purpose and often concerns issues that will have an impact on the child's life, whether the child is informed or not. Moreover, individual information is adjustable to the specific child's needs and capability in the 'processing and using phase' mentioned in the introduction, for instance by ruling out injurious details. Thus, the requirement for limitation of the right to individual information will be smaller than for general information. Another guidance is found in the wording of article 12 when stating that 'the child who is capable of forming his or her own views' has the right to information about matters affecting him or her. The wording can, together with the limitation clause in article 13, function as a guiding rule about how individual information must be adjusted and formulated. The child has the right to *child-friendly* information, adaptable to his or her age and maturity.

The principle of international system coheres also indicates that one should be careful about using the best interests as an argument for restricting other rights in the convention. As mentioned previously, the CRC Committee has drawn attention to the lack of hierarchy of the rights in the convention and that all the rights are in the 'child's best interests' and that 'no right could be compromised by a negative interpretation of the child's best interests'.<sup>88</sup> Furthermore, the lack of a limitation clause in article 12, together with the inextricable link to article 3, implies that the right to information about *matters affecting the child* cannot be limited based on a best interest assessment. Another argument supporting this view, is the difficulties balancing a limitation of the right to individual information with a child rights approach. The connection to a child rights approach indicates that information lays in the core of participation rights, where a limitation - at least if not strictly defined - may compromise the child's ability to secure his or her interests and rights and to be treated as a legal subject.

Nevertheless, a limitation based on the best interests of the child (or the child's well-being), cannot replace the existing terms in article 13. It must be harmonised and adjusted to the terms expressly implemented in the wording. This is also what Tobin and Parkes seem to do when arguing that protecting the child's own rights, in addition to protecting the rights of others as explicitly mentioned in article 13 ss 2 (a), constitute a legitimate aim, and that the

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<sup>88</sup> General Comment No. 14 para 4.

measures used still must comply with the principle of minimal impairment.<sup>89</sup> Information or material of general character that is harmful for children, could also be placed under the aim of the ‘protection [...] public [...] morals’ in article 13 ss. 2 (b), leaving an extended interpretation of the article’s wording redundant. Exposing children to harmful material could easily be considered immoral. However, an assessment of what is immoral might be difficult, and will vary from state to state.<sup>90</sup> It is therefore a need for discussing which information is harmful and is there a way to prevent harm?

### 5.3 *Which information is harmful and how can harm be prevented?*

Article 17 (e) mentions both information and ‘material’. Thus, the aim is broader than information, but still, it reflects that general information could be harmful for a child. The wording ‘injurious’ in article 17, points at something that is destructive, dangerous or harmful for the child. This indicates a high threshold, and that the evaluation of whether the information or material shall be hidden from the child is not the same as a best interest assessment where the decision-maker must broadly assess what is in the child’s *best* interests. Information might be disturbing or stressful, without being injurious. A high threshold for withholding general information or material is important because an assessment of the child’s best interests in such context would have to be without the child’s opinion, as to the fact that the child is missing the information. At the same time, the best interest of the child may influence on how and when the information is given to the child.

Children might need protection from ‘actually or potentially harmful advertisements, spam, sponsorship, personal information and content which is aggressive, violent, hateful, biased, racist, pornographic’.<sup>91</sup> Tobin and Handsley have mentioned violent and sexual material and representation of children as a cohort in media, typically portraying children in narrow stereotypes, as information that could cause harm.<sup>92</sup> In addition, one-sided or biased influencing with subjective elements or character, such as extreme religious ideas, might be harmful. However, none of these examples are of direct relevance for the topics discussed in this paper, and some might be difficult to consider as information (depending on how the concept is understood), in any case not child-friendly information.

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<sup>89</sup> Tobin and Parkes, 2019: 470.

<sup>90</sup> See Van Bueren, 1998: 135.

<sup>91</sup> General Comment No. 13 para 31 (i), and para 43 (a) and UN Committee in the Rights of the Child, General Comment No 16 para 58).

<sup>92</sup> John Tobin and Elisabeth Handsley, ‘Article 17. The Mass Media and Children: Diversity of Sources, Quality of Content, and Protection against Harm’ in *The UN Convention on the Rights of the Child*, John Tobin (ed.) Oxford 2019, 635–637

Another way to examine this issue is by using other rights recognised in the CRC. As there is no hierarchy between the rights and all the rights are in children's best interest, information about rights, how to enforce them, and information aimed to protect, promote and fulfil rights, are in a child's best interest and not injurious.<sup>93</sup> On the other hand, information that contradicts or conflicts with the rights might be injurious and is not child-friendly. For instance, this applies to information that undermines the child's right to freedom of thought, conscience and religion in accordance with article 14 of the CRC. In addition, procedural and substantive rights are interrelated. If a decision respect all relevant substantive rights, it will most likely have a content that the child can be informed about without any harm. The national authority must respect all the rights of the child, including the right to have his or her best's interests assessed and taken as a primary consideration when different interests are being considered, and the decision will have to reflect those rights. On this point an administrative decision, such as in a migration case, differ from health issues. Illness and injury do not respect human rights. Still, Norwegian legislation is built on the view that it is in children's best interests to receive health information.

Furthermore, the best interests of the child presupposes an individual assessment and determination 'in light of the specific circumstances of the particular child'.<sup>94</sup> The CRC Committee has explained that '[t]hese circumstances relate to the individual characteristics of the child or children concerned, such as, inter alia, age, sex, level of maturity, experience, belonging to a minority group, having a physical, sensory or intellectual disability [...]'.<sup>95</sup> Adjusting information to the individual child's needs is in accordance with this statement, may be an effective way to prevent harm. In addition, the CRC article 5 implies that the information must be adjusted to the 'evolving capacities' of the child. The concept in article 5 refers 'to processes of maturation and learning whereby children progressively acquire knowledge, competencies and understanding'.<sup>96</sup> Daly has stated that capacity 'refers to one's cognitive abilities, i.e. mental processes such as knowing, judging and evaluating'.<sup>97</sup> Since the ability to understand information may varies even between children that share many characteristics, information adjusted to the child's capacities is important. Since article 12 state that the child's views shall be 'given due weight in accordance with the age and maturity

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<sup>93</sup> General Comment No. 14 para 4, see also CRC article 29.

<sup>94</sup> General Comment No. 14 para 32.

<sup>95</sup> General Comment No. 14 para 48.

<sup>96</sup> General Comment No. 7 para 17.

<sup>97</sup> Aoife Daly, 'Assessing Children's Capacity. Reconceptualising our Understanding trough the UN Convention on the Rights of the Child', *International Journal of Children's Rights*, 2020 471–499 (473).

of the child’, decision makers must assess the capacity of the child.<sup>98</sup> The assessment of the capacity of the child will also be relevant for adjusting information to the child. Informing and involving a child, also in sensitive topics, is in addition an important means to increase the child’s capacity, and this indicating a close connection between the rights in article 3, 5, 12 and 13.

Another point is that adjusted information creates predictability and can contribute to a sense of control in difficult situations. A sense of control may be particularly important for children that has experience traumatic events earlier, such as children in the child welfare system and children seeking asylum.<sup>99</sup> This indicate that holding back information for protecting children belonging to groups that often is assumed to be especially vulnerable, might be counterproductive.

In Trauma-Informed care, consistency, reliability, predictability, honesty and transparency is central to one of the tree pillars, which is making the child feel safe.<sup>100</sup> The NPIS Guidelines for Asylum Cases Involving Children is research-based and shall ensure that children`s rights are safeguarded in NPIS`s work.<sup>101</sup> The Guidelines acknowledge that children who have previously experienced frightening or stressful events, for instance as asylum seekers, may be particularly vulnerable to new stressful events.<sup>102</sup> To prevent harm to children, the NPIS has defined some child-specific principles, which is ‘understanding’, ‘predictability’ and ‘involvement’, that shall prevent harmful stress by contributing to a sense of control.<sup>103</sup> Instead of focusing on vulnerability, the principles are intended to increase the child’s capacity and prevent expanding its inherent vulnerability, by informing and involving the child. In principle, this strategy is in line with a rights-based approach. However, how well this strategy functions depends on several factors, including how the principles are implemented. The same apply for the legislation about health information to children and trauma-informed care. Nevertheless, these examples illustrate that information can prevent (further) harm. Also, as mentioned in the discussion above, the necessity of informing a child about matters affecting him or her is related to that such information often concerns issues

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<sup>98</sup> See General Comment No. 12 para 44.

<sup>99</sup> See Howard Bath, ‘The Three Pillars of Trauma-Informed Care’, *Reclaiming Children and Youth* 2008, 17-19 and Derluyn and Broekaert, 2008, 321-322.

<sup>100</sup> Bath, 2008, 17-21.

<sup>101</sup> NPIS Guidelines, 2018: 7, 9 and 12–18.

<sup>102</sup> NPIS Guidelines, 2018: 10 and 13, see also General Comment No. 4/23 para 39–40 and M. Jakobsen, M. Meyer, and T. Heir, ‘Prevalence of psychiatric disorders among unaccompanied asylumseeking adolescents in Norway’, *Clinical Practice and Epidemiology in Mental Health*, 2014, doi:10.2174%2F1745017901410010053.

<sup>103</sup> NPIS Guidelines, 2018: 10–11, 16 and 20.

that will affect the child in one way or another, and it may serve as an important means for the child to handle the consequences.

Haugli has criticised the Supreme Court's verdict mentioned in the introduction.<sup>104</sup> She argues that it is debatable whether one protects children's best interests by not talking with them about difficult topics and, irrespective of the outcome of case, the child must live with the consequences. The same appears when the child is lacking information about a negative outcome in his or her asylum case, or in other cases. The child must live with the consequences, whether he or she is informed or not. Information, like participation in general, promotes the child's development of capacities.<sup>105</sup> Bearing in mind that these matters often affect the child one way or another, such contribute to enhanced capacities on these specific matters, is important. Considering this, in my opinion, child-friendly information about matters affecting a child is important for ensuring the child's rights, including the best interests of the child.

## 6 Conclusion

Information is essential for children as subjects of rights and an inherent part of the right to participate. Thus, the possibility to restrict the right must be very narrow, and not linked to any specific age. Although, there will be situations where children need protection, such as when the information might be very frightening or uncertain, and/or the child is very young and/or immature, the need for restricting the right after article 13 might be much smaller, or maybe superfluous, with by adding the requirement that the information must be child-friendly and adjusted in line with CRC article 3, 5 and 12.

The way state actors deal with questions related to informing children may reflect the view on participation and furthermore the views on children's social and moral status. Accepting that the main rule should be that children should not receive information on sensitive topics will contribute to maintaining a paternalistic attitude. Instead, it is necessary take the opposite approach; children have right to child-friendly information on sensitive topics affecting themselves. In accordance with a child rights approach, the state authorities, both in asylum cases and in other cases concerning children, *must ensure* that the child receive child-friendly information. This could be done with legislation, like in the health legislation, administrative regulations or guidelines and/or training of personnel. If different

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<sup>104</sup> Trude Haugli, 'Kommentar til Høyesteretts kjennelse om hensynet til barnets beste og barns rett til å bli hørt', *Juridika innsikt*, 2019.

<sup>105</sup> General Comment No. 12 para 79 and 84.

administrative bodies or persons have duties in different stages of a case (first decision, appeal, implementation/realisation etc) it must be clear who has the responsibility to make sure the child is informed in all these stages.

Respecting, protecting and fulfilling procedural rights as the child's right to information is central for a child rights approach and for treating children as right bearing subjects with growing capacity to handle their own life.

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