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## The Impact of the UNCRC During the Covid-19 Pandemic in Sweden

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## **Abstract**

Sweden has expressed a commitment to children's rights in the last few decades, signing the UN Convention on the Rights of the Child (UNCRC) in 1990 and eventually incorporating it as Swedish law in 2020. With the Covid-19 pandemic coinciding with the convention as law and drastically changing the lives of many, including those of children and youth, what role do children's rights play during a global pandemic? This thesis is interested in this question and has explored the impact of the UNCRC as law in Sweden during the pandemic. The impact has been measured through an examination of the implementation of the best interest principle in decisions. The case study for this thesis is the nationwide upper secondary school shut down, where I have examined national decisions issued by the Swedish Public Health Agency (FHM) and municipal decisions issued by Malmö municipality starting from March 2020 until June 2021. Methodologically, I have used a deductive top-down approach and a qualitative content analysis with closed coding. Theoretically, I have engaged with Lawrence M. Friedman's concepts of direct impact, use, semi-use, and non-use of a law. These theoretical concepts were applied to the best interest principle, forming its different applications. The theoretical concepts of instrumental and symbolic law were also employed as part of the theoretical body. The results showed that the right to education, mental health, and situations of vulnerability were briefly considered in some decisions, however the analysis pointed towards the non-use of the best interest principle in the decisions, thus concluding that the UNCRC occupies a symbolic law status.

**Keywords:** The Convention on the Rights of the Child, Covid-19, Pandemic, Impact, Upper secondary schools closure

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# 1. Introduction

When the news of a virus spreading in the Chinese city of Wuhan broke, chaos and uncertainty ensued upon us, and no one was able to anticipate the scope and the effect this virus would carry worldwide. The drastic and swift shift in everyday life carried far and wide exacerbating inequalities and disadvantaged the vulnerable (Human Rights Watch 2020). On January the 30<sup>th</sup> 2020 the World Health Organization (WHO) declared a public health emergency of international concern and shortly thereafter a pandemic on the 11<sup>th</sup> of March 2020 (WHO 2021). As of 16<sup>th</sup> of August 2021, the Coronavirus has infected over 200 million people and ended the lives of over four million worldwide (Worldometer 2021). To combat the virus, countries around the world adopted different measures such as imposing travel restrictions and lockdowns, requiring remote learning and working from home.

Sweden has been considered an outlier when it comes to measures combating the virus, largely relying on voluntary compliance instead of coercion (Henley 2020A; Henley 2020B; Henley 2020C). One of the key measures that the Swedish government has adopted is closing upper secondary schools and implementing distance<sup>1</sup> and remote<sup>2</sup> types of learning. On the 17<sup>th</sup> of March 2020 the Swedish Public Health Agency (FHM) and the Swedish government issued a country wide shut down of upper secondary schools recommending virtual types of education (FHM1). Over the past year and a half Swedish upper secondary schools have been completely shut, semi-shut, opened, and shut again. The most recent decisions from FHM on the 25<sup>th</sup> of March 2021 ended the restrictions on upper secondary schools, citing the negative impact the pandemic and the school shut down has had on students, especially in relation to health and education (FHM5). Indeed, students in upper secondary schools have had to adjust to drastic changes which is believed to

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<sup>1</sup> Interactive learning that relies on information and communication technology where the students and teachers are separated in time and space.

<sup>2</sup> Interactive learning in real-time that relies on information and communication technology where the students and the teachers are separated in space but not in time.

have long term implications on their well-being and rights fulfillment (Human Rights Watch 2020).

The issue of rights in relation to the schools shut down during the pandemic in Sweden is of particular relevance since the UN Convention on the Rights of the Child (UNCRC) has entered into force on January 1<sup>st</sup>, 2020, coinciding with the Covid-19 crisis and the measures adopted to shut down upper secondary schools. The convention as Swedish law carried with it a sentiment and anticipation of a children's rights' focused approach across all levels of decision-making stemming from the national to the regional, municipal, and school level (UNICEF 2018). Earlier investigations from the Swedish government have demonstrated a lack of compliance with the convention (see for example 1993/94: SOU01; 1995/96: SOU04; SOU 2016:19), especially when it comes to the implementation of two of the fundamental principles in the convention, namely the best interest of the child (article 3) and the right to be heard (article 12). Article 3 puts forward the legal requirement that the best interest should be the primary consideration in all actions concerning children. This principle has been problematized by many researchers (see for example Parker 1994; Andersson et al. 2004; Zermatten 2010; Lundberg 2011; Sonander & Olsson 2019: 163-164; Tärnfalk & Alm 2019) who argue that its arbitrary definition is linked to dilemmas in practice and lack of its implementation.

Rights protection and consideration has strong legal precedent with the UNCRC as Swedish law, thus examining the implementation of rights during the Covid-19 pandemic is of importance considering that the fulfillment of those rights is critical during a crisis. Taking the best interest of the child into consideration in decisions that drastically changes the lives of those affected, such as shutting down schools, is vital. Thus, a closer examination of how and if the best interest is considered in decisions can arguably be an indicator of the type of impact the UNCRC has had as law during the last year and half in Sweden. With the convention as law in Sweden, investigating its impact on practice is of socio-legal relevance. It goes to the heart of one of the issues the field of sociology of law tries to understand (Friedman 2016:

1-3). This research query takes its starting point from the gap between law in the books and law in action originating in writings of one of the fathers of sociology of law, Roscoe Pound (Banakar 2015: 52-54). Thus, this thesis's objective is grounded in socio-legal thinking and problematization.

### **1.1 Aim:**

The overall arching aim for this thesis is to investigate the impact that the Convention on the Rights of the Child's (UNCRC) with its new status as national law, has had in practice in Sweden during a crisis. The impact of the UNCRC will be measured through investigating the implementation of the best interest principle [article 3(1)] in practice, between March 2020 and June 2021 in the case of upper secondary schools during the Covid-19 pandemic in Sweden. The implementation of the best interest will be investigated in national and municipal decisions, where my case study is Malmö Municipality, as well as FHM and their decisions regarding upper secondary schools during the pandemic. Methodologically, a deductive approach and qualitative content analysis with closed coding will be used to systematically analyze the data. Theoretically, this thesis will employ theoretical concepts of use, non-use, and semi-use of a law, as well as symbolic and instrumental law derived from Lawrence M. Friedman's book on impact (2016).

### **1.2 Research questions**

What impact does the UNCRC has on the implementation of the best interest of the child principle in the case of upper secondary schools during the Covid-19 pandemic in Sweden?

- How is the best interest of the child implemented in decisions concerning upper secondary schools during the Covid-19 pandemic in Sweden?

The sub question will aid in answering the overarching question, where I aim to understand how the best interest is applied in decisions as an indicator for the impact of the UNCRC during the pandemic.



### **1.3 Delimitation**

The research topic chosen for this thesis is closely related to socio-legal areas such as the implementation of the UNCRC from the point of view of legal pluralism, as well as through the concept of juridification (see for example Teubner 1987; Ponnert & Johansson 2018). These concepts will not be treated in this thesis. The focus of this research is to investigate the impact of the UNCRC through the examination of the best interest principle, thus a traditional legal analysis will not be performed in this thesis. Furthermore, this investigating will deal with the effect the convention had on the policy level and not on those affected by policy.

### **1.4 Disposition**

The thesis is organized as follow: after the introduction and aim, chapter two describes the development of the convention in Sweden aimed to give the reader a historical context to the law examined. The third chapter provides a legal framework of the best interest principle to give an overview of the legal expectations and consideration of the principle examined. Chapter four presents a literature review of the relevant scholarships for this research. Chapter five discusses and operationalizes theoretical concepts employed in the analysis. Chapter six describes the methodology employed in this research, as well as the considerations and limitations of the methods used. Chapter seven presents the analysis and results. Finally, the thesis ends with concluding remarks and future research recommendations.

## **2. The development of the UNCRC in Sweden**

The UNCRC was drafted in 1989 and came into effect in 1990, where Sweden, among many countries, has signed it without any reservations. The UNCRC is the most ratified international convention, with 196 countries expressing a commitment to follow its standards (Ponnert & Sonander 2019: 37). As with most international conventions no sanction is in place for countries who fail to fulfill the requirements of the convention. To monitor and track of the development of the UNCRC in member states, the committee on the rights of the child has been created according to article 43. State members are required to submit a report every five years informing of the progress they have made regarding the development of children's rights, to which the committee responds with comments on improvements (Ponnert & Sonander 2019: 38). The convention has 54 articles, 41 of which are material rights. Out of those, four articles are considered to be the fundamental principles of children's rights. Article 2: the right to non-discrimination, article 3: the best interest of the child, article 6: the right to life, survival and development, and article 12: the right to be heard. Those four articles are to be seen as a framework for interpreting the rest of the convention. In general, the material rights in the convention are to be interpreted together and not individually depending on relevance. To clarify certain articles in the convention, the committee on the rights of the child writes general comments. However, these comments are not legally binding (Ponnert & Sonander 2019: 38-40). So far, the committee has written 25 comments, one of which concerns the best interest principle and how it is to be interpreted and applied. This will be elaborated on in the next chapter.

When the UNCRC was ratified in Sweden in 1990 the government aimed to establish harmony between the convention and Swedish national law, which meant little to no conflict between the two (Ponnert & Sonander 2019: 45-46). Historically, Sweden does not have a tradition of incorporating international conventions into its national law. One exception is the European Convention of Human Rights and Fundamental Freedoms, which became law in Sweden in 1995

(Mattsson 2019: 65). Sweden chose to incorporate the UNCRC into its national law through transformation. This meant that Swedish national law would change over time to be more in harmony with the convention. Essentially, old laws would be transformed, and new legislation would be introduced in accordance with the UNCRC (Ponnert & Sonander 2019: 46). Since ratifying the convention, courts, government agencies, and municipalities have the responsibility to interpret the law in accordance with the UNCRC. Furthermore, a special Swedish authority, children ombudsman (Barnombudsmannen), was assigned to monitor and observe the development and the compliance of Sweden with the convention, as well as represent the rights and interests of children and youth in Sweden (2018:882). With the UNCRC as Swedish law it has the same status as national law, which means that national Swedish law is no longer superior to it, as was the case before its incorporation. Even though Sweden's aim is to transform in accordance with the convention, earlier investigations has shown that there is a lack of compliance with the convention (see for example 1993/94: SOU01; 1995/96: SOU04). One example is a governmentally assigned committee in 1996 with the main task to investigate the relationship between the convention and Swedish law, as well as how the convention is implemented in practice. The investigation was centered around the four fundamental principles (article 2, 3, 6, and 12) and article 4 (economic, social, and cultural rights). The committee found that there are gaps in implementation and that the principle of the best interest of the child needed to be made clearer. Interestingly, the committee recommended that the UNCRC become Swedish law back then. Furthermore, the committee argued that since the convention's articles formulation are too vague it should not be up to courts to interpret them. As such, this responsibility should fall on the legislative body to draft laws for the rights in the convention to be better implemented (SOU 1997:116).

In 2011 the Ministry of Health and Social Affairs (Socialdepartementet) conducted an investigation to see how well the UNCRC harmonizes with Swedish law. The results showed that the two harmonized to a large extent however some laws were not clear regarding how children's rights can be applied in individual cases (Ds

2011:37). In 2013 the government set up another investigation concerning children's rights which concluded that the fulfillment of children's rights and the adoption of a child rights perspective in the public sector were still lacking. The investigation concluded that best interest principle and the right to be heard are inadequately implemented (Barnrättighetsutredningen S 2013:08).

In 2012 Sweden sent its 5<sup>th</sup> periodic report to the children's rights committee and as such it was criticized by the committee for not having the convention as law. The committee stated that there is a lack in the application of the four fundamental principles and stressed the importance of their reflection in the Swedish national law. Among the committee's recommendations were an increase in the provision of the Swedish children ombudsman, making a child rights assessment mandatory in all decisions concerning children, as well as giving the UNCRC the status of Swedish law (UN Committee on the Rights of the Child 2015). The UNCRC has throughout the years become part of many laws in Sweden. For example, chapter 1 of the Swedish School Act (2010:800) has the principle of the best interest of the child as a fundamental aspect of consideration. Throughout the years there has been arguments for and against making the convention a Swedish law. Some of the arguments for, were that courts and government agencies can use it as a base since Swedish law will no longer trump the convention. Moreover, the convention can be used by public officials as a guiding tool in their work with children. Some of the arguments against were that the articles in the convention are formulated vaguely, the original language of the convention is not Swedish, and finally that the convention lacks legislative history in Sweden (Ponnert & Sonander 2019: 51). However, the new government that came into power in 2014 had a clear political will to make the convention a Swedish law in its government policy statement (Regeringskansliet 2015). As such they put in place an investigation to examine four main areas; children in the migration process, children with disabilities, children who witness violence within their family, and children who are exposed to violence. Similar to previous investigations, the results showed a continued lack in the implementation of both article 3 and 12. For example, the questions the children

were asked were oftentimes irrelevant and knowledge about the principle of the best interest were lacking, as well as a clear definition of it (SOU 2016:19). Following the investigation, the UNCRC was voted on the 13<sup>th</sup> of June 2018 to become Swedish law. Essentially, the gap between rhetoric and practice is central when it comes to children's rights in Sweden.

After voting to make the convention Swedish law in 2018, the government assigned an investigation committee with the aim to examine the extent in which Swedish law harmonizes with the convention prior to the UNCRC coming into force in 2020. The investigation also researched how governmental agencies and courts listens to children, as well as how they use the best interest principle. The investigation went through relevant Swedish legislations and case law, as well as conducted a survey with professionals who work with children. The results demonstrated that Swedish laws and the UNCRC align with each other to a large extent with some exceptions. The best interest principle was lacking in court decisions, where it was not always clear how the best interest was determined. In many cases the best interest was not even mentioned. The right to be heard also suffers a lack of implementation, where the older the child is the more courts and governmental authorities listen to her/him. However, like the best interest this was not documented. Professionals who work with children have expressed a lack of ability to interpret the best interest principle and apply it due to its vague nature, as well as a lack of time, resources, and knowledge to properly use it (SOU 2020:63). While the convention is in harmony with Swedish law, the gap between black letter law and its implementation is clear regarding the best interest principle and the right to be heard.

While Sweden has made the UNCRC a national law recently, Norway has had the convention as part of its constitution since 2014. In general, it is difficult to say that it contributed to a huge change. However, it did give more focus and importance to children' rights. Finland is another example, where one cannot definitively see substantial change with the incorporation of the UNCRC. Denmark was also a contender in making the UNCRC part of its laws in 2018, however similar

arguments to the Swedish case were raised against incorporating it (Ponnert & Sonander 2019: 51-52; Mattsson 2019: 79-80). In a study concerning the impact of the UNCRC on increased protection of rights legally and in practice, Lunby, Kilkelly, and Byrne (2013) conducts research in twelve countries: Australia, Belgium, Canada, Denmark, Germany, Iceland, Ireland, New Zealand, Norway, South Africa, Spain, and Sweden. They conducted a field visit and held interviews with relevant governmental actors and agencies in six of those countries. Their aim was to examine the level of protection of children's rights in relation to the different degrees of incorporations of the convention. At the time of the study, 2013, only Belgium, Norway, and Spain had fully incorporated the convention into their laws. The findings suggest that countries who had the convention as part of their constitution had a symbolic 'red line' regarding the commitment to children's rights. Further, the interviews suggested that a higher level of incorporation of the UNCRC corresponded to a higher likelihood that the children are viewed as rights holders. Moreover, conflict between parents' rights and children's rights dominates public discourse in some countries. Interestingly, vulnerable children such as asylum seekers and children of minority populations fared less well regardless of the level of incorporation of the convention. Conclusively, countries that have incorporated the convention as part of its law tend to have higher protection of children's rights, where the convention functions as a backbone to drafting policies and laws. The authors further conclude that there is no one or right way to reach the goals of the convention, however one step that seems to have impact is incorporating the convention into national law, thus bringing the rights of children home (Lunby, Kilkelly & Byrne 2013).

Some researchers have adopted a critical approach to the convention and children's rights as a research field. For example, Ann Quennerstedt argues that the convention is to be viewed not merely as an implementation problem but rather as an object of study in itself. She contends that children's rights are not static and as such the convention should be viewed as a historical and political document that is a product of its time. Thus, an examination of its underlying assumptions is critical.

Quennerstedt further argues that treating the convention as the ultimate definition of children's rights is hindering the development of new theoretical approaches in the field. She also stresses that studying the convention should be context specific and discipline specific, where it should not be treated as a general implementation problem. She recommends children's rights researchers to be reflexive in their approach and depart from their particular field of interest rather than the convention when they are studying children's rights (Quennerstedt 2013).

While it is important to be critical to the convention and the underlying assumptions woven into its fabric, it has been used by governments as a tool to advance and support the rights of children and thus examining what that means in practice on a policy level is arguably of equal importance. With the convention as law in Sweden now, does it indeed guarantee a higher protection of children's rights or does it, as Lunby, Kilkelly, and Byrne, constitute a symbolic 'red line'? This thesis is precisely interested in this question and will attempt to answer it through the examination of the best interest principle in decisions during the Covid-19 crisis.

### **3. Legal framework**

This chapter will cover the legal expectations and standards of the implementation of article 3 in the UNCRC containing the best interest of the child principle. The focus will be on the first paragraph of the article since it is the one most applicable to my research. The purpose of this chapter is to give the reader a concrete legal framework of what the best interest entails and the legal obligations it presents. The legal framework consists of article 3 as stated in the UNCRC, as well as a summary of the committee on the rights of the child's general comments number 14 (UNCRC 1989; The Committee on the Rights of the Child General Comments 2013).

#### **3.1 The principle of the best interest of the child – Article 3**

The concept of the best interest of the child is not new, it preceded the UNCRC and has existed in national and international laws, such as the Declaration of the Rights of the Child in 1959. The aim of the best interest principle is to guarantee all rights recognized by the convention effectively. As such the best interest is to be interpreted in favor of guaranteeing all rights included in the convention. The rights in the convention have no hierarchical relationship to each other and are all equally important. As mentioned in the previous chapter, the best interest principle is one of the four fundamental guiding principle of the convention and consists of three separate paragraphs that are stated as follows:

“Article 3

- 1. "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*



3. *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*” (UNCRC 1989)

The second paragraph of the article focuses on the obligation of protection and care in the context of those legally responsible for the child, including the parents. Thus, article 3(2) concerns itself with the idea and the ideal of the ‘well-being’ of the child and not *just* the best interest. Article 3 (3) pertains the obligations that the state must ensure compliance to the established standards of care and protection and the continuation of their enforcement and supervision (Zermatten 2010; The Committee on the Rights of the Child General Comments 2013: 4). For the purposes of the thesis, I will only focus on paragraph 1. The first paragraph discusses the obligation of implementation in ‘all action’ including governmental decisions (on all levels of government) and as such it is the most relevant paragraph for my thesis and its legal framework will be discussed in detail below.

According to the committee on the rights of the child’s general comments number 14, the principle of the best interest, paragraph 1 can be viewed as three dimensional. The first dimension of the principle is the best interest as a fundamental right, which means that every child has the right to the assessment of his/her best interest as a primary consideration. The second dimension of the principle is to use it as a fundamental interpretive legal principle. This essentially means that if a legal provision allows for multiple interpretations, the interpretation that is more in line with the best interest of the child should be chosen. The best interest principle can also be used as a rule of procedure, which means that when decisions are taken regarding children there should be a mechanism in place in order to evaluate the impact the decision will have on a child or a group of children. Furthermore, the decision should be documented when it comes to how the best interest principle has been weighed against other interests and how the decision was reached (The Committee on the Rights of the Child General Comments 2013: 4).

### **3.2 The scope of obligations for state parties**

In general comments number 14, the committee identifies three main obligations that state parties are duty-bound to regarding article 3(1). The first obligation is that the best interest principle must enjoy consistent application that functions in an integrated fashion when it comes to actions impacting children taken by public institutions and judicial body. The second obligation emphasizes the importance of the primary role the principle plays in judicial and administrative decisions including policies and legislations concerning children. State parties are obliged to document and describe *how* the best interest has been assessed and the weight it carried in the decision. The third obligation stretches the concept further to not only the public sector and courts but also the private sector (The Committee on the Rights of the Child General Comments 2013: 5). The committee explicitly writes the legal standards of how the principle is to be applied, saying that “any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child’s best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child’s best interests were a primary consideration despite the result.” (The Committee on the Rights of the Child General Comments 2013: 20). Thus, a thorough description of the best interest principle should be clearly stated in all decisions.

### **3.3 Assessment of the best interest principle**

When it comes to the assessment of the best interest the committee names seven different elements essential to its assessment. However, these aspects are very broad and applicable on a case-to-case basis. It is important to keep in mind that not all of

them might be relevant to all cases and the weight they carry depends on their relevance in the case (The Committee on the Rights of the Child General Comments 2013: 13-17). The following section will list these elements and give a brief definition to each one as stated in the general comments number 14:

**(a) The child's views**

As mentioned earlier the view of the child is vital to the determination of the best interest regardless of the child's vulnerable position. This is to be applied depending on age and maturity of the child in question.

**(b) The child's identity**

Children are to be treated as a non-homogenous group with individual needs based on different range of personal, physical, social, and cultural aspects, as well as evolving capacities. As such their differences and individual needs is to inform the assessment of the best interest.

**(c) Preservation of the family environment and maintaining relations**

Here the committee elaborates the importance of resorting to family separation as a final option after exhausting all other options available because preservation of family and relationships are vital to the assessment of the best interest of the child.

**(d) Care, protection, and safety of the child**

The committee explains that in the assessment of the best interest, the well-being and development of the child are essential elements of consideration, as well as consideration of safety. Both short- and long-term risk assessment should be examined when taking decisions effecting the lives of children.

**(e) Situation of vulnerability**

The needs of vulnerable children might drastically be different from other children's needs and as such a determination of the best interest should be adjusted to their needs. Authorities should consider different aspects and degrees of vulnerabilities in children when it comes to decision making through carrying an assessment of the best interest on the level of the individual as well as the group level.

**(f) The child's right to health (article 24)**

Physical and mental health of the child is fundamental to the assessment of the best interest. The child view here is also essential before taking a decision. Information and treatment should be available to all children about health risks.

**(g) The child's right to education (article 28 and 29)**

The right to quality education is essential to every child and as such all decisions and assessment of the best interest should take into consideration the right to education.

In sum, the best interest is not a straightforward legal concept putting many obligations on decision makers. While its implementation is important for the advancement and the guarantee of children's rights, its impact on practice has been problematized by many governmental investigations, as well as by many academics (see for example, SOU 1997:116; SOU 2016:19; SOU 2020:63; Zermatten 2010; Lundberg 2011; Sonander & Olsson 2019; Tärnfalk & Alm 2019). Thus, it is important to examine its implementation now that it has a stronger legal hold with the convention as law in Sweden, especially in the context of a crisis, such as Covid-19, where children are more vulnerable, and rights protection is ever more important.

## 4. Literature review

In order to understand the topic studied and map existing research, a literature review is crucial (Banakar 2019). The literature review for this thesis was conducted to understand the use and application of the best interest principle as stated in the UNCRC, as well as summarize existing literature on children during the Covid-19 pandemic. Most importantly this literature review will serve to identify the knowledge gap in the literature and contribute to it from a socio-legal perspective (Banakar 2019). When it comes to the method for searching for literature on the best interest principle, a snowball sample was used starting with the book; *Perspective on the Convention on the Rights of the Child - Research, Theory and Practice*<sup>3</sup> (Sonander & Ponnert 2019). This book laid the ground for my sample and eventually 10 scholarly works were chosen and summarized below. As for the second strand of literature concerning the pandemic and children I have used Lund University library database, Lubsearch, where I searched for the following combination of words: "covid-19" OR "coronavirus" OR "sars-cov-2" OR "cov-19" OR "pandemic" OR "lockdown" OR "school closure" AND "child" OR "children" OR "youth" OR "adolescent" OR "teenager" AND "best interest" OR "article 3" OR "UNCRC" Or "the convention on the rights of the child" OR "children's rights" OR "Child rights" OR "the best interest of the child". I only searched for peer reviewed articles with the timeline 2020-2021 corresponding to the timeline for the pandemic. The search gave forty results. After an abstract screen seventeen articles were identified as relevant. Five additional peer reviewed articles were identified through a snowball sample from the previously found literature. Furthermore, thirteen reports from key Swedish governmental agencies<sup>4</sup> were identified as relevant for the topic for this thesis. The total number of articles and reports for this literature review is 45 and they will be summarized below.

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<sup>3</sup> Perspektiv på barnkonventionen - Forskning, teori och praktik (Sonander & Ponnert 2019).

<sup>4</sup> The Swedish children ombudsman, the Swedish School Inspectorate, and the Swedish National Agency for Education.

#### 4.1 The best interest principle

The best interest of the child principle is dynamic and does not have a set definition, which has been described as one of its weaknesses as well as one of its strengths. Its adaptability opens the door for applicability according to the situation of the child or children in question (see for example, Gustafsson 2019: 85 and Schiratzki 2005: 52-57). However, previous research has shown that the flexibility in interpretation can lead to dilemmas in practice (see for example Parker 1994; Anderson et al. 2004; Zermatten 2010; Lundberg 2011; Sonander & Olsson 2019: 163-164; Tärnfalk & Alm 2019). Theoretically, the principle produces two different views of children that are inherent to it as a concept. Those views are linked to ideas on children's legal values and protection. The first one is children as objects to be safeguarded, where they are viewed as vulnerable and in need of protection. The second view is children as subjects with rights, where they are viewed as capable individuals with rights to participate in decisions that effects his/her own life. The object view is connected to the adult's view of what the child needs, while the subjective view of children is linked to participation rights and children as experts in his/her own life. The latter view of the child is more modern and as such desired (Ponnert 2015). The lack of a concrete definition of the concept can lead to conflicting views when it comes to viewing the child as a rights holder with ability to participate and voice his/her opinion and be heard, as well as a person in need of protection and care. These views are often mixed up by professionals when making decisions concerning children (Ponnert 2015; Ponnert 2019: 114).

Johanna Schiratzki argues that the implementation of the best interest principle usually carries within its presumptions on what is generally best for children. As such the interpretation of the principle is confined by these assumptions. An example of this is the idea that the child *always* needs to have contact with his/her parents, which exists as a fundamental building block of the easement of the best interest (Schiratzki 2005; 58-62; Ponnert 2015). Zermatten (2010) argues that interpreting the best interest principle cannot take place in isolation, it must be

interpreted in relation to the UNCRC, especially in relation to the three other fundamental guiding principles of non-discrimination, harmonious development, and right to be heard (Article 2, 6, and 12 respectively). She asserts that the best interest principle is “an unspecified legal concept which must be elaborated in practice” (Ibid.). This, she means, should be within the parameters of the principle specified by the Committee on the Rights of the Child. Furthermore, Zermatten (2010) contends that the principle in article 3 is relative to time and space, meaning that the reliance on scientific knowledge about the child that is available now is in constant change (Zermatten 2010; Anderson et al. 2004). Deciding what the best interest is in a specific case should consist of both short term and long-term considerations since the child is developing and decisions that are taken now carry their effects years to come (Zermatten 2010). Zermatten (2010) concludes that the principle should be defined objectively as to best guarantee its effective application away from the assumptions of those who interpret it.

## **4.2 Covid-19 pandemic and children**

### ***4.2.1 International research***

While the Covid-19 pandemic is relatively new in scope and effect, there are some literatures that has accumulated over the past year and a half examining different aspects of the pandemic. The scientific community has engaged in researching different aspects of the virus and the disease it causes, as well as the effects the pandemic has had on society from various perspectives (Cachón-Zagalaz et al. 2020). One systematic literature review has summarized international literature from USA, UK, China, Spain, Italy, and Turkey, concerning the lives of school children up to the age of 12, where the researchers focused on the effects lockdown, and subsequently the closure of schools, had on children’s physical and mental health. The systematic review concluded that the nine studies analyzed all had similar results; the lockdown and being out of school due to the pandemic has

worsened physical and mental health in young children, where it contributed to increased levels of stress and worry due to not fully comprehending the pandemic situation, as well as decreased physical movement due to confinement. The researchers contended that most studies in the review demonstrated that routines and support from family had positive impacts on children. Lastly, the literature review further concluded that scarcity in research in the areas of children and Covid-19 pandemic is prevalent, thus there is a need for more research on this topic (Cachón-Zagalaz et al. 2020).

Internationally, several studies have been conducted on the effect of the pandemic on children where they highlight their struggles regarding mental health, psychosocial environment, violence, economic instability, unequal internet access, parent unemployment, disruptions of daily routines, worry, fear, anxiety, uncertainty, as well as changes in mood and behavior (Heldman & Dalton & Fellmeth 2020; Masonbrink 2021; Song 2021; Couper-Kenney & Riddell 2021; Ares et al. 2020). The international literature on this topic stresses the importance of making the struggle of vulnerable children and youth visible during the pandemic and understanding that Covid-19 exacerbate the vulnerable condition they are living in (Katz & Cohen 2020; Katz et al. 2020; Sullivan 2020; Heldman & Dalton & Fellmeth 2020; Masonbrink 2021; Levine & Morton & O'Reilly 2020; M'jid 2020; Raman et al. 2020; Bolborici 2020; Couper-Kenney & Riddell 2021; Adibelli & Sümen 2020; Miclea & Trifu & Herța 2020; Fegert et. al. 2020; Cuevas-Parra 2021). Furthermore, these studies underline the importance of adopting a children's rights approach to policies and decisions during the pandemic.

One study in Turkey researched the pandemic's health related effect on the lives of children between 7-13 years of age. The results showed that there was an increase in weight gain in children, as well as increase in sleep and internet use (Adıbelli & Sümen 2020). Miclea & Trifu & Herța (2020) investigated how the pandemic effects the psychosocial domain of children and adolescence lives in Romania, especially those who suffer from mental illness. They found that children were



exposed to worries from their parents, chaotic influx of information, economic problems, decreased social contact affecting friendships, and death or illness of relatives. Furthermore, the authors stresses that the continued school closure compromises the rights of children to education (Ibid.). An American study highlights the increased risk of children exposed to violence during the pandemic, as well as the weakening response of the children protection and mental health services. The article stresses the need to prioritize those areas during the pandemic and crisis situations in general (M'jid 2020). Heldman & Dalton & Fellmeth (2020) investigated the protection of children who rely on US government institutions such as child welfare, juvenile justice, and special education systems during the pandemic. The authors concluded that “COVID-19 and the response to it has serious implications for the safety, well-being, and development of these vulnerable children” especially children of color, who are highlighted to be disproportionately affected (Ibid.). One study focused on participation rights of children and youth and how they still struggle to be fulfilled during the Covid-19 pandemic even though the UNCRC has been around for 30 years. This is especially true when it comes to hard-to-reach children, essentially exacerbating inequalities (Cuevas-Parra 2021).

#### ***4.2.2 Scandinavian research***

Like international research on Covid-19 and children, Scandinavian research has also focused on children's experiences during the crisis, focusing largely on mental health. For example, studies have explored the experience of kindergarten children, as well as the experience of upper secondary school students in their last year of school during the pandemic (Heikkilä et al. 2020; Henning & Windsor 2020). Henning and Windsor (2020) have focused on the perspective of students who are on their way out of school in the upper second level, where the researchers asked the students about the difficulty the pandemic has brought to their lives. The results showed that students were stressed about school, felt isolated, worried about family, and the pandemic situation at large. Ahlström et al. (2020) examined the

experiences of parents and children during the pandemic in Sweden. The study demonstrated that there was general worry among parents due to primary schools being largely kept open in Sweden compared to Norway and Denmark. This led to students absents, which became a big burden on the schools to manage. Other challenges were related to low performing students, where access to help decreased during the pandemic (Ahlström et al. 2020). More Scandinavian studies has investigated socio-education policies (Loima 2020) as well as the experiences of social workers working with vulnerable children (Petersen & Ebsen 2020).

### ***4.2.3 The Swedish Context***

When it comes to the Swedish context, one report from the Swedish children ombudsman to the UN committee on the rights of the child, released in June 2020, highlighted the positive and negative effects, as well as the potential effects, the pandemic has had, or will have, on children and youth. Primary schools, up to the age of 16, has been largely kept open, which the report claims were based on a child rights perspective. The reports underline the decreasing number of cases of reported child abuse which can be linked to the distance/remote education, where children and youth staying at home and are more likely to be exposed to abuse and are less likely to have contact with adults outside the home. Other negative effects were the lack of a child rights impact assessments prior to deciding on closing upper secondary schools, which the reports states are affecting vulnerable students (Barnombudsmannen 2020). One exception is the municipality of Halmstad, where they have conducted a child impact assessment on the distance/remote education for upper secondary schools. The results emphasized both positive and negative effects, where education was deemed successful from an epistemological point of view. However, distance/remote education has exacerbated differences between students' academic performance due to differences in home environment. Interestingly, the assessment found that some students struggle with food safety, where they rely on the school lunch as a main meal (Halmstads Kommun 2020).

The Swedish school inspectorate and Swedish National Agency for Education have produced reports concerning upper secondary schools in Sweden during the pandemic. Through interviews and surveys with school staff and students the results from the reports will be presented below. Essentially, the aim of the reports was to highlight the challenges that upper secondary schools and students have faced during the pandemic. Worsening students' health is a recurring finding in the reports, where students are reported to have increased stress level, feeling unmotivated, overwhelmed, and overworked in school due to the increased number of assignments in distant/remote education. The increased number of assignments given to students is a way to compensate for not being able to do the usual in-class exercises. The student health role in schools is underlined to be of particular importance during distance/remote education especially when it comes to students who are hard to reach with weak socio-economic backgrounds. Lack of movement, increased uncertainty, diminished levels of daily activity, and isolation are all a result of distance/remote education. Students who are newly arrived in Sweden are also highlighted as a vulnerable group, where language difficulty in communication and understanding is exacerbated in distance/remote educational settings (Skolinspektionen 2020A; Skolinspektionen 2020B; Skolinspektionen 2020C; Skolinspektionen 2020D; Skolverket 2020A; Skolverket 2020B; Skolverket 2020C; Skolverket 2020D; Skolverket 2020E; Skolverket 2020F).

Another challenge stated in the reports is reaching the knowledge goal, where teachers struggle in assessment and grading specifically regarding practical tasks. This is especially difficult when it comes to sports and vocational programs. Some of these tasks were moved from the spring semester of 2020 to the fall semester 2020, which overworked the students, having to do the previous semester's assignment, as well as the new semester's assignment while juggling a clash between classes. Some positive effects to distance/remote education discussed in the reports were the general increase in attendance in student, as well as the benefit of recorded lessons for students who usually struggle following in class, where it

provided a platform to learn in their own pace (Skolinspektionen 2020A; Skolinspektionen 2020B; Skolinspektionen 2020C; Skolinspektionen 2020D; Skolverket 2020A; Skolverket 2020B; Skolverket 2020C; Skolverket 2020D; Skolverket 2020E; Skolverket 2020F).

The quality of education has been described in the reports to be decreasing in general, compared with in-school teaching. The difference between students' home environments plays a vital role in knowledge retention, wellbeing, and performance, which can be argued to infringe on right to equality in the school setting. Furthermore, the pandemic has had negative effects on the school support for students who are vulnerable. One important aspect highlighted in the reports is the absences of school staff such as teachers and counselors, which presented more difficulties for the schools to manage schedules and planning. When it comes to planning the layout in schools in accordance with the recommendation, the reports stated that adjusting to the restriction imposed by FHM has worked well (Skolinspektionen 2020A; Skolinspektionen 2020B; Skolinspektionen 2020C; Skolinspektionen 2020D; Skolverket 2020A; Skolverket 2020B; Skolverket 2020C; Skolverket 2020D; Skolverket 2020E; Skolverket 2020F). In general, the reports summarized above do not present a positive picture of the experiences of upper secondary schools' students during the pandemic, where the negative consequences of distance/remote learning over the last year and a half has negative effects in the short and the long run. Sjögren et al. (2021) investigate the long-term effect of the pandemic on children and youth when it comes to upbringing environment, schooling, education, and labor market entry. While it is too hard to draw any certain conclusions, the researchers argued that the long-term consequences of the pandemic are negative, especially for those who have weak socio-economic backgrounds. Thus, the authors recommend an increased support to institutions such as social services and student health, as well as put in place compensation mechanism for the shortcomings in human capital development and loss of opportunities that the pandemic has caused and causes for students.

In their yearly report (2021), the Swedish children ombudsman has investigated the impact of the UNCRC during the Covid-19 pandemic. The report stresses the importance of the best interest principle and how it should be clearly considered by municipal, regional, and governmental actors of all levels during a crisis. Participation is also vital before, during, and after a decision during a crisis is taken, where children and youth participate and voice their opinions concerning decisions that affects them. The report recommends better information adaptation during a crisis to be comprehensible by children and youth of all ages, as well as securing the right to education through consideration of the best interest in decisions taken by schools and responsible bodies (Barnombudsmannen 2021).

### **4.3 Gap in the literature**

In sum, the literature above has largely focused on the experience of children and youth during the pandemic, highlighting the importance of having a child rights perspective during a crisis. The topic of the pandemic is relatively new and as such there is a need for more research on the pandemic in general, especially pertaining to the issues of rights and rights guarantee. Essentially, the literature review above has demonstrated that the literature relevant to the topic of this thesis is missing on several fronts. First, there is a need for more research on children's and youth's experiences during the pandemic, as well as research on the short- and long-term effects of the pandemic on youth and children. Second, there is a need for research on the challenges that the schools have faced during the pandemic and the tools needed to better guarantee the rights of all students equally in a crisis. Third, there is a need for a closer examination of decisions and decision makers during the pandemic and the role that children's rights play in those decisions. The aim of my thesis is to contribute to last mentioned point through examining national and municipal decisions concerning upper secondary schools in Sweden during the pandemic and how and if the best interest is considered in those decisions. The best interest is vital in decision making to best guarantee rights and as such it is important to examine its implementation, especially against the background that the

UNCRC is now law in Sweden. Examining the impact a law has on practice is one of the pillars of sociology of law research. Thus, examining the impact the UNCRC has during the Covid-19 crisis goes to the heart of socio-legal research and as such relevant for this thesis.

## **5. Theoretical frames**

This chapter will present the theoretical concept that this thesis will employ in the analysis of national and municipal decisions concerning upper secondary schools during the pandemic. The theoretical framework will be primarily derived from Lawrence M. Friedman's book on impact (2016). Thus, this thesis will adopt a deductive approach to analyzing the data.

### **5.1 Impact**

Lawrence M. Friedman argues that there are two major questions that the field of sociology of law tries to answer. The first one is about the source of which laws, decisions, doctrines, etc. come from. The assumption here is that they are socially conditioned, and effects are affected by society. The second big question is that of impact. Once a law is in place, what follows? The two big questions, Friedman contends, are not separated. One of the sources that contribute to reforming the law comes from society which can be regarded as a type of impact. However, the two big questions can be separated analytically (Friedman 2016: 1-6). This thesis will deal with the second question – *Impact*.

A study of impact acknowledges the inevitable gap between what is wanted from the law and what the law does. In other words, the gap problem; the difference between the law in the books and law in action, originating in the writings of Rosco Pound. Friedman asserts that this chasm creates dual systems functioning separately, which in turn has implications for the impact. If the laws in place are completely disconnected from their societal context their enforcement will be problematic. Even if they are enforced, they might have no impact on practice (Friedman 2016: 79-83).

Impact, according to Friedman, can be distinguished from effectiveness. Impact is a matter of whatever effects the law might have in practice, regardless of what the legislators intended. The intentions of laws are not always graspable and nor is the

intentions of the legislators. However, impact and effectiveness are naturally related. Friedman asserts that they can be analytically separated. Impact deals with the aftermath of a law passing, while effectiveness must relate back to the purpose of the law (Friedman 2016: 44-46). This thesis is interested in the impact the UNCRC new status as law in Sweden has in practice during the pandemic. Effectiveness, as such, will remain outside the scope of this thesis.

## **5.2 Direct and indirect impact**

Friedman defines impact as “value neutral. It is about the changes that takes place after, or because of, some activity within the legal system” (Friedman 2016: 44). Impact can also be considered in terms of the changes that happens in anticipation of law being passed. While impact is indeed a broad concept, Friedman distinguishes between two main types: direct and indirect. *Direct impact* can essentially be defined in terms of compliance and non-compliance of a legal rule or regulation. Compliance or non-compliance can be measured on the citizens level, the legislative, and the enforcement level (bureaucracy level). The more complex the legal act the more shade of compliance there is. This makes compliance and non-compliance have scale like relationship to each other. Words such as compliance and non-compliance are more fitting for criminal law. Friedman employs *use* and *non-use* as synonymous with compliance and non-compliance (Friedman 2016: 75-83). Thus, use and non-use are more fitting for non-criminal law and for this thesis.

Friedman terms the *indirect impact* of a law as ripple effects, meaning the impact that has carried through to unexpected places – possibly in a positive or negative way, or both, depending on the perspective – but that can still be somewhat traced back to the law that ignited it. One example Friedman gives in his book on impact demonstrating indirect impact is raising the license for hunting deer, which lead to fewer dears being killed, which then increases the deer in a certain area. That leads to deer invading more gardens and eating plants there. A woman then gets depressed



because the deer ruined her beloved garden. And on and on it goes. This can be endless. Weighing in the positive and negative ripple effect of law is part of measurement. However, tracing back and measuring ripple effect is very challenging (Friedman 2016: 47-49).

Compliance (use) and non-compliance (non-use) are extremes and naturally there exist an area in-between. A law might be fully used and enforced, or it might be partly used and enforced or not used and not enforced at all. This depends on variety of factors. One of those factors is communication. When laws are passed communicating their existence and what that means is vital for their impact. A law no one knows about will not be used. Enforcers (local and national level) are also essential to the impact story. A law must be communicated, and its enforcement must trickle down to the citizen's level. The enforcers must understand what the law is and the means to enforce it as a precondition to it having an impact. Laws that are vague and unclearly communicated are problematic since they end up either misunderstood, simplified, or not enforced at all (Friedman 2016:19-43). Interestingly, Friedman mentions the best interest standard as an example of a vague concept that is hard to implement due to its lack of definition. Those who are supposed to implement it end up not knowing how to and as such it ends up unused (Friedman 2016: 27-28).

Friedman contends that impact essentially deals with cause and effect. However, it is often the case that causality is hard to claim, that A led to B. Yet sometimes it is possible. One example of this he gives is a study from Taiwan where the norm in custody hearing was that fathers were preferred over mothers. The highest courts changed this patriarchal norm, and the new standards became the best interest of the child. In this case the impact of law can be dated to a certain point and one can measure the before and after. However, the law did have impact only in Taipei and not in the rural areas due to patriarchal norms being stronger there. Furthermore, the impact measured only concerned court decisions. Other types of impact concerning family norms and norms in society is another question. Here, the impact

was measured concerning one aspect – court decisions (Friedman 2016: 64). The scale of impact is also important to consider. What might have an impact in place A might not have an impact in place B due to variety of reasons as the example demonstrated above (Friedman 2016: 5).

Impact can also be legal. *legal impact* refers to the impact a law has within the legal system itself. This type of impact is not of interest for this thesis and as such will be ignored. Norms, culture, personality, risk, reward, punishment, peer pressure, morality, and more play an important role in *why* impact happen or subsequently not happen (Friedman 2016: 5-6). The *why* question of impact, while interesting and important, will remain outside the scope of this thesis. I would argue that one must first investigate if a law has an impact at all and if so in which ways. This thesis is interested in doing that.

### **5.3 Instrumental laws and symbolic laws**

Laws that are not used can be considered symbolic. Joseph R. Gusfield (1967) distinguishes between *instrumental laws* and *symbolic laws*. Instrumental laws are broadly speaking enforced with impact in a specific issue. Symbolic laws' impact does not depend on enforcement to have effect. Its effects manifests in the consideration it produces. A government passing a law creates a symbolic meaning since it effects public norms. According to Gusfield (1967), the symbolic value of a law is that it signals *ideals* and *norms* to the public. One symbolic value of a law is that it demonstrates which culture has the dominant statues. Even if the law does not have direct effects on behavior and it is not enforced it can still have a symbolic function. The law remains an ideal of what is accepted in society as norms, as well as what is wanted to be the norm. Friedman is skeptical to the notion of symbolic law, and he argues that unenforced laws can also have no meaning or value. On one end of the scale there are laws that are enforced vigorously and on the other end toothless laws that are ignored. Friedman states that most laws are in-between. He writes that symbolic laws are not always desired but at the time it is the only

possible outcome. Unenforced laws, Friedman stresses, while they can have no value, they can also have a negative value since it can increase skepticism (Friedman 2016: 51). However, there are exceptions. Symbolic laws can be used to mobilize or demand more action and enforcement. One kind of impact that a law might have, is encouraging people to change the law. One can see symbolic laws as a failure or as a first step in a journey to achieve something, “symbolic victories are rarely victories, but they are also not always total defeats” (Friedman 2016: 52).

Impact is also time conditioned. Friedman contends that “some laws, like good wine and good cheese, take time to mature” (2016: 72). Meaning that the impact of a law is not always immediate, and it might take time before we see results. However, the more time that passes the more factors gets involved in the impact story and the less certain we become that the law is mediating impact, which subsequently effects the measurement of impact (Friedman 2016: 68).

Essentially, Friedman’s book on impact can be divided into two big clusters; the first one is determining the type of impact a law has, direct or indirect, use and non-use. The second part concerns the factors that affects the impact. As I argued earlier, the first part of the book is about answering the what question, as in *what* is the impact and try to measure it through looking at compliance (use) and non-compliance (non-use). The second part is about the *why* question, meaning the factors determining the impact. My thesis will be concerned with the first part (the what question), the type of impact the UNCRC has as law in Sweden during the pandemic.

#### **5.4 Operationalization of theoretical frames:**

Firstly, this thesis will be concerned with impact and not effectiveness. Arguably, this is a reasonable choice and an important distinction since the best interest principle has been labeled a vague standard that is not well defined in the law and therefore it is hard to measure the effectiveness in relation to what it intends to do

(its purpose). What is possible to measure, however, is if, and in which ways, it is implemented, as well as how it is used during the pandemic when making decisions after the UNCRC became law.

Secondly, Friedman argues that impact in general is about cause and effect. This means that one must look at the ‘before’ and ‘after’ of the law in place and be able to clearly see a connection between the law and the impact on practice it produced. While this is tempting it is indeed very difficult to make that claim confidently. The background to my thesis is that the best interest principle in many governmental investigations and academic research been highlighted to lack proper implementation (see literature review). This can be argued to constitute the ‘before’ of my study. The UNCRC becoming law has carried with it an expectation of change. My study is then about that – the after. The possible change that might have taken place and the role or *impact* the convention has as law in Sweden during the Covid-19 crisis. Furthermore, upper secondary schools during the pandemic are hard to avoid as a case study since it coincides with the convention becoming law in 2020. The crisis is arguably the law’s first big challenge. One might argue that the pandemic is an extreme case and might have blocked or slowed down the impact of the UNCRC. While this is a reasonable argument, I would argue that it is of bigger importance to investigate the consideration that exists in these decisions and what is defined as the best interest, if at all. The pandemic as a case study is very interesting due to its unique unprecedented nature. Life changing decision on a country level such as shutting down schools are usually not taken. This makes the pandemic in the context of convention becoming law indeed a relevant case. In extreme situation where decisions makers issue decisions that dramatically change the life of upper secondary schools’ students, a determination of the best interest is important.

Thirdly, as mentioned previously indirect impact is hard to measure in most cases, as well as in this case. Accordingly, I aim to measure direct impact. To do so, I will employ the theoretical concepts Friedman relates to direct impact; use and non-use.

However, he also discusses how most laws usually exist in a grey area in between use and non-use. Accordingly, I will label this area, semi-use. As such direct impact of the UNCRC will be measured through three main indicators; *use of the best interest of the child*, *semi-use of the best interest of the child*, and *non-use of the best interest of the child*. These three indicators will be employed in the analysis of national and municipal decisions concerning upper secondary school during the pandemic.

The first indicators of direct impact, *the use of the best interest*, will be measured through the full application of the principle according to the legal framework I provided earlier in my thesis (see chapter 3). This would mean the full assessment of the best interest standard in decision directly effecting youth/children, including participation rights. This would arguably allow me to label the UNCRC and the best interest standard as *instrumental law* since it would have direct impact on practice (decisions). No mention of the best interest or any types of rights discourses that can be linked to it will be categorized as *non-use of the best interest of the child* in decisions. Following the same theoretical logic as before, the non-use of the best interest would open for a discussion on how the UNCRC can be seen as *symbolic law* and not as instrumental law since it did not have direct impact on practice (decisions). The third indicator, *semi-use of the best interest principle*, will be measured through investigating the logic employed in decisions to examine if there are any aspects that can be linked to the best interest, even if there is no exact mention of it. Employing parts of the legal framework mentioned earlier, as well as mentioning rights discourse in the decisions will be labeled semi-use of the best interest of the child. Additionally, I will also investigate changes over time in the decisions collected over the course of 15 months. This would open for the consideration on how impact can be affected by temporal aspects.

Following the theoretical arguments and the application of theory for this thesis, the use, semi-use, non-use of the best interest is all summarized in the table below:

<b>Use of the best interest of the child</b>	<b>Semi-use of the best interest of the child</b>	<b>Non-use of the best interest of the child</b>
<p>Full assessment of the best interest principle in accordance with the legal framework presented in the thesis. This would point to the UNCRC being an <i>instrumental law</i>.</p> <p><b>Indicators:</b> mentioning the best interest clearly and the weight it carried in the decisions making, as well as referring to a full assessment of it.</p>	<p>Finding aspects that can be linked to the best interest principle.</p> <p><b>Indicators:</b> rights discourse pertaining to the different considerations in the legal framework.</p>	<p>No mention of the best interest principle at all or any aspects that can be linked to it. This would point towards the UNCRC being a <i>symbolic law</i>.</p> <p><b>Indicators:</b> no rights discourse or consideration pertaining to the legal framework of the best interest principle.</p>

## **6. Methodology**

In this chapter, a presentation and a discussion of the methods adopted to conduct this research is presented, starting with the research design being a single case study followed by a justification of choosing a top-down approach. I explain in this chapter how the data was collected and analyzed through qualitative content analysis with closed coding, as well as situate a discussion of the choices made concerning the data used in the analysis. The chapter ends with ethical consideration pertaining to this thesis.

### **6.1 Research Design: A single case study**

Since my aim is to investigate the impact of the UNCRC through the implementation of the principle of the best interest in decisions concerning upper secondary schools during the pandemic in Sweden, a single case study design is suitable. The characteristics of such a design allows me to delve deep into one specific area of research and examine a case in-depth (Halperin and Heath 2017: 214-215). Halperin and Heath (2017: 214-215) claim that there are two main objectives for a ‘good’ case study; the first one is that a case study attempts to say something interesting and meaningful concerning the topic it studies. This speaks for the internal validity of the research. The second characteristic of a ‘good’ single case study is that despite its narrow focus on the case that it examines, the research should still be able to relate and be applicable to other cases even if only hypothetically (Ibid). This would speak to the external validity of the research. Since I have chosen a single case study design it will allow me to examine my case closely and in-depth, thus the internal validity would be elevated. While hypothetically one might be able to apply my finding to other municipalities, the design I have chosen, have low external validity (Halperin and Heath 2017; 149). Since my aim is to examine the considerations employed in national decision and municipal decisions my study design is a sound choice when it comes to answering the research questions and fulfilling my aim. Other possible research design could have been to adopt a comparative design between different municipalities and

compare the different impacts of the UNCRC in one municipality versus another, when it comes to consideration of the best interest during the pandemic. However, examining municipal decisions in Malmö is relevant in the context of the pandemic since the city has expressed a commitment to children's rights (Malmö Stad 2021C) and is the third largest city in Sweden, thus this choice is adequate in answering my research question.

## **6.2 Top- down approach**

Methodologically speaking, a top-down approach and bottom-up one can be considered 'Ideal types' in the sense that they simplify the reality which they describe. In the field of sociology of law both top-down and bottom-up approaches are used in various ways. The former starts with the law and examines its impact on society and behavior, while the latter starts at the society level and, broadly speaking, investigate people's perception of the law and its function. Both of those approaches have theoretical implication on the researcher's understanding of the role of law in society. The bottom-up approach understands the law at the micro level using qualitative methods, while the top-down approach starts with the law and can be conducted through both quantitative and qualitative methods (Banakar 2019; Banakar 2015: 50-52). Since my aim is to examine the implementation of the best interest of the child principle at the municipal and national level, naturally my starting point will be the law and its implication on society. Thus, the suitable approach is a top-down one. Such a choice, Banakar argues, runs the risk of taking the law's "objectivity, universality, generality, and neutrality, for granted and treating issues such as the law's authority and legitimacy as unproblematic, thus neglecting to analyze the dominant power relations that are mediated and maintained through the law and legal institutions." (Banakar 2019). While exposing dominant relations maintained by the law is important, my study focuses on impact, the impact a law has on practice in regards to policy. I would argue that one must first understand the impact a law has on practice, if it has any at all. This thesis will do that in relation to the implementation of the best interest in municipal and national decisions during the pandemic. Thus, my study is descriptive and aims to



map how and if the UNCRC has had an impact on practice in the case of the upper secondary schools during the pandemic.

### **6.3 Methods of collecting data**

When it comes to the decisions on the national level, the website of FHM was used to access decision regarding the school shut down between the period of March 2020 and June 2021. Five documents were collected in the months of March 2020, May 2020, December 2020, January 2021, and March 2021. Those months corresponds to the time FHM has issued official decisions. As for the municipal decisions, the chosen municipality is Malmö. Municipalities are complex entities and are constructed differently depending on size. Each municipality has a city council that is the highest decision-making body who decides over budget and the general goals of the municipality. These decisions trickle down and are to be implemented on all levels. Municipalities are responsible for different areas including, social services, education and the schooling system, health and environmental protection, and more. Each of these areas have its own administrative body and committee depending on the size of the municipality. The committee has the power to decide in questions concerning its area of specialization and the administrative body is to implement those decisions. In Malmö municipality, a specialized committee and administrative body rule over questions regarding upper secondary schooling and adult education. Meaning that they are responsible for all public upper secondary schools, as well as adult education. Their meetings are on monthly basis (Malmö Stad 2021A). As such my data will be collected from their archives, where relevant decisions regarding upper secondary schools during the pandemic has been collected. The time frame for my data collection is between the months of March 2020 and June 2021 corresponding to the pandemic's timeline. The total number of the documents collected are 30 documents. Months such as July 2020 and February 2021 no committee meetings have taken place and as such no documents were collected from those months. However, the committee met twice in September 2020 and March 2021.

Essentially, the documents analyzed were collected from the months of March 2020, April 2020, May 2020, June 2020, August 2020, September 2020, October 2020, December 2020, March 2021, and May 2021.

#### **6.4 Choice of data**

Since my case study Malmö municipality, the decisions collected from their archives concern public upper secondary schools only. Private upper secondary schools are not included since decisions to shut them are not as accessible as the decisions from Malmö municipality. The principle of open government and transparency (Regeringskansliet 2014) allows for an easy access to decisions concerning public upper secondary schools in Malmö. The number of public upper secondary schools that Malmö municipality decide over is 12. The schools offer a variety of different educational programs from vocational programs to programs within the social science and natural science (Malmö Stad 2021B).

Upper secondary schools have students between the ages of 15-19. This means that a portion of the students are essentially above 18. This has implication on the application of the best interest principle, where the definition of a child according to the convention is a person under the age of 18 (UNCRC 1989). Thus, every person under 18 has the right for their best interest to be the primary consideration in matters that affects them. This can arguably be problematic since a portion of the students in the upper secondary schools I intend to include as part of my data, might be 18 or over. However, national (FHM) and municipal decision are taken unanimously concerning all upper secondary schools regardless of age. Essentially, upper secondary schools are treated as one entity. While this could be considered a weakness in my thesis, I would argue that my data can be treated in the same way. Even through there are students 18 and over in upper secondary schools, the authorities cannot treat them as adults since they are still students at the upper secondary level. Arguably the best interest is still relevant since both students under 18, and 18, and above all go to the same school and must follow the same regulation that is issued on a national level by FHM. Thus, upper secondary schools can be

considered one entity even if there are some students 18 or over, and as such an examination of the best interest of the child in decision concerning upper secondary schools during the pandemic is arguably still applicable.

When it comes to examining the implementation of the best interest in decisions, not finding it written in decisions does not necessarily mean that it was not discussed in meetings prior to the decisions making. Arguably, this can be considered a methodological weakness in this thesis. However, if the best interest was indeed discussed in the meeting, then one could argue that at least a short reference to it should be present in the decisions. Furthermore, the decisions are the official documents that are then circulated to upper secondary schools and are available to the public. Thus, I would contend that decisions are still relevant material to examine when it comes to the implementation of the best interest.

#### ***6.4.1 Secondary data***

The data used to answer my research questions is considered secondary, where I did not create them. Using secondary data has its strengths and weaknesses; one of its strengths is that it enjoys high level of validity. Since all my data are from official governmental agencies and websites relevant in answering my research questions, the data enjoys a high level of reliability because it is collected from a trusted source and therefore will remain the same if another researcher were to collect the same data to conduct similar research (Halperin and Heath 2017; 171-174). Another strength of secondary data is that it can arguably be devoid of ethical issue, especially in this case since I am using government document. One weakness of secondary data is that the researcher has no control over how the data has been collected, which can be problematic or at worse unethical (Halperin and Heath 2017; 176-177). However, my source of data is governmental decisions that are arguably valid and reliable. Furthermore, collecting official documents is arguably a less obtrusive method than interviews and surveys. Conducting interviews would have exposed the research to the ‘interview effect’, which is the tendency of the

interviewee to try to please the researcher through answering according to what they believe is to be the wanted answer (Halperin and Heath 2017; 176-177).

When it comes to my research, another way to study the impact of the UNCRC and the best interest in practice during the pandemic would have been to interview public servant working at the municipality. However, municipalities, as I mentioned earlier, are complex entities and the decision-making process is not conducted by one single person that I can interview. While interviews would have provided me with a unique perspective into the decision-making process, written decisions are more reliable since they give a wholesome picture of what consideration went into decision making. Furthermore, it would have been difficult to get a representative sample of interviews from Malmö municipality since there are many layers to decision making at the municipality level. Essentially, written decision documents can be seen as the final product and as such serve as a representative example of how the municipality work in practice. Using this data set will elevate the quality of analysis and allow me to examine the decision-making process at the municipal level without interviewing the decision makers themselves. Perhaps an improvement would have been to adopt a mixed methods approach combining both interviews with public servants and an examination of written decisions, which would have allowed for a deeper understanding to the underlying conflicts regarding the implementation of the best interest. However, the data set I chose is arguably adequate in answering my research questions and fulfilling my aim.

### **6.5 Qualitative content analysis (QCA) with closed coding**

According to Halperin and Heath (2017; 345), content analysis is “systematic analysis of textual information” (Ibid.), and it can be both quantitative and qualitative. They both differ in the types of questions they try to address. Quantitative content analysis tries to answer questions such as ‘how often’ or ‘how many’ and its data as one might predict is quantified into for example the times one word appear in a certain set of data. QCA focuses on latent meanings in text and

uncovering motives and purpose embedded in a text and as such it is more suitable for questions regarding a content of certain set of data (Halperin and Heath 2017; 345). Since my aim to examine the implementation of the best interest principle in national and municipal decisions, QCA is a suitable choice. It will allow me to systematically read the text and find patterns.

When it comes to conducting QCA, coding is an essential part of this method. The process of coding is essentially applying labels to certain passages and parts that are meaningful to the research. Broadly speaking, there are two types of coding: closed coding and open coding. Open coding is also referred to as grounded coding, where the researcher uses the material at hand to create the code, meaning that the codes emerge from the text. This process involves ‘constant comparison’ where every passage of text is compared to the rest of the codes and assigned a code accordingly. Transparency in how the codes emerged from the data is vital for reliability, as well as validity of the research. Closed coding relies on predetermined codes that stem from theory or previous research. In such a method the research is essentially examining the existence and the form these codes appear in the data – if a certain code exists and how it exists (Halperin and Heath 2017; 345-355). Since my aim is to see how and if the best interest is used in decision concerning upper secondary schools during the pandemic, the closed coding method is more suitable for my study. This method will aid in systematically understanding, analyzing, and presenting the data. Essentially, the closed coding process helps organize the data in a comprehensive manner and answer my research questions accordingly. This will ensure the validity and reliability of my research.

In accordance with the analytical framework presented in the theory part, codes were assigned the three different categories that will guide the analysis:

**UBI** (Use best interest) = Full assessment of the best interest principle in accordance with the legal framework presented in the thesis.

**SUBI** (semi-use best interest) = Finding aspects that can be linked to the best interest principle.

**NUBI** (non-use best interest) = No mention of the best interest principle at all or any aspects that can be linked to it.

There are weaknesses and strengths to choosing QCA as my method of analysis. Since I am answering investigative questions with a deductive approach, QCA will allow me to answer the research questions systematically. This method provides me with inter-coder reliability, where it would be possible to replicate what I have done in future research with high probability of arriving at similar results. Another strength to this method is that it will make this research process transparent due to it having rule-governed nature (Mayring 2004). When it comes to the weakness of this method it is grounded in choosing a deductive approach, where the analysis will be guided by the three codes and thus aspects that are deemed not to fit those three codes will be ignored. This could be solved through adopting a combination between deductive and inductive approach to the research with both closed and open codes. However, despite this weakness, I would argue that my codes are encompassing of the various application of the best interest and thus my deductive approach is suitable in answering the research questions

## **6.6 Ethical considerations**

In the process of collecting and analyzing my data I have encountered no ethical issues. All data were accessed according to the open government principle in Sweden, where citizens are allowed to access documents both on the state and the municipality level (Regeringskansliet 2014). This made my data collection less time consuming and ethically sound.

## **7. Analysis**

### **7.1 Introduction**

The analysis for this thesis has been conducted systematically and will be presented below in seven main sections. The section after this will present a summary of the legal regulations employed in the decisions relating to the pandemic to give an overview of the legal instruments used, as well as offer a brief timeline of the development of those regulations regarding upper secondary schools during the pandemic in Sweden. The third and fourth section will analyze national decisions from FHM, and decisions issued by Malmö municipality respectively, between the months of March 2020 and June 2021. The fifth section situates a discussion of the UNCRC as symbolic law. In the sixth section, I briefly reflect on the analysis. The last section presents the results clearly through answering the research questions. The municipal decisions analyzed for the purposes of this thesis are all organized in a similar fashion. It starts with a summary of the decision taken, followed by a description of the case in question, where aspects of consideration can be found. Some decisions refer to one or more appendices which I review as part of the decision. The decisions from FHM are presented differently, where they are short, concise, and instructional with limited legal official language compared to the municipal decisions.

### **7.2 Regulations for the schooling system during the Covid-19 pandemic**

After WHO declared Covid-19 disease as a pandemic on the 11<sup>th</sup> of March 2020, FHM classified a high risk for spreading this disease in Swedish society. Parliament and the government have decided on several temporary regulations aimed to increase the flexibility in school activities during the crisis. On the 13<sup>th</sup> of March the Swedish government issued an Ordinance (2020: 115) on education in the school area and other pedagogical activities in the spread of certain infections. This Ordinance gives the responsible body (ex: municipality) for a school entity the legal precedent to under certain conditions be able to make decision excepted from the

School Act (2010:800), such as shut down schools due to the risk of Covid-19 spreading. The aim of this regulation is to give the responsible body the condition to secure the students' right to education while also controlling the spread of Covid-19. The regulation entered into force on the 16<sup>th</sup> of March 2020 and has been revised following FHM's recommendations. On the 17<sup>th</sup> of March the FHM issued a recommendation that all teaching in upper secondary schools, as well as adult education of all their forms be conducted remotely. This decision includes upper secondary schools, upper secondary schools for youth with learning disabilities, and municipal adult education. On the 2<sup>nd</sup> of April the government made changes to the Ordinance (2020:115) making it possible for the responsible body to keep the schooling entities semi-closed, as well as open for smaller number of students to be present on the premises, without limiting the number of students that can be present on the school's premises at once. This is up to each region and municipality to implement.

A further change to the same Ordinance (2020:115) took place on the 24<sup>th</sup> of April giving more flexibility for both students and teachers. The provision creates an opportunity for e.g., teachers who must follow the FHM general advice and guidelines (Folkhälsomyndigheten 2021) to be able to conduct distance and remote learning for students staying at the school's premises. Moreover, the provision allows for students to stay home because they are following the FHM general advice and guidelines. On the 29<sup>th</sup> of May 2020 FHM issues a reopening of upper secondary schools starting from the 15<sup>th</sup> of June 2020.

According to the Swedish School Act (2010:800) education must be taught on the school's premise. On the 16<sup>th</sup> of July 2020 a further change to Ordinance (2020:115) is issued. This new change gives exception from the School Act (2010:800) providing the opportunity for the responsible body to combine on premise education with distance and remote types of education. On the 10<sup>th</sup> of August 2020 parliament and the government revised the Ordinance (2020:115) again and introduced a new section, 11b, with the aim of increasing the flexibility for the responsible body of a



school entity to apply remote and distance education under certain conditions, such as avoiding overcrowding in public transport. Section 11b only regards upper secondary schools. Essentially, the exceptions in Ordinance (2020:115) allow for a combined-on premise, distance, and remote education because of three main reasons: the students or teachers have symptoms and must follow FHM general advice and guidelines, the students or teachers are classified as being in a risk group, or to avoid overcrowding in public transport. Thus, the exception related to public transport is to be assessed on the group level, while the other two are assessed on the individual level.

On the 19<sup>th</sup> of November, a new section, 11c, has been introduced to the Ordinance (2020:115) linked to the increased spread of infection in Sweden. The purpose is to give the responsible body the opportunity to limit the number of students in the school premises if it is necessary to be able to follow FHM general advice and guidelines. Under certain conditions, the provision according to section 11c gives the responsible body the opportunity to make limited exceptions from the School Act (2010:800) when it comes to the number of students present in schools to e.g., combine on premise education with distance and remote types of education. This provision came into effect on the 23<sup>rd</sup> of November 2020.

FHM gives another recommendation on the 20<sup>th</sup> of January that the distance and remote learning should occupy between 20 to 80 percent of the total education time that the students are entitled to, where the maximum of distance learning should occupy maximum 80% and that the students are entitled to at least 20% of their education be on the school premises. On the 3<sup>rd</sup> of December FHM issued a recommendation that all upper secondary schools partly close and move to distance and remote education starting from the 7<sup>th</sup> of December and until the 6<sup>th</sup> of January 2021. The decision was then prolonged on the 18<sup>th</sup> of December 2021 until the 24<sup>th</sup> of January 2021 and then on the 20<sup>th</sup> of January 2021 the decisions were further prolonged to 1<sup>st</sup> of April 2021. On the 15<sup>th</sup> of March 2021 a new decision from FHM stated that there will be no extension of the recommendation for distance

education to continue after the 1<sup>st</sup> of April. Essentially, the responsibility lies in the hands of the responsible body for a school entity to decide how and when the distance and remote education should take place and whether the schools should be semi-open or closed, as well as how many students should be on the school premise at once.

In sum, these regulations and recommendations give a significant leeway and can be interpreted in different ways and adjusted to fit to schools' needs. As such it is important to first examine closely the decisions from FHM, and second how Malmö municipality applies those recommendations and regulations regarding public upper secondary schools. Most importantly is to examine the role the best interest principle plays in those decisions, if at all.

### **7.3 FHM's decisions during the Covid-19 pandemic**

FHM has essentially issued five official main decisions regarding upper secondary schools; the first one on March the 17<sup>th</sup> 2020, the second one on the 29<sup>th</sup> of May 2020, the third on the 3<sup>rd</sup> of December 2020, the fourth one on the 20<sup>th</sup> of January 2021, and the last one, as of the writing of this thesis, is on the 25<sup>th</sup> of March 2021. For this analysis I have chosen to present fully the first decision recommending distance and remote education for upper secondary schools in 2020 and the decision on the 25<sup>th</sup> of March 2021 to end the recommendation for upper secondary schools' distance and remote education. Arguably this would present a comparative element to the decisions and examine the change over time in the consideration. The three remaining decisions will also be discussed at the end of this section.

In their decisions on the 17<sup>th</sup> of March 2020 FHM issues the following:

“Higher education institutions and upper secondary schools in Sweden are now encouraged to conduct distance education. The new recommendation from the Swedish Public Health Agency aims to curb the rate of spread of covid-19. The Swedish Public Health Agency recommends that teaching in upper secondary school should not be conducted on school premises, but through remote or distance education. The corresponding recommendation also applies to higher education institutions, vocational education, and adult education.

The recommendation aims to slow down the spread of covid-19 in society, thereby relieve healthcare centers and protect the most vulnerable from infection. “In this situation, it is reasonable to encourage upper secondary

schools, universities and colleges to switch to distance education. Then the teaching can be conducted without students gathering in classrooms”, says Johan Carlson, Director General of the Swedish Public Health Agency. High school students and pupils are not in need of care, unlike children in the early years of primary school. Both upper secondary schools, universities and colleges also gather students from areas that are much larger than the compulsory school.

The Public Health Agency's basic position is that asymptomatic people, who do not belong to the risk groups, should be able to continue with their normal activities. At the same time, there are now several measures in place that contribute to reducing the spread. This applies, among other things, to the restriction of public gatherings that the government has decided on, but also to information provided to schools, event organizers, travelers, and the public. “The mantra that we want to repeat is to stay at home when you are ill, even with mild symptoms, and to have good hand hygiene”, says Johan Carlson.”<sup>5</sup> (FHM 1 in appendix)

One could clearly read in the decisions that the main reason for shutting down upper secondary schools is due to the spread of infection. That said, there are no other consideration mentioned in this decision. The decision also clumps together upper secondary school students, university students and adult education, which arguably implies that upper secondary students are not regarded as youth but are treated in the same way adults are treated at the university and adult educations levels. This could be seen as problematic since the majority of student in upper secondary schools are youth under 18. In the second paragraph, the decision is justified further by claiming that students in upper secondary schools are not as much in need of care as younger student. This logic is arguably flawed since the vulnerability of a younger group of students does not mean that older students are not vulnerable. The reports from the school inspectorate and the national agency for education concerning the students’ situations during distance education highlight many negative effects of distance education such as lack of motivation, stress, isolation, and more (see literature review). The main consideration in this decision is the epidemiological situation Sweden is in, thus there are no clear mention of the best

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<sup>5</sup> ”Lärosäten och gymnasieskolor i Sverige uppmanas nu att bedriva distansundervisning. Den nya rekommendationen från Folkhälsomyndigheten syftar till att dämpa spridningstakten av covid-19. Folkhälsomyndigheten rekommenderar att undervisningen i gymnasieskolan inte ska bedrivas i skolans lokaler, utan genom fjärr- eller distansundervisning. Motsvarande rekommendation gäller också lärosäten, yrkeshögskolan och komvux. Rekommendationen syftar till att bromsa takten i spridningen av covid-19 i samhället, och att därmed avlasta sjukvården och skydda de mest sårbara från att smittas. Det är rimligt i det här läget att uppmana gymnasieskolor, universitet och högskolor till en omställning till distansundervisning. Då kan undervisningen bedrivas utan att elever och studenter samlas i klassrum och lärosalar, säger Johan Carlson, Folkhälsomyndighetens generaldirektör. Gymnasieelever och studenter är inte i behov av omsorg, till skillnad från barn i grundskolans tidiga årskurser. Både gymnasieskolor, universitet och högskolor samlar också elever och studenter från upptagningsområden som är mycket större än grundskolans. Folkhälsomyndighetens grundhållning är att symtomfria personer, som inte tillhör riskgrupperna, ska kunna fortsätta med sina normala sysslor. Samtidigt finns nu ett antal åtgärder på plats som bidrar till att minska spridningen. Det gäller bland annat den inskränkning av offentliga sammankomster som regeringen har fattat beslut om, men också framtagen information till skolor, evenemangsarrangörer, resenärer och allmänheten. Det mantra som vi vill upprepa är att stanna hemma när du är sjuk, även med milda symtom, samt att ha en god handhygien, säger Johan Carlson.”

interest in this decision. Moreover, I would argue that there are no aspects considered here which can be related to the best interest. Thus, the classification of non-use of the best interest principle fits best here.

In their decision on the 25<sup>th</sup> of March 2021 FHM issues the following:

“The Swedish Public Health Agency's national recommendation for partial remote and distance education for upper secondary school expires after 1 April. It will not be extended. The upper secondary schools have for almost three semesters conducted their teaching in whole or in part as remote and distance education. This is one of several measures to slow down the spread of covid-19. There are many indications that young people's mental health has been negatively affected during the pandemic. Many students find it difficult to assimilate the teaching when it is conducted at a distance, many feel anxious about the future and feel lonely and isolated.

“Young people have been affected by the pandemic and by the measures against the pandemic at an important stage in life”, says Britta Björkholm, head of department at the Swedish Public Health Agency. Overall, the Swedish Public Health Agency assesses that the disadvantages for students with remote and distance education are significant, and that local education at the school is better for the students' acquisition of knowledge and health. It is up to each responsible body to plan how the teaching is to be conducted. There are always options to adapt the planning based on the situation that prevails locally and regionally. Remote and distance learning in upper secondary school can be used under certain conditions, just like in middle school, according to the current Ordinance.

“I want to emphasize that the preventive work and measures to reduce the spread of infection in the school environment are very important. The basic advice and guidelines need to be followed, and both young people and adults need to take responsibility”, says Britta Björkholm. The regions' work on infection for everyone who is tested positive for covid-19 is also important to be able to quickly find cases, break infection chains and prevent outbreaks. According to the Swedish Public Health Agency's strategy for testing against covid-19, the use of antigen tests, which provide answers within a few minutes, may be suitable as one of several tools for preventing the spread of infection in the school environment.”<sup>6</sup> (FHM 5 in appendix)

Unlike the decision in March 2020, this decision has considerations that go beyond the epidemiological situation. Students' mental health and the way in which distance and remote education increase anxiety and feelings of isolation, both carry weight in this decision. The head of department for infection control and health

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<sup>6</sup> ”Folkhälsomyndighetens nationella rekommendation om delvis fjärr- och distansundervisning för gymnasieskolan upphör att gälla efter den 1 april. Den kommer inte att förlängas. Gymnasieskolorna har under nästan tre terminer bedrivit sin undervisning helt eller delvis som fjärr- och distansundervisning. Detta som en av flera åtgärder för att bromsa spridningen av covid-19. Mycket tyder på att ungas psykiska hälsa har påverkats negativt under pandemin. Många elever har svårt att tillgodogöra sig undervisningen när den bedrivs på distans, många känner oro inför framtiden och känner sig ensamma och isolerade. Ungdomarna har drabbats av pandemin och av åtgärderna mot pandemin i ett viktigt skede i livet, säger Britta Björkholm, avdelningschef på Folkhälsomyndigheten. Folkhälsomyndigheten bedömer sammantaget att nackdelarna för eleverna med fjärr- och distansundervisning är betydande, och att närundervisning på plats i skolan är bättre för elevernas kunskapsinhämtning och hälsa.

Det är upp till varje huvudman att planera hur undervisningen ska bedrivas. Det finns alltid möjligheter att anpassa planeringen utifrån den situation som råder lokalt och regionalt. Fjärr- och distansundervisning i gymnasieskolan kan användas under vissa förutsättningar, precis som på högstadiet, enligt gällande förordning. Jag vill betona att det förebyggande arbetet och åtgärderna för att minska smittspridning i skolmiljön är väldigt viktiga. De grundläggande råden behöver följas, och både ungdomar och vuxna behöver ta sitt ansvar, säger Britta Björkholm. Regionernas arbete med att utföra smittspårning kring alla som testas positivt för covid-19 är också viktigt för att snabbt kunna hitta fall, bryta smittkedjor och förhindra utbrott. Enligt Folkhälsomyndighetens strategi för testning mot covid-19 kan användandet av antigenester, som ger svar inom några minuter, lämna sig som ett av flera verktyg för att förebygga smittspridning i skolmiljö.”

protection at FHM has highlighted in the decision how upper secondary schools' students are affected at such an important stage of life, where education and knowledge retention are important for acquiring higher education, as well as vital for future job opportunities. The decision no longer recommends partial remote and distance education to continue thus leaving the implementation for the municipalities and other responsible bodies to implement the decision in schools on case-by-case basis. Since they considered aspects such as mental health, as well as students' knowledge retentions and future, one could argue that these aspects can be linked to the principle of the best interest point f in the legal framework regarding the child's health both mental and physical, as well as point g regarding the right to education (see legal framework). Thus, this decision could arguably be classified as semi-use of the best interest principle since some aspects are still considered, combined with the long-term perspective on the negative effects due to distance and remote education.

Regarding the other decisions in between the two discussed above issued by FHM, the semi-closure of the schools recommended in the decisions in December 2020 (FHM 3) and January 2021 (FHM 4) had exceptions for practical tasks that cannot be done on distance, as well as national tests, language introduction programs for newly arrived immigrants, and what they defined as 'generally vulnerable student'. The decisions in the end of May 2020 (FHM 2) to open upper secondary schools for the Autumn semester of 2020 also recognized that the schools shutting down has had negative effects on students. The overall focus in the decisions from FHM is on the epidemiological situation however, some aspects of consideration can arguably be linked to the best interest principle. The exemptions made for practical tasks and national exams can be directly linked to students' rights to education, point g in the legal framework. Making it possible for vulnerable students to be on the school premises can also be linked to point e, situation of vulnerability, in the assessment of the best interest, which is essentially recognizing and catering for the needs of vulnerable students both on the group and the individual level. An example of this is recommending an exception for the students at the language introduction

program aimed to teach young immigrant students the Swedish language. This proved to be difficult through distance and remote types of education, thus a recognition of their needs, vulnerability, and allowing them to be present at the school premises can be argued to be a consideration of the best interest. Thus, semi-use of the best interest can be argued to be the case in the FHM decisions. However, no official assessment of the best interest has been made prior to the decisions and no implementation of point a, the child's view, was mentioned.

#### **7.4 Malmö municipality's decisions during the Covid-19 pandemic**

When it comes to the decisions issued by Malmö municipality concerning public upper secondary schools, the decisions do indeed follow FHM's recommendation and employ the Ordinance (2020:115) mentioned earlier to justify their decisions concerning the schools in their area of responsibility. Following the FHM decision to shut down upper secondary schools in March 2020, Malmö municipality issued this decision on the 17<sup>th</sup> of March for its public upper secondary schools:

“The Upper Secondary and Adult Education Board decides to close the premises at all upper secondary schools within its area of responsibility for students from 18 March 2020. The decision applies until further notice.

The Upper Secondary and Adult Education Board decides that students at all upper secondary schools within the board's area of responsibility from 19 March 2020 shall be given teaching where the teacher and student are separated in rooms but not time (so-called distance teaching) or where the teacher and students are separated in both time and room (so-called distance education). The decision is valid until further notice.”<sup>7</sup> (M1 in appendix)

All decisions from Malmö Municipality are provided with a background to justify how each decision came about and the consideration it went into taking it. For the first decision issued by Malmö municipalities the reasoning was stated as the following:

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<sup>7</sup> ”Gymnasie- och vuxenutbildningsnämnden beslutar att stänga lokalerna på samtliga gymnasieskolor inom sitt ansvarsområde för eleverna från och med den 18 mars 2020. Beslutet gäller tillsvidare.

Gymnasie- och vuxenutbildningsnämnden beslutar att eleverna på samtliga gymnasieskolor inom nämndens ansvarsområde från och med den 19 mars 2020 ska ges undervisning där läraren och eleven är åtskilda i rum men inte i tid (s k fjärrundervisning) eller där läraren och eleverna är åtskilda i både tid och rum (s k distansutbildning). Beslutet gäller tillsvidare.

“The new Corona virus with Covid-19 disease was classified on 11 March 2020 as a pandemic by the World Health Organization, WHO. On the same day, the Swedish Public Health Agency stated on its website that the risk of the spread of infection in society was judged to be very high in Sweden.

On 13 March 2020, the Government, based on Chapter 29, Section 29 S of the Education Act, issued an Ordinance (2020: 115) on education in certain school forms in the school system for the spread of certain infections (hereinafter referred to as the Ordinance). The ordinance applies until 30 June 2021. The ordinance gives, under certain conditions, a responsible body the right to decide on several measures defined in the ordinance, such as distance and remote education, to ensure that students in upper secondary school are insured their right to education. Chapter 2 Section 4p of the ordinance states that a responsible body has the right to apply the provisions of the ordinance if the responsible body, due to a recommendation from the Public Health Agency that concerns the school area, keeps or has kept one or more school closed.”<sup>8</sup> (M1 in appendix)

The decision first mentioned the recommendation from FHM and then the Ordinance (2020:115) described in the beginning of the analysis to set the legal precedent and the justification for their decision. The epidemiological situation is essentially what governs this decision. Other types of considerations are absent here. The right to education is also mentioned as a consideration, however it does not specify how this right to education is to be fulfilled through remote and distance types of education. Like FHM’s first decision to shut down the schools, these decisions carry no consideration of the best interest. One could argue that providing remote and distance education to fulfill the right to education for students fulfill points g, right to education (see legal framework). However, no specific measurement was mentioned of how this right is to be guaranteed with distance and remote types of education and as such I would argue that this decision is classified as non-use of the best interest.

In later decisions concerning specific programs and schools, Malmö municipality issues the following:

“On 2 April 2020, the Government decided on an amendment to the ordinance on education in certain school forms in the schooling system concerning the spread of infection, so that the teaching of a small number of students in the school premises has under certain conditions been made possible. Due to the Government’s

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<sup>8</sup> Det nya Coronaviruset med sjukdomen Covid-19 klassades den 11 mars 2020 som en pandemi av Världshälsoorganisationen, WHO. Folkhälsomyndigheten angav samma dag på sin hemsida att risken för smittspridning i samhället bedömdes vara mycket hög i Sverige.

Regeringen har den 13 mars 2020 med stöd av 29 kap.29 S skollagen utfärdat Förordning (SFS 2020:115) om utbildning i vissa skolformer i skolväsendet vid spridning av viss smitta (nedan benämnd förordningen). Förordningen gäller till och med den 30 juni 2021. Förordningen ger, under vissa förutsättningar, en huvudman rätt att besluta om ett antal i förordningen definierade åtgärder, såsom t ex distans- och fjärrundervisning, för att säkerställa att elever i bland annat gymnasieskolan tillförsäkras sin rätt till utbildning. Av 2 S 4 p. i förordningen framgår att en huvudman har rätt att tillämpa bestämmelserna i förordningen om huvudmannen, med anledning av en rekommendation från Folkhälsomyndigheten som berör skolområdet, håller eller har hållit en eller flera skolenheter stängda.”

decision, a mapping has been carried out for needs other than remote and distance education at the school units within the upper secondary school and adult education committee's area of responsibility.

At Malmö Idrottsgymnasium, the principal, after consultation with relevant teachers, has made the assessment that it is not possible to complete practical teaching steps before the exam for students studying the subject Specialized physical education (RIG / NIU) through the remote and distance education that, in accordance with the coronavirus, covid-19 and previous decisions, is in effect at the school premises. The principal of the school has submitted a description of the intended structure of the teaching and with proposals for measures to prevent infection. The head of Central Student Health has reviewed the school's intended structure and proposals for infection control measures.

A special risk assessment of the planned approach from an infection control perspective has been carried out at the school together with safety representatives and has been reviewed by the administration's HR manager. Against this background and the Swedish Public Health Agency's recommendations, the Upper Secondary and Adult Education Board decides that certain teaching, from 24 April 2020 up to and including the end of the school year, may be conducted according to the proposed structure, to ensure that affected students have their right to education met.”<sup>9</sup> (A5 in appendix)

In this decision the municipality of Malmö issues an exception for students studying Specialized Physical Education in one of the public upper secondary schools under their areas of responsibility. The decision is made to provide the students in question with the right to education to be able to pass the exams. Essentially, it is not possible to reach the knowledge level required to pass the exams through distance education since this program is different from regular physical education offered at upper secondary schools, where regular physical education is offered with aim of teaching about health, physical activities, and sports. Specialized physical education is aimed for students with athlete ambitions. The decision above grants an exception for students who study special physical education to guarantee their right to education. While regular physical education is possible to conduct through distance education the specialized physical education is, as the decisions states, not possible to do through distance forms of education. This is clarified

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<sup>9</sup> ”Regeringen beslutade den 2 april 2020 om en ändring i förordningen om utbildning i vissa skolformer i skolväsendet vid spridning av smitta, så att undervisning av en mindre andel elever i skolans lokaler under vissa förutsättningar har möjliggjorts. Med anledning av regeringens beslut har en kartläggning genomförts av behovet av annat än fjärr- och distansundervisning på skolenheterna inom gymnasie- och vuxenutbildningsnämndens ansvarsområde.

Vid Malmö idrottsgymnasium har rektorn, efter samråd med berörda lärare, gjort bedömningen att det inte är möjligt att slutföra praktiska undervisningsmoment inför examen för eleverna som läser ämnet Specialidrott (RIG/NIU) genom den fjärrundervisning som, med anledning av Coronaviruset och Covid 19 och i enlighet med tidigare beslut, bedrivs på skolenheten. Rektorn för skolan har inkommit med en beskrivning av tänkt upplägg för undervisningen och med förslag på åtgärder för att förhindra smitta. Chefen för Centrala elevhälsan har granskat skolans tänkta upplägg och förslag på smittskyddsåtgärder.

En särskild riskbedömning av det planerade upplägget utifrån ett smittskyddsperspektiv har genomförts på skolan tillsammans med skyddsombud och har granskats av förvaltningens HR-chef. Mot denna bakgrund och Folkhälsomyndighetens rekommendationer beslutar gymnasie- och vuxenutbildningsnämnden om att viss undervisning, från och med den 24 april 2020 till och med läsårets slut, ska få bedrivs enligt föreslaget upplägg, i syfte att säkerställa att berörda elever ska få sin rätt till utbildning tillgodosedd.”



further in other parts of the decisions where it is explained that the students who study this program need to develop their physical abilities practically and together with a teacher. This is essentially the reason why the exception is made. The right to education is essential to this decision and small group of 10 students and 2 teachers are allowed to meet outside to conduct their training. This is permitted with precaution and vigorous detailed plan of how they will follow FHM advice and recommendations. These precautions include hand hygiene, keeping distance between students, cleaning equipment after every session, cleaning bathrooms twice a day, and more. I would argue that since the right to education has weighed heavy in this decision pertaining to point g (right to education) in the assessment of the best interest, one could argue that this important aspect of the best interest was taken into consideration however, there are many aspects that were ignored such as the view of the child (point a). Thus, I would conclude that it is possible to argue that the best interest was semi-used in this case, however vital aspects to its assessment was missing and there is no clear mention and reference to it. Hence, my conclusion leans towards non-use of the best interest of the child in this decision.

Similar examples can be found in decisions A2, A3, A4, A6, May 2, May3, May 4, May5, May 6, May 7, May 8, May9, May10, J1, J2, and J3 (see appendix). These decisions pertain to different aspects of education, such as practical types of education like the example above, as well as exceptions for conducting exams on the school's premises. Similar reasoning is employed and as such the analysis and the presentation of the example above is representative of the data from Malmö municipality.

In other decisions concerning upper secondary schools including the ones for students with disabilities (see decisions A4, May1, S1, A1, J5, and M1-21 in the appendix), Malmö municipality makes exception for students to be present at the school premise in small groups due to physical or psychological reasons, or for meeting with the school counselor, as well as for students who need teaching support. Again, these are aspects that can be linked to the best interest principal

point e (situation of vulnerability) and g (right to education) in the assessment (see legal framework). Later in June, the municipality, following FHM recommendation, opened all forms of upper secondary schools before the Autumn school semester (see decisions J3 and J4 in the appendix). However, during the Autumn semester new decisions to combine on premise with distance and remote types of education setting the legal president for those decisions through the Ordinance (2020:115), in combination with the aim to fulfill the right to education and taking into consideration student's vulnerabilities and needs (see Aug1, Aug2, S1, O1, O2, and D1 in the appendix). Malmö municipality then decided that 25% of the teaching given to students in its public upper secondary schools will be distance and remote types of education, where two thirds of the students would receive education on the school premises, while the one third receive distance and remote education (see May1-21 in the appendix). The right to education is essentially mentioned in all decisions throughout the 15 months and arguably is a consideration in the decision-making process. Acknowledging and giving exceptions to students who are vulnerable increases in the decisions the more time passes. The best interest was never directly mentioned and there was never any mention of any assessment linked to it. One could only, as I argued earlier, find some aspects that can be linked to the best interest and classify some decisions to employ semi-use of the best interest. Furthermore, the exception made for groups of students was made on the small group level and not for all students in general. The long-term consequences for the school shut down are many and they include students not fully being able to pass exams and reach the knowledge goals of their education, as well as the huge impact on their opportunities to enter the job market. This was to a large extent not considered by Malmö municipality. The logic that dominated in the decisions was the epidemiological situation in Sweden and as such it trumped any other consideration. The view of the students was absent in the decision-making process carrying implication for any consideration of the best interest.

In sum, a direct mention of the best interest in accordance with my first code in the decisions was absent. None of the decision directly discussed the best interest and how much it weighed in the decisions made. Thus, my first code was not found in the data. I argued that there are some aspects that can be linked to the best interest and therefore I classified it as semi-use. However, I conclude that even though semi-use can be considered in some decisions, I lean toward summarizing and classifying the decisions as non-use of the best interest, which according to my theoretical framework would point towards the UNCRC occupying a symbolic status in Sweden.

## **7.5 UNCRC as symbolic law**

The best interest was not implemented according to how it was expected to be. In earlier part of the thesis concerning the development of the convention to law in Sweden, many governmental investigations that the UNCRC as law will increase participation rights, as well as make sure the best interest is considered in all matters concerning children, especially those who are vulnerable (1993/94: SOU01; 1995/96: SOU04; SOU 2016:19). The idea is that the convention as law would guarantee more rights for children in Sweden has been regurgitated over the years. Testing its impact in the case of crisis, the Covid-19 pandemic, has proved to give disappointing results. Analyzing the decisions has shown that there is very little indication that the best interests has been taken into consideration when these decisions are issued both on the national and the municipal levels. I have in the theory chapter argued that the convention having little to no impact during the pandemic can facilitate for the argument that thus far it has occupied a symbolic law status. The concept of symbolic law indeed implies that there is no material concrete impact that is measurable, unlike instrumental law. However, as Gusfield (1967) argues a law can communicate ideals and norms of what is wanted and accepted in society. Arguably this concept can be used to understand the lack of implementation of the UNCRC during a crisis and specifically the best interest as tested in the decisions. Previous studies have also showed that countries like Norway who has had the UNCRC as part of their constitution has not increased protection and implementation of rights for children (Ponnert & Sonander 2019: 51-52; Mattsson 2019: 79-80). Arguably, this might also be applicable to Sweden in the sense that an increase in rights protection has not taken place after the law passing. Over belief in the power of passed laws when it comes to children's rights is arguably a concern. Passing a law does not necessarily mean that it will have impact. Arguably, other measures must be taken alongside that law. Perhaps that law does not coincide with values, norms, and practices embedded in institutions which could arguably explain why it had no impact in decisions during the pandemic. As many scholars has pointed out the best interest principle is inherently vague and undefined (see literature review), which arguably could explain why it

is prone to fizzle out at the level of the implementation in the case study for this thesis. Friedman argues that the communication of a law to the enforcers and by the enforcers is a precondition to implementation. This could also explain the lack of instrumental impact and the symbolic status UNCRC arguably has. Perhaps it is communication and knowledge that is hindering implementation. However, the UNCRC occupying a symbolic status does not mean it had no impact at all. As Lunby, Kilkelly & Byrne (2013) argue, a symbolic ‘red line’ is created communicating norms and ideals where instrumental impact might be eventually the results. One could argue that an impact of the convention as law in Sweden is that the committee on the rights of the child can no longer criticize Sweden for not having it as law, which they have persistently done previously (see chapter two).

One important aspect that needs to be considered is of course the extraordinary situation of a crisis that this thesis has tested the law against. One could argue that a crisis is not a fair example of the impact of the UNCRC through the best interest principle. While that might be true, I would argue that a crisis is an important case for testing, if not the most important, since it is in a crisis that rights need to be protected, especially of those who are the most vulnerable – youth and children. As such, my analysis and display of the decision has demonstrated that indeed a concrete impact is not impeccable and as such so far, the UNCRC can be argued to occupy a symbolic legal status.

## **7.6 Reflections**

If the best interest was indeed mentioned and assessed in the decisions both on the national and municipal levels, shutting down the schools might have been the results anyways. A consideration and an assessment of the best interest would not have guaranteed the school being kept open. It would however, hopefully given deeper insight into the decision-making process and how the decision makers view youth, as well as the weight that carried in their decisions. Doing such an assessment would have at least documented the views of the students and experiences of the

school shut down and to some extent guaranteed their right to be heard. However, two governmental agencies, namely the Swedish school inspectorate and the Swedish national agency for education, has produced multiple reports concerning the struggles distance/remote education has brought on students and their everyday life (see literature review). But, the question remains, what would a consideration of the best interest have meant to the convention and its impact as new law in Sweden. As I have argued in the theory chapter, a consideration of the best interest is an indicator of the convention having instrumental impact. However, only in regards to policy and not on those most effected, namely upper secondary schools students. In order to understand if the convention has indeed had impact on those it is supposed to protect, further research needs to be conducted. This research has specifically answered to impact on the policy level and labeled it as symbolic since the best interest was never mentioned in the decisions.

While the best interest was not mentioned or referred to in the decisions, one could argue that it might have been discussed in the meetings prior to the decision making. While that is plausible, one could argue that in such a case a mention of it should be present in the decisions. The fact the FHM is primarily a health body makes it less likely that a children rights perspective would be high on their list of consideration. Malmö Municipality has expressed a commitment to children's rights; thus, it is likely a discussion of the best interest could have taken place. However, there were no mention of it in the data. This would lead me to conclude that even if they have discussed the best interest, it should have been written in the decisions if it was an important consideration in the decisions. Furthermore, the decisions are the final product that is then circulated among the schools and as such the most relevant to examine.

The previous scholarly literature on the best interest has argued that the principle lacks implementation, which the findings of this study is in unison with. Furthermore, the literature demonstrated that different ways to implement the principle has implication on the view of the child as object or subject (see literature

review). Since the view of the child was missing completely in the data, the students can indeed be argued to be viewed as objects, where decisions are made about them and for them without their participation. The subject view, while desired and facilitates for the view of the child as a rights holder, was not present. Thus, one can conclude that the UNCRC as law has not yet changed practice on the policy level and the results of this study has contributed to the body of literature highlighting the lack of implementation of the best interest as well as calling for a more children rights approach to prevail during a crisis.

## **7.7 Results**

How is the best interest implemented in decisions concerning upper secondary schools during the Covid-19 pandemic in Sweden?

The analysis in the current chapter has systematically examined the data and presented it both in relation to national decisions issued by FHM and in relation to municipal decisions from Malmö municipalities. The dominant discourse and logic employed in the decisions is governed by the epidemiological state Sweden is in. Other consideration related to the right to education, situations of vulnerability, and mental health was mentioned briefly in the decisions on both national and municipal levels. These aspects I have argued can be linked to several elements in the assessment of the best interest pertaining to point g (right to education), e (situations of vulnerability), point f (right to health) in the legal framework. Thus, some decisions were classified to employ a semi-use of the best interest. Moreover, the decisions have been argued to change over time since they included more aspects of consideration relating to upper secondary schools' students throughout the pandemic year and a half. However, those considerations remain on the small group level. Since there were no comprehensive assessment of how the best interest is defined and the weight it carried in decision making, as well as absence of the child view, non-use of the best interest was also argued to be the case in all decisions.

What impact does the UNCRC has on the implementation of the best interest principle in the case of upper secondary schools during the Covid-19 pandemic in Sweden?

When it comes to impact of the UNCRC, this thesis has measured direct impact in relation to use, semi-use, and non-use of the best interest, classifying use of the best interest as an indicator that the new UNCRC status as law is instrumental in its impact, while the non-use of the best interest would indicate that the UNCRC is a symbolic law. I have argued in the analysis that the best interest was semi-used in some of the decisions. However, very few aspects of its assessment were employed and as such non-use of the best interest was also employed in classifying the data analyzed. Moreover, no reference to UNCRC was found in the decisions alongside other laws and ordinances. Thus, the results indicates that the UNCRC essentially occupies a symbolic status and its impact on the use of the best interest principle is arguably symbolic and not instrumental since it has no effect on practice.



## 8. Conclusion

The starting point for this thesis is grounded in one of sociology of law's fundamental questions, which is that of impact. Specifically, the impact a law has on practice once it becomes a law. For this thesis I have examined the impact of the UNCRC new status as law in Sweden during the Covid-19 pandemic contributing to literature on impact studies, literature on the pandemic, as well as children's rights literature. To examine its impact on practice, I have zoomed in on the best interest principle, which is one of the building blocks of the child convention, where I essentially investigated its implementation in national decisions from FHM and municipal decisions from Malmö municipality concerning upper secondary schools during the pandemic. This thesis has employed theoretical concepts developed by Friedman, related to the measurement of direct impact, where use, non-use, and semi-use of the best interest of the child was operationalized and applied in the analysis of decisions concerning upper secondary schools during the pandemic. Those concepts have arguably proved to be useful in examining the decisions since it allowed me to categorize the data, thus answering my overarching research question concerning the impact of the UNCRC on practice. The concept of symbolic law and instrumental law was also adopted and used in the analysis to further understand the impact the UNCRC can have.

The results indicated that, while one could argue that some aspects of the best interest have been considered in the decisions, there were no direct mention or assessment of it. However, right to education, as well as mental health and situations of vulnerability has been mentioned in the decisions, which are the aspects that were argued to be linked to the best interest. Most notably is the change in decisions over time, which can arguably be linked to knowledge acquired about the students' situation. Furthermore, I argue that the UNCRC has had symbolic impact although it did not have instrumental impact on the implementation of the best interest principle during the pandemic. Moreover, the dominant discourse in the decisions is linked to the epidemiological situations and is arguably governed

by it. The close, semi-close, and opening of upper secondary schools throughout the last one and half years has been directly and primarily linked to the increase and decrease of infections in Swedish society. Essentially, Swedish upper secondary schools and Sweden are arguably governed through Covid-19 indicators with the objective of controlling the spreading and ‘flattening the curve’. While controlling the spread of Covid-19 is of the utmost importance in a pandemic, there are arguably more aspects of consideration in such a crisis. The literature review presented in this thesis has highlighted both the short- and long-term effects on students due to shutting down the schools. The biggest of which is arguably the long-term effect that the one and a half year of distance education will have on their future combined with feelings of stress, lack of motivation, and social isolation. Interestingly, Swedish government has issued one billion Swedish crowns in 2021 dedicated to compensation efforts for the effects the pandemic has caused to the schooling system in general and including upper secondary schools. The flow of funding is aimed to help municipalities and schools to better implement and fulfill the right to education for all students (Riksdagsförvaltningen 2021). With the long- and short-term consequences on upper secondary school students in mind, governing primarily through Covid-19 indicators can be arguably questioned. While controlling the spread of infection is no doubt vital, rights protection and guarantee for youth and children weigh heavy. I would argue that a consideration of the best interest in a crisis, including participation rights, is of equivalent priority. Institutions should arguably be equipped to include youth and children during a crisis, as well as consider the best interest in decisions. Interestingly, Sweden’s crisis management is based on the principle of responsibility, meaning that the responsible body for a certain issue in usual times is to govern over the same issue in crisis times. In the Covid-19 pandemic, FHM has, and still, governs. This could be questioned since institutions, such as FHM, might not be equipped with the resource and knowledge to consider other aspects than that they are not experts at, such as adopting a child rights perspective when making decisions.

## **8.1 Future research**

The pandemic is a relatively new topic to research. There is need for more research on the pandemic from different perspectives, including students' experiences during the upper school shut down, the teacher's experiences and their struggle, as well as society's response and governing during a crisis. Furthermore, more research on how the schooling system has functioned during the pandemic is needed, as well as how the pandemic has transformed society including the effects it had – and still have – on those most vulnerable. From a theory standpoint, impact – or lack thereof – of the UNCRC can be understood from the lens of legal pluralism as a result of plural legal orders, as well as analyzed to be the result of a juridification process, where rights guarantee is understood as a legal issue solved through the legal system. Further research engaging in these two theoretical lenses can be a valuable addition to the field of sociology of law.

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## 10. Appendix

### 10.1 FHM decisions

**FHM1**<https://www.folkhalsomyndigheten.se/nyheter-och-press/nyhetsarkiv/2020/mars/larosaten-och-gymnasieskolor-uppmanas-nu-att-bedriva-distansundervisning/>

**FHM2**<https://www.folkhalsomyndigheten.se/nyheter-och-press/nyhetsarkiv/2020/maj/gymnasieskolorna-kan-oppna-till-hostterminen/#:~:text=Det%20inneb%C3%A4r%20att%20gymnasieskolorna%20kan,s%C3%A4ger%20Johan%20Carlson%2C%20Folkh%C3%A4lsomyndighete ns%20generaldirekt%C3%B6r.>

**FHM3**<https://www.folkhalsomyndigheten.se/contentassets/b3dcf0884c2b480589426f5def0c7b51/rek-distansundervisning-final.pdf>

**FHM4** <https://api.fryshuset.se/wp-content/uploads/2021/01/Rekommendation-om-fjarr-eller-distansundervisning-for-gymnasieskolan-210120.pdf>

**FHM5** <https://www.folkhalsomyndigheten.se/nyheter-och-press/nyhetsarkiv/2021/mars/ingen-forlangning-av-rekommendation-om-fjarr--och-distansundervisning-pa-gymnasiet/>

### 10.2 Malmö Municipality's decisions

**M1**<https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-03-20/agenda/ordforandebeslut-om-att-stanga-lokalerna-pa-samtliga-gymnasieskolor-for-eleverna-fran-och-med-den-18mar-2020-pdf?downloadMode=open>

**A1**<https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-04-24/agenda/delegationsbeslut-2020-04-01-om-undantag-fran-gymnasie-och-vuxenutbildningsnamndens-beslut-att-stanga-skolenheternas-lokal-er-for-eleverna-inom-gyskolan-gysarskolan-komvux-samt-yrkehogskolanpdf?downloadMode=open>

**A2** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-04-24/agenda/delegationsbeslut-2020-04-14-gallande-planerad-apl-med-anledning-av-coronaviruset-och-covid-19pdf?downloadMode=open>

**A3** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-04-24/agenda/ordforandebeslut-2020-04-16-om-atgarder-pa-universitetsholmens-gymnasium-el-och-energiprogrammet-for-att-mojliggora-undervisning-av-en-mindre-andel-elever-i-skolenhetens-lokal-erpdf?downloadMode=open>



- A4** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-04-24/agenda/delegationsbeslut-2020-04-16-om-tillagg-till-och-fortydligande-av-tidigare-beslut-om-undantag-fran-gymnasie-och-vuxenutbildningsnamndens-beslut-att-stanga-skolenheternas-lokalerpdf?downloadMode=open>
- A5** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-04-24-om-atgarder-pa-malmo-idrottsgymnasium-for-avgangseleverna-inom-amnet-specialidrott-for-att-mojliggora-undervisning-av-en-mindre-andel-elever-pa-platspdf?downloadMode=open>
- A6** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-04-om-atgarder-pa-malmo-restaurangskola-for-avgangseleverna-pa-restaurang-och-livsmedelsprogrammet-inriktning-bageri-och-konditoripdf?downloadMode=open>
- May1** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-om-atgarder-i-gymnasiesarskolan-for-att-begransa-smittspridningpdf?downloadMode=open>
- May2** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-04-om-atgarder-pa-malmo-latinskola-for-avgangseleverna-pa-estetiska-programmet-inriktning-teater-samt-estetik-och-mediapdf?downloadMode=open>
- May3** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-04-om-undervisning-av-en-mindre-andel-malmoelever-pa-utbildningen-bygg-och-anlaggning-del-2b-i-hermods-malmo-lokalerpdf?downloadMode=open>
- May4** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-13-om-atgarder-for-att-mojliggora-examination-i-skollokalerna-for-en-mindre-andel-avgangselever-pa-estetiska-programmet-vid-malmo-latinskolapdf?downloadMode=open>
- May5** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-13-om-atgarder-for-att-mojliggora-undervisning-pa-plats-for-en-mindre-andel-elever-i-arskurs-3-som-laser-kursen-idrott-och-halsa-2-vid-malmo-latinskolapdf?downloadMode=open>
- May6** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-18-examination-i-skollokalerna-for-en-mindre-andel-avgangselever-pauliskolanpdf?downloadMode=open>

**May7** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-18-examination-i-skollokalerna-for-en-mindre-andel-avgangselever-pauliskolanpdf?downloadMode=open>

**May8** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-05-29/agenda/ordforandebeslut-2020-05-18-examination-for-mindre-andel-elever-introduktionsprogram-latinskolanpdf?downloadMode=open>

**May9** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/ordforandebeslut-2020-05-25-om-undantag-for-stangningsbeslut-pa-grund-av-covid-19-for-spr19ab-pa-malmo-latinskolanpdf?downloadMode=open>

**May10** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/ordforandebeslut-2020-05-25-om-atgarder-for-att-mojliggora-examinationsmoment-i-skollokalerna-for-en-mindre-andel-elever-i-arskurs-3-pa-estetiska-programmet-es17a-och-es17b-vid-malmo-latinskolanpdf?downloadMode=open>

**J1** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/ordforandebeslut-2020-06-01-om-undantag-for-stangningsbeslut-pa-grund-av-covid-19-pa-malmo-latinskola-for-es17bpdf?downloadMode=open>

**J2** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/ordforandebeslut-2020-06-04-om-atgarder-examinationsmoment-malmo-latinskola-samhallsvetenskapliga-programmetpdf?downloadMode=open>

**J3** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/gyvf-2020-2536-delegationsbeslut-om-undantag-for-examinationsmoment-i-matematik-2c-for-en-mindre-andel-elever-vid-st-petri-skolanpdf?downloadMode=open>

**J4** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/gyvf-2020-2551-delegationsbeslut-om-att-oppna-lokalerna-for-eleverna-inom-gymnasiesarskolan-i-malmo-stadpdf?downloadMode=open>

**J5** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-06-16/agenda/gyvf-2020-2551-delegationsbeslut-om-att-oppna-lokalerna-for-eleverna-inom-gymnasiesarskolan-i-malmo-stadpdf?downloadMode=open>

**Aug1** <https://motenmedborgarportal.malmo.se/welcome-sv/namnderstyrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-09-02/agenda/ordforandebeslut-2020-08-20-om-utokad-mojlighet-att-bedriva-fjarr-och-distansundervisning-i-gymnasieskolanpdf?downloadMode=open>

**Aug2** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-09-02/agenda/ordforandebeslut-2020-08-20-om-delegering-av-beslut-i-en-viss-grupp-av-arenden-enligt-forordningen-om-utbildning-pa-skolomradet-och-annan-pedagogisk-verksamhet-vid-spridning-av-viss-smittapdf?downloadMode=open>

**S1** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-09-23/agenda/ordforandebeslut-2020-09-08-om-fjarr-och-distansundervisning-for-en-andel-elever-pa-valdemarsro-gymnasiesarskolapdf?downloadMode=open>

**O1** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-11-19/agenda/beslut-om-delegering-av-beslutanderatten-i-en-viss-grupp-av-arenden-enligt-forordningen-om-utbildning-vid-spridning-av-viss-smittapdf?downloadMode=open>

**O2** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-11-19/agenda/beslut-om-utokad-fjarr-och-distansundervisning-i-gymnasieskolanpdf?downloadMode=open>

**D1** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2020-12-16/agenda/g-tjansteskrivelse-gvn-2020-12-16-beslut-om-utokade-mojligheter-till-fjarr-och-distansundervisning-i-gymnasieskolan-samt-delegation-av-beslutanderatten-enligt-komunallagenpdf?downloadMode=open>

**M1-21** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2021-03-26/agenda/delegationsbeslut-2021-03-09-om-fjarrundervisning-pa-malmo-borgarskola-enligt-forordningen-om-utbildning-pa-skolomradet-och-annan-pedagogisk-verksamhet-vid-spridning-av-viss-smittapdf?downloadMode=open>

**May1-21** <https://motenmedborgarportal.malmo.se/welcome-sv/namnder-styrelser/gymnasie-och-vuxenutbildningsnamnden/mote-2021-05-28/agenda/tjansteskrivelse-beslut-om-upphavande-av-beslut-om-delegation-av-ratten-att-fatta-beslut-enligt-11css-forordningenpdf?downloadMode=open>