

# In Their Best Interest

French and German political attention to child refugees and their rights

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Master Thesis

by

Jeroen Stellmacher

6240933

**Utrecht University**

Supervisor: Dr. Ozan Ozavci

MA International Relations in Historical Perspective

Faculty of the Humanities

Date of submission: August 14, 2021

Wordcount: 15463

## **Acknowledgements**

I would like to thank my supervisor Dr Ozan Ozavci for his guidance, advice, feedback, time, encouragement and trust. His support has been invaluable over the course of researching and writing this thesis. Thank you for inspiring me and pushing me further.

I am also very grateful for the members of my peer review group. To Carys, Malina, Bryony and Isabel, thank you for taking the time in these strange times to meet online and provide me with feedback, advice and encouragement. Without this, writing the thesis would have been a much more difficult and lonelier task.

I would like to thank my family (namely my parents Lydia and Willem and my sister Melissa) and Ian, who believed in me and supported me unconditionally.

**Abstract:** The Convention on the Rights of the Child (1989) demands that signatory states take the best interest of the child as a primary consideration in every decision concerning children. It also explains that between children, no differences can be made. In practice, differences in the treatment of national children and refugee children persist. This thesis answers the question of how French and German parliamentarians differed in applying the notion of the best interest to debates on child refugees between 2011-2016. By analysing the parliamentary debates of these two countries, it becomes clear that despite differences between the countries, both French and German Centre-Right parties argued in favour of restrictive policies, but do not do so by referring to the best interest principle. Instead, these policies were promoted out of economic, political and ideological motivations. Though it is acknowledged that the right to education and healthcare is inherent for every child, for child refugees the degree to which they can enjoy these rights depends on whether it is in the interest of the nation. This thesis further argues that this is typical for the national ideologies of French Republican Universalism and German Christian socialism.

**Keywords:** Best Interest, CRC, children, refugees, asylum, immigrants, Rights of the Child, France, Germany, political debate, parliament

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## Children, refugees and their rights

Many will remember the picture of a little boy, Alan Kurdi, who laid lifeless on the shore of Turkey after a failed attempt to reach Greece by boat in 2015. The picture and story of the boy went viral. The newspapers were filled with stories about how the father buried his son, along with the child's mother and older brother.<sup>1</sup> The impact of this picture was immense. The political changes such as the opening of borders for refugees was only one result. Perhaps the most important consequence was the change of discourse. The people arriving at the European shores were not immigrants, but refugees. The states of the European Union, therefore, had a moral responsibility to help them. Up until that point, many countries were reluctant to take on the burden to take care of these refugees, but the image of the little child spoke to the minds of many. There is, however, only so much a picture can do to the hearts and minds of Europeans. Those refugees who accomplished to reach the European borders after the dangerous voyages still face significant hardships.

People have historically shown more empathy for children than for adults, as children are seen as innocent and more vulnerable. It was the humanitarian organisation Save the Children which first declared that helping children is not a political issue. It was one of the first humanitarian organisations which decided to provide help to children regardless of their nationality.<sup>2</sup> Now, even strict immigration policies make exceptions for children. The United Nations Convention on the Rights of the Child (CRC) of 1989, the *Magna Carta* of children's rights, is one of the most important and most signed treaties in world history, with 196 signatory states.<sup>3</sup> This convention clarified that the legal status of a child does not affect their rights.<sup>4</sup> Not everyone realised that. The death of Alan Kurdi, in that case, was a wake-up call for the public and politicians. The CRC still condemns Western states for not implementing the Rights of the Child in their domestic laws and highlights that states forget to consider child refugees as deserving of those same rights. This thesis focuses on the treatment of child refugees by national parliaments.

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<sup>1</sup> Mukul Devichand, "Did Alan Kurdi's death change anything?", *BBC* September 2, 2016.

<https://www.bbc.com/news/blogs-trending-37257869>, accessed on March 5, 2021.

<sup>2</sup> Michael Barnett, *Empire of Humanity: A History of Humanitarianism* (London: Cornell University Press, 2011), 83.

<sup>3</sup> United Nations Committee on the Rights of the Children, "Convention on the Rights of the Child: General Comment no. 14 (2013) on the rights of the child to have his or her best interest taken as a primary consideration" (29 May 2013)

<sup>4</sup> United Nations Committee on the Rights of the Children, "Convention on the Rights of the Child: General Comment no. 14 (2013) on the rights of the child to have his or her best interest taken as a primary consideration" (29 May 2013).

### Research questions

This thesis answers the question of how the French and German politicians differed in applying the best interest principle to child refugees during their parliamentary debates between 2011 and 2016. Comparative research is needed because the political context of countries varies widely. Countries also have a different experience with refugees, as some receive more or have fewer means to deal with them. As a result, the degree to which they respect the best interest of the child will vary, and their motivation for arguing against the best interest of the child will be different. Each country could have other interests that they take as a more important consideration than that of the child refugee. Comparative research will find out these national differences which help in creating a more complete picture of how the CRC is weakened by national ideologies and political climates.

From 2011 to 2016, the Syrian refugee crisis took place which provides a good opportunity to assess the asylum legislation and immigration policies of the countries. This period was a test for the existing policies, but the crisis also forced certain changes with either extending rights or limiting them due to public discontent. There will be no distinction made between Syrian and other refugee children, as both are equal in the eyes of the CRC. The answer to the research question should demonstrate whether the best interest of the child is respected by politicians, as was promised by signing the convention. The assumption is that politicians do not have the best interest principle as a primary consideration, and instead are driven by other motivations to promote child refugee policies. This thesis looks to verify this assumption and point to these other motivations and arguments used in debates. Additionally, it is argued that the treatment of child refugees in France and Germany corresponds to their national ideologies of Christian socialism and Republican Universalism.

To filter over five years of parliamentary debates of the two countries, specific topics are chosen. Debates on healthcare and education will be the focus of this research, as these are some of the most fundamental rights of children, but possibly a source of discrimination when it comes to refugees. Some sub-questions are to aid in further specifying the research focus. First, in both the French and German cases, it must become clear who proposes more restrictive policies. Which parties promote these policies and what is their position on the political spectrum and within the parliament? Secondly, what arguments are used to underpin more restrictive immigration policies? Both these sub-questions will be answered in chapters 2 (on France) and 3 (on Germany). The differences will be highlighted and explained throughout the thesis and again in the conclusion of this thesis.

### Historiographical debate

When it comes to protecting children, the United Nations CRC is the most important treaty. This declaration also relates to the rights of underage refugees.<sup>5</sup> Though it is a celebrated treaty, it is not uncontested. The most debated principle of the CRC is that of the ‘best interest’ in article 3:

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.<sup>6</sup>

Because the best interest of the child varies per group or even individual case, the principle is open to interpretation.<sup>7</sup> This openness and vagueness caused concern for some scholars. The principle has been criticized for being self-defeating, individualistic, unknowable, vague, dangerous and open to abuse.<sup>8</sup> Others still defend the principle as valuable precisely because it applies to different circumstances.<sup>9</sup>

The implementation of international treaties and conventions such as the CRC has been researched by many already.<sup>10</sup> However, there are significant blind spots in many of those

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<sup>5</sup> Marine Eudes, “La convention sur les droits de l’Enfant, texte emblématique reconnaissant l’intérêt de l’enfant... et passant sous silence les droits des femmes?” *Revue des droits de l’Homme* 3 (2013): 1-2.

<sup>6</sup> United Nations Human Rights Office of the High Commissioner, “Convention on the rights of the Child: Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49”, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> accessed on March 5, 2021.

<sup>7</sup> Barbara Gornik, “At the crossroads of power relations. The Convention on the Rights of the Child and unaccompanied minor migrants”, in *Unaccompanied Children in European Migration and Asylum Practices: In Whose Best Interest?* ed. M. Sedmak, B. Sauer, B. Gornik, D. Hernández. (Leiden: Taylor and Francis Books, 2017), 32; Elena Rossi, “Évaluation de l’intérêt supérieur de l’enfant et Convention des Droits de l’enfant”, *Journal du Droits des Jeunes* 221 (2003) 1, 19; Michael Freeman, *Article 3: the best interest of the child* (ebook, 2007, DOI: <https://doi.org/10.1163/ej.9789004148611.i-80.2>) 40; Thomas Dumortier, “L’interêt de l’enfant: les ambivalences d’une notion «protectrice»”. *Revue des droits de l’homme* 3 (2013): 1, 1-2.

<sup>8</sup> Elzbieta Gozdzia, “In the Best Interest of the Child: Perceptions, Responses and Challenges in Providing Assistance to Trafficked Children in the United States” in *Children and migration: At the crossroads of resilience and vulnerability*, ed. M. Ensor, E. Gozdzia (New York: Springer, 2010), 174; Claude Schauder, “Le devenir de l’enfants est-il soluble dans la CIDE?” *Journal du Droits des Jeunes* 251 (2006): 1, 27.

<sup>9</sup> Gozdzia, ‘In the Best Interest of Interest of the Child’, 174.

<sup>10</sup> Ibidem, 175; Beatrice Scuratru & S. Paoli, *Child Emigration and biopolitics: old and new experiences in Europe* (Leiden: Taylor and Francis Books, 2021); Jyothi Kanics, “The best interest of unaccompanied and separated children: A normative framework based on the convention on the Rights of the Child” in *Unaccompanied Children in European Migration and Asylum Practices: In Whose Best Interest?* ed. M. Sedmak, B. Sauer, B. Gornik, D. Hernández. (Leiden: Taylor and Francis Books, 2017), 45; Unicef, *Protecting the World’s Children: Impact of the convention on the rights of the Child in diverse Legal Systems* (Cambridge: Cambridge University Press, 2009); Ralf Roßkopf, *Unaccompanied Minors in International, European and National Law* (PDF e-book, 2016) 147-149; Ton Liefaard & Jaap Doek, *Litigating the Rights of the Child in Domestic and International Jurisprudence* (Dordrecht: Springer Science + Business Media Dordrecht, 2015) 369-413.

works. For instance, there is a book series where every article of the CRC is analysed in separate books. *Article 3: The Best Interests of the Child* by Michael Freeman is one of those. In this book, however, there is almost no regard for the best interest of child refugees.<sup>11</sup> Child refugees are rarely included in the literature that analyses the implementation of the CRC. The same goes for the attention to individual countries. Most attention goes to English-speaking countries such as Britain, Australia, Ireland, and the United States. Other research is predominantly concerned with other Western countries. France, for instance, is occasionally included and to an even lesser extent, Germany.<sup>12</sup> When the implementation of the CRC and treatment of children is discussed in the French and German context, there is once again little specific attention to child refugees. Instead, the French focus lays on the best interest principle in court cases involving children.<sup>13</sup> French law reviews concerning the CRC are about how it regulates the relations between child and parent and fail to consider the specific situation of child refugees.<sup>14</sup> German scholars, on the other hand, criticise the failure to implement the notion of best interest in their country's constitution.<sup>15</sup> German literature also focuses on the influence of the CRC in family matters where there is, again, little attention for child refugees.<sup>16</sup>

This thesis closes the gaps in the knowledge of several aspects. First, even though there is a significant amount of work that acknowledges the weak spots of the CRC, and its adoption in domestic laws, there is little attention to France and Germany specifically, whereas this thesis focuses on these two countries. Second, even when there is attention to France and Germany, there is almost no attention to their treatment of child refugees in particular. Lastly, because of

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<sup>11</sup> Freeman, *Article 3*, 5.

<sup>12</sup> Roßkopf, *Unaccompanied minors*, 95-264; Liefwaard and Doek, *Litigating the Rights of the Child*, 13-175; Olga Cvejic Janicic, *The Rights of the Child in a changing World: 25 Years after the UN Convention on the rights of the Child* (Switzerland: Springer International Publishing, 2016), 61-348.

<sup>13</sup> Laurent Puech, "Le droit de l'enfant à vivre en famille est-il un droit? L'article 9 de la CIDE et la question de l'hébergement de familles à la rue...". *Journal du Droits de Jeunes* 338-339 (2014): 8-9, 33., Dominique versini, "L'application de leurs droits peut-elle fragiliser certains enfants?" *Enfances & Psy* 43 (2009): 2, 83; Ariane Berthy-Cailleux, "Le droit de l'enfant d'exprimer librement son opinion sur toute question l'intéressant – article 12 alinéa 1 de la CIDE- va-t-il devenir caduc", *Journal du droit des jeunes* 287 (2009): 7, 22; Marcelle Bongrain, "Amour et le loi. À propos des droits de l'enfant", *Empan* 105 (2017): 1, 76; Adeline Gouttenoire, "Les droits de l'enfant en droits français", in *The Rights of the Child in a Changing World*, ed. O. Cvejic Jancic (Switzerland: Springer International Publishing Switzerland, 2016), 113; Dumortier, "Les Ambivalences d'une notion protectrice", 10.

<sup>14</sup> Eudes, "La convention sur les droits de l'enfant", 7.

<sup>15</sup> Stefanie Schmahl, "The rights of the Child in Germany: The UN Conventoin on the Rights of the Child and Its Implementation in National Law", in *The Rights of the Child in a Changing World*, ed. O. Cvejic Jancic (Switzerland, Springer International Publishing Switzerland, 2016), 129-134; Hartmut Kreß and Rudolf Gerhardt, "Kinderrechte gehören nun auch ins Grundgesetz: Die UN-Kinderrechtskonvention ist jetzt seit 25 Jahren in Kraft", *Zeitschrift für Rechtspolitik* 47 (2014): 7, 215-217.

<sup>16</sup> Zoë Clark, "Familiarismus und Anti-Paternalismus in der UN-Kinderrechtskonvention", *Soziale Passagen* 6 (2014): 1, 238-239.



the CRC legal treaty, the focus is on the legal aspects of the CRC. But that skips the step of creating domestic laws. Indeed, a focus on the political debate could be more useful. There is a pervasive failure in states to adopt a child rights focus in administrative procedures involving child migrants. It needs to become clear what exactly prevents politics from genuinely considering the needs of child refugees to solve some fundamental problems faced by child refugees.<sup>17</sup>

The societal relevance also cannot be understated. This thesis confronts society with the reality of child refugees that does not match up with the promises of the CRC. A large amount of unattended child refugees has gone missing in these countries.<sup>18</sup> The right to family reunification is in most cases only granted in the case that the child refugee returns to their (unsafe) home country.<sup>19</sup> And because the years child refugees spend in their host countries are critical for their future, any wrong treatment will have significant repercussions for their further development into human beings.<sup>20</sup> Politicians decide for a large part what is in the interest of the child, but European countries have sometimes confined the rights of refugees to the bare minimum. So is it really in the best interest of the child?<sup>21</sup>

### Methodology, sources and concepts

The secondary sources used in this thesis go more in-depth on the CRC, the meaning of the CRC, and law reviews of the implementation of CRC recommendations in French and German domestic laws.<sup>22</sup> Secondary sources also explain the national contexts of France and Germany, which in turn clarifies why they differ in their treatment of child refugees. Primary sources are used in the form of humanitarian reports to answer the question of what the obligations of states are regarding child refugees. After it is clear what problems child refugees still face in their host countries, the political viewpoints are analysed by looking at the debates, which are found

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<sup>17</sup> Mary Crock and Lenni B. Benson, "Central issues in the protection of child migrants," in *Protecting migrant children: in search of best practice*, ed. Mary Crock and L. Benson (Ebook, 2018), 21.

<sup>18</sup> Gornik, "At the crossroads of power relations", 36.

<sup>19</sup> Crock, "Central issues in the protection of child migrants", 39.

<sup>20</sup> Ibidem, 16-17.

<sup>21</sup> Gornik, "At the crossroads of power relations", 25; Carmelo Danisi (With Mary Crock), "Immigration control and the best interest of the child in Europe," in *Protecting migrant children: in search of best practice*, ed. Mary Crock and L. Benson (Ebook, 2018), 136.

<sup>22</sup> Sedmak et al, *Unaccompanied minors*; Nigel Cantwell, "La genèse de l'intérêt supérieur de l'enfant dans la convention relative aux droits de l'enfant" *Journal du Droits des Jeunes* 303 (2011): 3; Roßkopf, *Unaccompanied minors in International, European and National Law*, ; R. Sheehan, H. Rhoades, N. Stanley, *Vulnerable Children and the Law: international evidence for improving child welfare, child protection and children's rights* (PDF e-book, 2012).

in parliamentary documents of France and Germany. These primary sources are accessible through the digital archives of the respective governments.<sup>23</sup>

The primary sources are used to find out if child refugees are treated as a separate topic and receive adequate attention. While the CRC intended its rights to be extended to all children, including refugees, it might be the case that they are somewhat forgotten to be seen. They could, however, be treated as a separate group with their own specific needs. The debates show whether politicians acknowledge these special needs and if the necessary rights are granted to these children. The debates are analysed through the conceptual lens of the ‘best interest’. This principle is described by the CRC, but other authors have also given their analysis on what the best interest should entail. The CRC demands that the ‘best interests [is] assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere’.<sup>24</sup>

Chapter 1 goes more in-depth about the CRC and the best interest principle. For now, it suffices to know that as a conceptual lens, it is used to analyse what drives politicians to justify their policies, and whether or not their position is in favour of the best interest of the child or not. The best interest varies per child. It is therefore impossible to correctly assess what is in the best interest of a group of children. There are methodologies and frameworks such as the one described in Sedmak Sauer’s book, but these methodologies concern assessing the specific needs of a single child.<sup>25</sup> To assess whether a politician is acting in favour of the best interest of the child, they should not promote policies that negatively discriminate against the group of child refugees. Positive discrimination in the case of child refugees is, in various cases, acceptable, due to the specific needs of this group. Secondly, politicians should promote their policies by referring to the inherent right or needs of the children, because the policies must be at the benefit of the children. If they use economic, political or ideological arguments, they are not acting in the best interest of the child. The rights of child refugees are not political, ideological or economic. They are universal. At least, that is how the CRC intends it, and thus how politicians should act.

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<sup>23</sup> Asssemblée Nationale, *Archive de la XVIe Législature* (online: <https://www.assemblee-nationale.fr/14/documents/archives-14leg.asp>) ; Deutscher Bundestag, *Plenarprotokolle* (online: <https://www.bundestag.de/dokumente/protokolle>).

<sup>24</sup> United Nations Committee on the Rights of the Children, ‘Convention on the Rights of the Child: General Comment no. 14 (2013) on the rights of the child to have his or her best interest taken as a primary consideration’ (29 May 2013), 3.

<sup>25</sup> Sedmak et al, *Unaccompanied minors*; Cantwell, “La genèse de l’intérêt supérieur de l’enfant”; Roßkopf, *Unaccompanied minors in International, European and National Law*; Sheehan, *Vulnerable Children and the Law*.

Children and thus the way they are treated will be viewed from a Postcolonial and critical standpoint. More specifically, children are considered a subaltern group in this thesis. This term is disputed and changed in meaning over time. Antonio Gramsci, Italian Marxist and political activist was the first to refer to the group Subaltern and meant ‘any low rank person or group of people in a particular society suffering under hegemonic domination of a ruling elite class that denies them the basic rights of participation in the making of local history and culture’.<sup>26</sup> The only groups Gramsci had in mind were the workers and peasants who were oppressed by the Italian fascist party.<sup>27</sup> Later, historian of the Indian subcontinent, Ranajit Guha, used the term to study subaltern groups as ‘an objective assessment of the role of the elite and as a critique of elitist interpretations of that role’.<sup>28</sup> Thereafter, Indian philosopher and feminist critical thinker Gayatri Chakravorty Spivak made a ground-breaking essay on ‘can the subaltern speak’ which reconsidered the problems of subalternity. She pointed to the impossibility of voicing the oppressed group’s resistance because of their representations by other dominant forces.<sup>29</sup>

The notion of subaltern groups made its way to critical theories such as Securitization Theory and was used to point to groups that were unable to voice their concerns.<sup>30</sup> Children have not been considered to constitute a subaltern group. One academic field, however, has started to consider children as subaltern: literary studies.<sup>31</sup> They have pointed out that children are subordinate in terms of social, political and economic power.<sup>32</sup> Children in literature very rarely have their own voice. They are spoken for by an adult character in books, or the adult author projects their own experiences and knowledge on the child character.<sup>33</sup> This corresponds with how subaltern groups are spoken for as described by Spivak and others. The

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<sup>26</sup> El Habib Louai, “Retracing the concept of the subaltern from Gramsci to Spivak: Historical developments and new applications” *African Journal of History and Culture* 4 (2012): 1, 5; Reenu Jain, “Subaltern Studies,” *International Journal in Commerce IT & Social Sciences* 4 (2017): 2, 372.

<sup>27</sup> Louai, “Retracing the concept of the subaltern”, 5.

<sup>28</sup> Ibidem, 6.

<sup>29</sup> Ibidem, 6-7; Jain, “Subaltern Studies”, 373.

<sup>30</sup> Scott Watson, “The ‘Human’ as a referent object? Humanitarianism as securitization”, *Security Dialogue* 42 (2011): 1, 5; Lene Hansen, “The Little Mermaid’s Silent Security Dilemma and the Absence of Gender in the Copenhagen School,” *Millenium* 29 (1999): 2, 288-293; Sarah Bertrand, “Can the Subaltern Securitise? Postcolonial Perspectives on Securitization Theory and its Critics,” *European Journal of International Studies* 3 (2018): 3, 285; Rita Floyd, “Can securitization theory be used in normative analysis? Towards a just securitization theory”, *Securitization Dialogue* 41 (2011): 4-5, 430-433.

<sup>31</sup> G. Vijayalakshmi, “Unmuting the Future, Children as a Subaltern Subject: A Perspective Reading of *God of Small Things* by Arundhati Roy”, *Shanlax International Journal of English* 6 (2018): 1, 27; Kusum Nandal, “Sublateral Children in *The Bluest Eye*”, *The Criterion: An International Journal in English* 5 (2014): 2, 730.

<sup>32</sup> Anneliese Hatton, “Children in Literature: the voice of the subaltern”, *Childhood remixed Journal* (papers drawn from the international Children and Childhoods Conference held at UCS 2015) February 2016, 53.

<sup>33</sup> Hatton, “Children in Literature”, 58.

underrepresentation of the child as a subaltern subject might be because children are not considered to be ‘different’ or ‘other’, compared to other subjects traditionally considered subaltern based on gender, race or ethnicity, as all adults have been a child before.<sup>34</sup> Literature studies have pointed out, however, that because of this belief, every author feels that they have the authority or ability to represent children as they have all experienced childhood.<sup>35</sup> Take this knowledge to the political arena, and politicians believe to some extent that they can act in the best interest of the child because they know what a child needs.

Lastly, a short comment on definitions is needed. In literature, the debates, and in this thesis, definitions like refugees, asylum seekers and migrants are used. This is not interchangeable or random. Migrants are the most inclusive term, encompassing all people who move from one place to another. Migration occurs for numerous reasons, like economic, social or political reasons. Asylum seekers and refugees are part of this group as well.<sup>36</sup> Refugees as a concept on its own concerns people who leave their homeland due to imminent fear for their lives. Refugees typically travel to a refugee camp in a country of first asylum and register themselves for refugee status.<sup>37</sup> Asylum seekers also flee their home countries, but rather than applying for refugee status with the UN, they migrate directly to a country in which they hope to resettle.<sup>38</sup> If politicians refer to migrants, then, they also refer to refugees. If they refer to refugees, they do not necessarily refer to all other types of migrants. The terms used in this thesis are in most cases determined by the politicians and what they are talking about.

The first chapter will take a closer look at the history of the best interest and the CRC. The second chapter will move on to France. This chapter starts with explaining the political context of the country during the refugee crisis and looks at dominant political views before moving on to their debates on healthcare and education. In France, Republican Universalism is taken as the most important factor influencing their political behaviour. The third chapter starts with an explanation of the German refugee situation, whereafter the debates on healthcare and education are discussed. The German Christian democratic values will be taken as the primary factor influencing their political viewpoints. The conclusion gives a short overview of general similarities and differences and argues what the consequences are of this research.

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<sup>34</sup> Ibidem, 59

<sup>35</sup> Ibidem, 59.

<sup>36</sup> Editorial, “Defenitions matter: migrants, immigratns, asylum seekers and refugees”, *Journal of Travel Medicine* (2019), 2; Jody Lynn McBrien, “Refugees, asylum seekers, and other immigrants: Help for teachers with problematic definitions”, *Social Studies Research and Practice* 12 (2018): 2, 115.

<sup>37</sup> McBrien, “Refugees, Asylum seekers, and other immigrants”, 116.

<sup>38</sup> Ibidem, 117.

## Chapter 1: The unfinished progress of the Rights of the Child

On the day of its signing in 1990, the Convention on the Rights of the Child was signed by the greatest number of signatories to ever sign a human rights convention.<sup>39</sup> The treaty achieved universal ratification in 1997 making it the most widely ratified treaty in the world except for the UN charter itself. It also went into force quicker than any other human rights treaty had done before. Lastly, it is the only human rights treaty to combine civil, political, economic, social, cultural and human rights in a single instrument.<sup>40</sup> This chapter traces the history of children's rights and makes an inventory of the different articles of the CRC. The CRC proves to be unique and significant, but also has its downsides. This chapter is concerned with the fact that the implementation of the CRC cannot be enforced. The pitfalls of the treaty help in explaining why, despite the CRC, child refugees are potentially still maltreated and ignored.

### *The Rights of the Child: a history*

The notion of children's rights started in the pre-industrial period. Children from the age of six were already seen as small adults but were legally and socially seen as the property of the parent. As a result, they had little to no legal rights.<sup>41</sup> As child mortality was high, parents often did not have an emotional closeness to their children and could even be cold and distrustful to them.<sup>42</sup> In the industrial period, children were increasingly considered endangered by the conditions of industrialisation and urbanisation. Here, the idea of protecting children emerged.<sup>43</sup> This was primarily confined to rights concerning industrial child labour. The Child Labour Reform movements caused a significant shift in thinking, as school was increasingly seen as an alternative model of social existence.<sup>44</sup> The nineteenth century was considered a child-saving era, and children were seen less as property.<sup>45</sup> It was in this period that the state began to play a role in the protection of children, even from their own parents. It was the state which started to provide services in health, education, care and housing.<sup>46</sup> What once were the privileges of

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<sup>39</sup> Mary Crock and Hannah Martin, "First things first: international law and the protection of migrant children", in *Protecting migrant children: in search of best practice*, ed. Mary Crock and L. Benson (Ebook, 2018), 81.

<sup>40</sup> Hanita Kosher, Asher Ben-Arieh and Yael Hendelsman, "The History of Children's Rights", in *Children's Rights and Social Work*, ed. Hanita Kosher, Asher Ben-Arieh and Yael Hendelsman (Switzerland: Springer International Publishing, 2016), 15.

<sup>41</sup> Kosher et al., "The History of Children's Rights", 9-10.

<sup>42</sup> *Ibidem*, 10.

<sup>43</sup> *Ibidem*, 11

<sup>44</sup> *Ibidem*, 11.

<sup>45</sup> *Ibidem*, 11.

<sup>46</sup> *Ibidem*, 11.

the few (schooling, hygiene, nutrition, medical attention), increasingly became universal children's rights.<sup>47</sup>

The late nineteenth century saw medical breakthroughs which led to more well-being of children, and therefore lower mortality rates.<sup>48</sup> The developments, however, were uneven. Large differences existed between the Western and non-Western world and between rural and urban places. The result of this disparity was that children's rights were increasingly seen as something that should become universal.<sup>49</sup> During the first half of the twentieth century, the increased optimism and attachment to children caused parents to demand the best and latest information, based on science, on how to raise children in the best way.<sup>50</sup> Typical for that period was the buying of books and attending classes to learn how to care for children. Parents' optimism was shattered by the First World War which showed that sentiments and intentions were not enough to protect children from harm. Never was the audience so outraged to see images of child suffering pouring in as during 1914-1918.<sup>51</sup> It was perhaps the spreading of sensibilities, visibility and active targeting of civilians that was the initial setting for what would become a new commitment in the twentieth century to an international treaty to protect children's rights.<sup>52</sup>

The First World War was followed by a convention to prohibit children from working in hazardous conditions.<sup>53</sup> And in 1924, the League of Nations adopted the Declaration of Geneva on Children's Rights, but this consisted of only 5 statements and was non-binding.<sup>54</sup> After the Second World War, children's rights became more commonplace internationally, and more binding.<sup>55</sup> This period witnessed the UN Universal Declaration of Human Rights. This was, however, still not legally binding. It nevertheless did establish the basis for defining the rights of children in fully and legally binding ways.<sup>56</sup> In 1959, the declarations of the Rights of the Child, the immediate predecessor of the CRC was written and signed by all 78 member states of the United Nations General Assembly. This treaty was characterised by the provision-protection view of children's rights which was commonplace in society since the Industrial

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<sup>47</sup> Paula Fass, "A Historical Context for the United Nations Convention on the Rights of the Child", *The Annals of the American Academy of Political and Social Science* 633 (2011): 1, 20.

<sup>48</sup> Fass, "A Historical Context", 19.

<sup>49</sup> *Ibidem*, 19.

<sup>50</sup> *Ibidem*, 21.

<sup>51</sup> *Ibidem*, 22.

<sup>52</sup> *Ibidem*, 22.

<sup>53</sup> *Ibidem*, 20.

<sup>54</sup> *Ibidem*, 17; Kosher et al., "The History of Children's Rights", 15.

<sup>55</sup> Fass, "A Historical Context", 23.

<sup>56</sup> *Ibidem*, 23.

Revolution.<sup>57</sup> It still saw children as objects in need of services. Then, the International Year of the Child was held in 1979 and the drafting of the CRC started.<sup>58</sup> It would take another ten years to finalize the treaty, but the results were, as said, revolutionary.

The new CRC was different from its predecessors in the sense that it was more comprehensive and addressed the full range of the rights of the child. But most radically, maybe, it differed from the others because it emphasized children's rights concerning decision-making processes in child matters.<sup>59</sup> The treaty affirms that the child should not only be protected from harm and abuse but should also have a childhood, be able to develop into an autonomous adult and have a voice in matters affecting them. This is vastly different from previous notions of the child as a passive object who does not really bear rights or is even seen as the property of the parent.

### *The articles of the CRC*

There have been numerous efforts over the years to create typologies of Children's rights. The CRC itself makes a distinction between non-discrimination, the best interests of the child, the right to life, survival and development, and participation rights. Contemporary literature uses the typology of the three P's: Protection, Provision and Participation Rights.<sup>60</sup> As described above, the last P is the newest addition to children's rights compared to previous treaties. Participation rights refer to the right of children to be respected as active members and contributors to society. Provision rights concern the provision of services and resources, such as care, health, adequate living standards, education and cultural life. Protection rights concern the protection from neglect, abuse, exploitation, violence, maltreatment, hazardous work, and discrimination. Almost all articles of the CRC can be categorized in one of these three typologies.

The most well-known article of the CRC is that of the Best Interest.<sup>61</sup> Article 3 states that in all actions concerning children, the best interest of the child shall be a primary consideration.<sup>62</sup> The fact that it says 'shall' makes it an obligation. But it also says it should be 'a' primary consideration, which indicates that the best interest of the child does not outweigh other interests. The CRC was not the first treaty to incorporate the Best Interest principle, as it

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<sup>57</sup> Ibidem, 18.

<sup>58</sup> Kosher et al., "The History of Children's Rights", 15.

<sup>59</sup> Ibidem, 15.

<sup>60</sup> Ibidem, 16.

<sup>61</sup> Eudes, "La convention sur les droits de l'enfant", 2.

<sup>62</sup> Ibidem.

was known for a much longer time, especially in domestic legislation.<sup>63</sup> But the CRC was the first to write that the best interest should be a primary consideration in *every* context.<sup>64</sup> Not only in the private sphere do parents have to consider the best interest, but politicians in political arenas on a national and international level as well.

There are numerous provisional rights within the CRC, and possibly make up the majority of the treaty. Two of the most important articles are those relating to health and education. Regarding healthcare, the CRC says that every child has the right ‘to the enjoyment of the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health’.<sup>65</sup> Concerning education, the treaty declares that states have to recognize the right of the child to education and are obliged to make primary education free and compulsory, combat drop-out and encourage different forms of secondary education, which should be made accessible to all based on capacity.<sup>66</sup>

One of the most important protective rights is that of non-discrimination: ‘States Parties shall respect and ensure the rights outlined in the present Convention to each child within their jurisdiction without discrimination of any kind’.<sup>67</sup> No matter the ethnicity, colour, status, nationality, sex or opinion, every child has the right to not be discriminated against. The treaty also contains specific articles relating to refugees to make clear that child refugees are also incorporated and given special attention.<sup>68</sup> Article 22 is an example of this:

States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall . . . receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.<sup>69</sup>

As can be seen, article 22 also contains a reference to other protective measures enshrined in International Humanitarian Law (IHL). It is the first of the modern human rights regimes to do

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<sup>63</sup> Ibidem, 2; Crock and Martin, “First things first”, 79.

<sup>64</sup> Ibidem, 86.

<sup>65</sup> UNOHCR, “Convention on the Rights of the Child”, Article 24, paragraph 1.

<sup>66</sup> Ibidem, Article 28, paragraph 1 A-C.

<sup>67</sup> Ibidem, Article 2, paragraph 1.

<sup>68</sup> FördervereinPro Asyl, “Kinderrechte für Flüchtlingskinder ernst nehmen! Gesetzlicher Änderungsbedarf aufgrund der Rücknahme der Vorbehalte zur UN-Kinderrechtskonvention” (Frankfurt, 2011), 7; Crock and Martin, “First things first”, 83; UNOHCR, “Convention on the Rights of the Child”, Article 22.

<sup>69</sup> UNOHCR, “Convention on the Rights of the Child”, Article 22.



so.<sup>70</sup> This means that certain rights might not be written in the CRC itself, but they are in other conventions. Looking at the CRC is thus a good focal point, precisely because it also encompasses other international treaties, such as the UN Refugee Convention.<sup>71</sup>

All state parties have agreed to these rights by signing the treaty. Also, the CRC demands that states adhere to the convention. Article 4 states that:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources.<sup>72</sup>

This, in theory, leaves states to be obliged to implement every article in their domestic laws. But it would be a mistake to assume that all states have done so.

### Reservations and limitations

States have agreed to the same articles, but they can have different interpretations of those articles. This leads some countries to believe they have taken all necessary steps to implement the Convention sufficiently. At the same time, the CRC makes recommendations or remarks, which indicate that these states have failed to do that. There are, however, no means for the CRC to ensure the implementation of the recommendations. In the end, it is still the state which decides what they do with their domestic legislation and policies. The state decides on the extent to which they are willing to go.

Even before signing the treaty, differences in the relation to the CRC among countries existed. The CRC, like many other treaties, was signed by states who could have reservations about the treaty. A reservation is ‘a unilateral statement made by a state when signing, ratifying and accepting a treaty, whereby it attempts to exclude or modify the legal effect of certain provisions’.<sup>73</sup> Statements like these can be called anything, such as a reservation, declaration, understanding, statement, or reservation.<sup>74</sup> Western Europe has, proportionally, the highest percentage of states with reservations in the world.<sup>75</sup> As of 1996, 17 of the 26 European states

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<sup>70</sup> Crock and Martin, “First things first”, 85.

<sup>71</sup> Ibidem.

<sup>72</sup> UNOHCR, “Convention on the Rights of the Child”, Article 4.

<sup>73</sup> Lawrence J. Leblanc, “Reservations to the Convention on the Rights of the Child: A macroscopic view of state practice”, *The International Journal of Children’s Rights* 4 (1996): 1, 357.

<sup>74</sup> Leblanc, “Reservations tot the Convention”, 360.

<sup>75</sup> Ibidem, 363.

ratified the CRC with reservations to one or more articles.<sup>76</sup> States can also object to others' reservations. Western Europe has objected the most to non-Western reservations.<sup>77</sup> Indeed, of the 187 parties in 1996, only 12 made objections to reservations, and all were from Europe.<sup>78</sup>

Article 21, concerning the adoption of the treaty, has received the most reservations. Of the 11 states, most were Islamic.<sup>79</sup> They did not object to a particular article, but the general idea of the convention, while still signing. European states, in contrast to other objecting states, have made reservations that modify or exclude very specific provisions of several articles. Their conditions of ratification have usually included a mix of reservations and declarations.<sup>80</sup> European states, by doing this, have made it very clear what their objects and concerns are, and thus leave little room for doubt as to precisely what obligations they have accepted, and what not.<sup>81</sup>

France and Germany have made such very specific reservations. France objected to article 30, which states that ethnic, religious and linguistic minorities have the right to enjoy his or her own culture, profess and practise their religion and use his or her language. France does not see article 30 as applicable because its constitution demands that the language spoken in France has to be French and religious freedom is already enshrined in the French constitution itself.<sup>82</sup> Germany stated that no provision of the CRC may be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens.<sup>83</sup> Indeed, Germany wanted to make clear that it still had full authority to decide who is allowed to enter Germany. It also wanted to retain the authority on how to treat different groups within its territory.

### Conclusion

The evolution of children's rights transformed children from passive property-like objects of the Industrial Revolution to autonomous individuals. They have become more than simply bearers of rights. Instead, child refugees are active participants in society who have the right to

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<sup>76</sup> Ibidem, 363.

<sup>77</sup> Ibidem, 374.

<sup>78</sup> Ibidem, 374.

<sup>79</sup> Ibidem, 369.

<sup>80</sup> Ibidem, 370.

<sup>81</sup> Ibidem, 370.

<sup>82</sup> United Nations, Treaty Series, vol. 1577, p. 3 ; depositary notifications C.N.147.1993.TREATIES-5 of 15 May 1993 [amendments to article 43 (2)] 1 ; and C.N.322.1995.TREATIES-7 of 7 November 1995 [amendment to article 43 (2)], 8

<sup>83</sup> Ibidem, 9.

be heard and contribute to decisions that concern them. Children's rights have also become increasingly universal. This made the CRC such a revolutionary convention. However, this chapter also pointed out that states have different interpretations on how the articles should be implemented. France and Germany were states that had reservations upon signing the treaty. This all limits the degree to which the CRC is respected.

It remains to be seen what the effects of these limitations of the CRC are for refugee children. Have they also become more than passive bearers of rights? Are they also active participants who are heard and contribute to society? The answer will determine if the CRC managed to make children's rights truly universal. Germany already made clear upon signing it wanted to hold the right to make distinctions in law between Germans and non-Germans. Chapter 3 will show the implications of that decision. But the next chapter will first show that France did not even need such a reservation to make distinctions between French and non-French children.

## Chapter 2: The Rights of the Child in France

The evolution of the Rights of the Child showed that the CRC brought change in the sense that children were no longer seen as passive bearers of rights. Instead, they should be included in decisions that concern them. What is more, the evolution of children's rights also places increasingly more responsibility on politicians to consider the best interest of the child. At the same time, the weak spots of the CRC are known and inequalities between children persist. This chapter shifts the attention to France, and especially on how the CRC influenced the French parliamentary debates. How are the rights of migrant children discussed and is there an adherence to the CRC? Concretely, do politicians and parties respect the best interest of the child and do they refrain from discriminating against these children?<sup>84</sup> The shortcomings of the CRC in France are discussed regarding the provisional rights of education and healthcare, after which the debates demonstrate how politicians fail to address migrant-specific issues.

In France, the Centre-Right (Republican) party advocates for more conservative policies. Meanwhile, the Left parties such as the Socialists are in favour of more generous policies. For a long time, however, it was assumed that Right-wing parties, influenced by neoliberal ideology, would be the ones to call for more liberal policies.<sup>85</sup> France is also a post-Fordist, Keynesian capitalist state. France will therefore appear more concerned with international competitiveness and innovation. This type of capitalism attempts to attract the best talents and views immigration ambivalently.<sup>86</sup> It speaks in terms of those who are an economic burden on the national community, and those who will make money for the country. This explains why economic motives appear to play a larger role in advocating restrictive policies. Moreover, the core ideology of Universal Republicanism also prevents the best interest of the child from being genuinely considered as a primary consideration.

### Education: 'interest of the nation'

In France, there is a degree of segregation between migrant and national pupils. Migrants receive a different quality of education, partly because they are the victim of selective budget

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<sup>84</sup> The French Parliament consists of representatives of departments of France. They are often tied to a political party. Political parties in France work together in parliamentary groups. This thesis use the names of groups and parties interchangeably, as they correctly represent their overall ideology. For instance, the Republican Party UMP is part of the Republican Parliamentary Group.

<sup>85</sup> Paul May, "Ideological justifications for restrictive immigration policies: An analysis of parliamentary discourses on immigration in France and Canada (2006-2013)," *French Politics* 14 (2016): 1, 287.

<sup>86</sup> May, "Ideological justifications for restrictive immigration policies", 300.

cuts which degrades their education. As a result, they have less qualified teachers.<sup>87</sup> All of this increases the differences between national and migrant children. Overall, fewer children have to redo a school year, but this trend is slower for migrant children.<sup>88</sup> School dropout constitutes another problem for refugees.<sup>89</sup> An overrepresented group within vocational schools are the migrant students, while they are underrepresented within higher education.<sup>90</sup> Therefore, UNICEF recommends the fair treatment of non-French children and give them equal access to education. According to UNICEF, France is the most socially determined country in Europe in the case of education.<sup>91</sup>

The debates of 2011-2016 show a certain acknowledgement of some of these problems. Various debates on a bill aiming for the refoundation of the educational system show that members of the General Assembly acknowledged that social inequalities were reinforced within schools and created educational inequalities. Yves Durand of the Parti Socialiste (Socialist Party) said that ‘there is a correlation between social inequalities and educational inequalities, and they are growing’.<sup>92</sup> He states that 150.000 students are dropping out and are excluded from citizenship. Many of which are migrants. Barbara Pompili of the Europe Écologie les Verts (Green party) stated that ‘our school no longer meets the republican requirements [of equality]’.<sup>93</sup> There was also the acknowledgement that socially disadvantaged groups are especially vulnerable to this. Maud Olivier (Socialist Party), for instance, pointed out that only ‘18% of students from disadvantaged social classes obtain a general baccalaureate, against 79% of those from privileged social classes’.<sup>94</sup> Moreover, political position plays little to no role in the acknowledgement. Benoist Apparu of the Union pour un Mouvement Populaire (Republican Party UMP), also acknowledges that ‘our schools do not know how to combat inequalities and even tends to reproduce birth inequalities’, even though he is against the

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<sup>87</sup> Conseil National d'évaluation du système scolaire (CNESCO), “Inégalités Sociales et Migratoires: Comment l'école amplifie-t-elle les inégalités?” (Paris, 2016), 22, 37-38, 52.

<sup>88</sup> CNESCO, “Inégalités Sociales et Migratoires”, 52.

<sup>89</sup> UNICEF France, “Chaque Enfant Compte. Partout, Tout le Temps. Rapport alternatif 2015 de l'UNICEF France et de ses partenaires dans le cadre de l'audition de la France par le Comité des droits de l'enfant des Nations Unies”, (Paris, 2015), 21.

<sup>90</sup> Unicef France, “Chaque Enfant Compte”, 21

<sup>91</sup> Ibidem.

<sup>92</sup> Assemblée Nationale, “Session Ordinaire de 2010-2011: 2e Séance du jeudi 9 juin 2011”, *Journal Officiel de la République Française*, N. 58 (2011), p. 3928. Yves Durand, ‘il y a une corrélation entre inégalités sociales et inégalités scolaires, et celles-ci se creusent’.

<sup>93</sup> Assemblée Nationale, “Session Ordinaire de 2012-2013: Séances du 11 mars 2013”, *Journal Officiel de la République Française*, N. 28 (2013), p. 2535. Barbara Pompili, ‘notre école ne répond plus à ces exigences républicaines’.

<sup>94</sup> Assemblée Nationale, “Session Ordinaire de 2012-2013: Séances du mardi 12 mars 2013”, *Journal Officiel de la République Française*, N. 29 (2013), p. 2619. Maud Olivier, ‘18 % des élèves issus de classes sociales défavorisées obtiennent un bac général, contre 78 % de ceux issus de classes sociales favorisées’.

refoundation of the school.<sup>95</sup> Similarly, Philippe Gomès of the Union des Démocrates et Indépendants (Union of Democrats and Independents) too is against the refoundation but maintains that the ‘equality of opportunity’ must be restored.<sup>96</sup>

The Socialists sought to repeal Republican policies such as the Ciotti law which determined that in the case of the continued absence of the pupil, parents will have their family allowances suspended after a few warnings. This measure was adopted to combat school dropout. George Pau-Langevin (Socialist), Minister Delegate of Education said that the Ciotti law is ‘historically contested, ineffective and unfair’.<sup>97</sup> She further argued that the law did not work because of the 300.000 absentee students, 619 received warnings and only 142 had allowances suspended.<sup>98</sup> ‘In 90% of the cases, what matters is dialogue with the family’.<sup>99</sup> Pau-Langevin continued by saying that sanctions are also useless because ‘In order for this sanctioning device to be put in place, steps have to be taken. And, during all this time the child does not go to school’.<sup>100</sup> Sandrine Douchet (Socialist Party) also declared that the ‘Ciotti law targets the largest, the poorest . . . families.’<sup>101</sup> Patrick Bloche (Socialist Party) argued that the issue was treated wrong: ‘We [must] approach the issue of absenteeism, first and foremost, according to the interest of the child, a respect which is enshrined in an international convention’.<sup>102</sup> He said that the Ciotti law took the issue backwards and waved a threat of financial sanction. It was deliberately leaving aside the academic aspect of absentee behaviour.<sup>103</sup> The best interest of the child, according to Bloche, is combatting the root of the problem, which is in the educational system itself.

The discussion of the bill on the overhaul of the education system similarly invoked the best interest. Françoise Dumas (Socialist Party) called the overhaul ‘a beautiful project of equality and solidarity between all pupils in all the territories, which puts the interest of the

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<sup>95</sup> Assemblée Nationale, “Séances du 11 mars 2013”, 2525. Benoist Apparu, ‘l’école ne sait pas suffisamment gérer les inégalités de naissance. Elle les reproduit plus massivement qu’ailleurs’.

<sup>96</sup> Ibidem, 2547. Philip Gomes, ‘Là où on doit rétablir l’égalité des chances’.

<sup>97</sup> Assemblée Nationale, “Session Ordinaire de 2012-2013: Séances du jeudi 17 janvier 2013”, *Journal Officiel de la République Française*, N. 3 (2013), p. 154. George Pau-Langevin, ‘Ce dispositif est historiquement contesté, inefficace et injuste’.

<sup>98</sup> Assemblée Nationale, “Séances du jeudi 17 janvier 2013”, 155.

<sup>99</sup> Ibidem, 155. George Pau-Langevin, ‘Dans 90 % des cas, ce qui compte, c’est le dialogue avec la famille’.

<sup>100</sup> Ibidem, 155. George-Pau Langevin, ‘Le principal problème, c’est que, pour que ce dispositif de sanction se mette en place, on a prévu des étapes. Et, durant tout ce temps, l’enfant ne va pas à l’école’.

<sup>101</sup> Ibidem, 157. Sandrine Douchet, ‘la loi Ciotti cible les familles les plus nombreuses, les plus pauvres’.

<sup>102</sup> Ibidem, 158. Patrick Bloche, ‘nous abordons la question de l’absentéisme : d’abord et surtout en fonction de l’intérêt de l’enfant, dont le respect est inscrit dans une convention internationale’.

<sup>103</sup> Ibidem, 158. Patrick Bloche, ‘À cet égard, la loi dite Ciotti prenait en quelque sorte la question à l’envers. En agitant la menace de la sanction financière, vue comme la punition des parents considérés irresponsables, elle laissait délibérément de côté l’aspect scolaire du comportement absentéiste.’

child at the centre of the device'.<sup>104</sup> And Martine Carrillon-Couvreur (Part of the socialist parliamentary group) declared she was in favour of the refoundation because the CRC demands it from her: 'as the declaration of the Rights of the Child lays down three principles which must always guide our reflection on these subjects: the refusal of all discrimination, the rights to dignity, equality, care and integration, and the right to education'.<sup>105</sup> And Bloche said that provisions of the bill are 'first and foremost in the interest of the pupils'.<sup>106</sup> And when Jean-Pierre Vigier (Republican Party) voiced his doubts about whether everything can be realised financially, such as transports to schools, Luc Belot (Socialist Party) responded indignantly: 'and the best interest of the child? You only talk about money!'<sup>107</sup>

It should be noted that there was no specific attention for child refugees and migrants, even though the CRC expects them to take this into account when discussing educational inequalities. Additionally, the reports they use, such as PISA, which proved the inequalities they acknowledged at the start of the debates, highlight the fact that migrants have been most vulnerable to past policies. The acknowledgements of politicians do not go that far. Instead of highlighting the vulnerability of migrants, politicians generalize this specific group. Martine Martinel refers to 'difficult neighbourhoods' and 'areas in difficulty'.<sup>108</sup> Xavier Breton calls the group 'disadvantaged social categories' and Barbara Pompili (the Green party) and Marie-George Buffet (Communist Party) call them 'children in difficulty'.<sup>109</sup> Sylvie Tolmont (Socialist Party) compares 'privileged districts and those in the priority educational zones' and Maud Olivier refers to 'disadvantaged social classes'.<sup>110</sup>

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<sup>104</sup> Assemblée Nationale, "Séance du mardi 12 mars 2013", 2623. François Dumas, 'c'est un beau projet, un projet d'égalité et de solidarité entre tous les élèves sur tous les territoires, qui met l'intérêt de l'enfant au centre du dispositif'.

<sup>105</sup> Assemblée Nationale, "Session Ordinaire de 2012-2013: 2e séance du mardi 12 mars 2013", *Journal Officiel de la République Française*, N. 29 [2] (2013) p. 2643. Martine Carrillon-Couvreur, 'Pourtant, la déclaration des droits de l'enfant pose trois principes qui doivent toujours guider notre réflexion sur ces sujets : le refus de toute discrimination, le droit à la dignité, à l'égalité, aux soins et à l'intégration, et le droit à l'éducation. C'est cet environnement juridique qui doit nous guider'.

<sup>106</sup> Assemblée Nationale, "Session Ordinaire de 2012-2013: Séance du lundi 3 juin 2013", *Journal Officiel de la République Française*, N. 68 (2013) p. 5925. Patrick Bloche, 'ce au nom d'abord de l'intérêt des élèves'.

<sup>107</sup> Assemblée Nationale, "Séance du mardi 12 mars 2013", 2650. Luc Belot, 'Et l'intérêt de l'enfant ? Vous ne parlez que d'argent!'

<sup>108</sup> Assemblée Nationale, "Session Ordinaire de 2011-2012: 2e séance du jeudi 16 février 2012", *Journal Officiel de la République Française*, N. 21 [2] (2012), p. 1196. Martine Martinel, 'les quartiers difficiles'; 'les zones en difficultés'.

<sup>109</sup> Assemblée Nationale, "Séances du 11 mars 2013", 2531, 2538. Xavier Breton, 'catégories sociales les plus défavorisées'; Marie George Buffet: 'enfants en difficulté'; Barbara Pompili 29, 'enfants en difficulté'.

<sup>110</sup> Assemblée Nationale, "Séance du mardi 12 mars 2013", 2608. Sylvie Tolmont, 'les zones d'éducation prioritaires'; Ibidem, 2619. Maud Olivier, 'de classes sociales défavorisées'.

Jacques Bompard (independent member) is the only one actually referring to ‘migrants’: ‘in Bollène, classes [are] made up of 100% children of migrant origin. How do you want these children to learn French correctly and integrate in our society?’<sup>111</sup> This is thus a unique passage in the debates on education. It could be that politicians wish to discuss the problem on a larger scale. Migrants are certainly part of the disadvantaged social categories, but not everyone in that category is a migrant. On the other hand, however, it can be believed that the role of migrant status and ethnicities are deliberately not discussed. Sylvie Pichot (Socialist parliamentary group), along with Mathieu Hanotin (Socialist Party) and Malek Boutih (Socialist Party) proposed an amendment to include a passage in the overhaul law: ‘to social, ethnic, cultural and educational diversity, to fight against discrimination but also to educational and territorial continuity’.<sup>112</sup> The amendment was not adopted, because the word ‘ethnic’ poses a problem.

Both the government and the commission had an unfavourable opinion on the amendment. The word ‘ethnic’, according to Yves Durand, is ‘contradictory with our conception of a one and indivisible Republic which does not recognize ethnicities’.<sup>113</sup> Durand also argues that ‘The very term of ethnicity in a law of the Republic poses the problem of the recognition of the ethnic groups, including to fight them’.<sup>114</sup> Malek Boutih understands this problem but highlights that the amendment and wording is

precisely intended to invoke a problem that can never be. Social diversity has nothing to do with the problem I am raising, in particular the ghettoization of children in certain districts of France. [The] School of the Republic must rediscover the functions . . . of making little French people, children who feel French. What in my eyes is unconstitutional is to tolerate ghettoization and discrimination by continuing to hide behind the social mix which in no way explains them.<sup>115</sup>

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<sup>111</sup> Assemblée Nationale, “2e séance du mardi 12 mars 2013”, 2643. Jacques Bompard, ‘Ainsi, à Bollène, on trouve des classes composées à 100 % d’enfants issus de l’immigration. Comment voulez-vous que ces enfants apprennent correctement le français et s’intègrent dans notre société?’

<sup>112</sup> Assemblée Nationale, “Session Ordinaire de 2012-2013: 3e séance du jeudi 14 mars 2013”, *Journal Officiel de la République Française*, N. 31 [3] (2013), p. 2868. Sylvie Pichot, ‘d’ajouter « à la mixité sociale, ethnique, culturelle et scolaire, à la lutte contre les discriminations mais aussi à la continuité éducative et territoriale. »’

<sup>113</sup> Assemblée Nationale, “3e séance du jeudi 14 mars 2013”, 2869. Yves Durand, ‘La notion d’ethnie, par exemple, me semble totalement contradictoire avec notre conception d’une République une et indivisible qui ne reconnaît pas les ethnies’.

<sup>114</sup> *Ibidem*, 2869. Yves Durand, ‘Mais le terme même d’ethnie dans une loi de la République pose le problème de la reconnaissance de ces ethnies, y compris pour les combattre’.

<sup>115</sup> *Ibidem*, 2869. ‘cet amendement a justement vocation à évoquer un problème qui ne peut jamais l’être. La mixité sociale n’a rien à voir avec les problèmes que je soulève, en particulier celui de la ghettoisation des enfants de certains quartiers de France . . . l’école de la République doit retrouver la fonction qui est la sienne de fabriquer de petits Français, des enfants qui se sentent Français. Ce qui à mes yeux est anticonstitutionnel, c’est tolérer la ghettoisation et la discrimination en continuant à se cacher derrière la mixité sociale qui ne les explique en aucun cas’.



Even more, according to Boutih, is that an earlier amendment on allowing regional French languages in school was deemed favourable by the government. According to them, these languages ‘far from dividing the national community, these languages enriches it’.<sup>116</sup> In contrast, this subject of ethnicity is ‘the victim of racism and blindness to the point that we refuse to address it’.<sup>117</sup> Boutih has pointed out what was shown earlier: politicians use reports of PISA to highlight the inequalities within the educational system, but fail to address other findings of those reports, such as the fact that social and ethnic status play a role within the educational system.

The reluctance of the government and commission to discuss the ethnic root causes of the problems faced by many migrant pupils are characteristic of the French core ideology of Republican Universalism, which triumphed after the French revolution.<sup>118</sup> The idea emerged of the French nation as indivisible, meaning that the interest of the nation is above individual or group interests.<sup>119</sup> It insists on the sameness of individuals and sees this as the basis for equality.<sup>120</sup> Already after the French Revolution, however, some groups did not belong to this nation, precisely because they were seen as different.<sup>121</sup> But recognizing these differences would go against the Republican Universalist belief. Jews, women, homosexuals and immigrants had a difficult time in acquiring recognition for their position, and achieve equal access to economic, civil, political and social rights.<sup>122</sup> Ideas of the un-assimilability of certain groups have not vanished.<sup>123</sup> Child refugees are at the crossroad of this position: their child status makes them fit for assimilation (by education from an early age), but at the same time, their foreign status makes things complicated.<sup>124</sup> And as can be seen in the debates, the problems faced by them as a result of their foreign status are not recognized, because politicians do not want to recognize ethnicity-specific problems, as that would divide their country.

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<sup>116</sup> Ibidem, 2869. Malek Boutih, ‘loin de diviser la communauté nationale, l’enrichit’.

<sup>117</sup> Ibidem. Malek boutih, ‘Par contraste, ce sujet est victime d’une forme d’ostracisme et d’aveuglement au point qu’on refuse de l’aborder’.

<sup>118</sup> Joan W. Scott, *The Politics of the Veil* (Princeton: Princeton University Press, 2007), 12.

<sup>119</sup> Scott, *Politics of the Veil*, 12-13; Jacques Barou, “Integration of immigrants in France: a historical perspective,” *Global studies in Culture and Power* 21 (2014): 6, 4; Abigail Taylor, “‘Crimes of solidarity’: France’s Contemporary crisis of hospitality”, in *Making Strangers: outsiders, Aliens and Foreigners*, ed. Abbes Maazaoui (Delaware: Vernon Press, 2018) 46.

<sup>120</sup> Scott, *The Politics of the Veil*, 12.

<sup>121</sup> Ibidem, 12-13.

<sup>122</sup> Ibidem, 13-14; Taylor, “Crimes of Solidarity”, 47.

<sup>123</sup> Barou, “Integration of immigrants in France”, 8.

<sup>124</sup> Ibidem, 7.

Boutih, along with very few others, tried to go against this Republican Universalist belief and elevate the debate to include special attention to those who need it most, such as child refugees. The ‘purpose of the amendment is precisely to be able to speak for the first time about a very real problem. It seems to me, to be the first to send a signal by opening this debate instead of making it a taboo’.<sup>125</sup> But a taboo it remained. It was not until 2016 that education was again talked about in a large debate. And once again, migrant children were given little attention. Ruddy Salles (Democrat) was the only one to point to migrant children.<sup>126</sup> The rest, including the Minister of Education, referred once again to children from ‘disadvantaged social origins’.<sup>127</sup> Even though the new debates took place at the height of the migrant crisis and discussed ‘public policies in favour of social diversity’, child refugees or migrants played no role. The belief in the indivisibility of the country has apparently led to less specialized debates. It is possible that no specialized debates on the education of child refugees were held after 2013 because French politicians simply preferred to talk about education for all.<sup>128</sup>

Republican Universalism also explains other aspects of the debate. Politicians of both the Republican and Socialist parties, for instance, argued not in the interest of the child, but of the nation. This argument was used more frequently because it fits better in the Republican ideals. Republican Universalism prescribes that individual and group interest should not be above the interest of the nation, which is why many laws in France are promoted to be in the interest of the whole nation. Marriage for same-sex couples in France, for example, was only acquired after the law was called ‘marriage for all’.<sup>129</sup> Vincent Peillon (Minister for Education, Socialist Party) declared that ‘the interest of the school is in the best interest of the nation.’<sup>130</sup> Thus, in justifying policy reforms, he uses not the best interest of the child, but of the schools and the nation. Later he repeats this message by declaring that rectors and teachers will agree with the bill because ‘it is in the best interest of the country’, once again not of the child in

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<sup>125</sup> Assemblée Nationale, “3e séance du jeudi 14 mars 2013”, Malek Boutih, ‘Il serait tout à l’honneur de ce Parlement, me semble-t-il, d’être le premier à envoyer un signal en ouvrant ce débat au lieu d’en faire un tabou’.

<sup>126</sup> Assemblée Nationale, “Session Ordinaire de 2015-2016: 2e séance du mardi 12 janvier 2016”, *Journal Officiel de la République Française*, N. 2 [2] (2016) p. 83.

<sup>127</sup> Assemblée Nationale, “2e séance du mardi 12 janvier 2016”, 87. Najat Vallaud-Belkacem, ‘collégiens d’origine sociale défavorisée’.

<sup>128</sup> Taylor, “Crimes of Solidarity”, 48.

<sup>129</sup> *Ibidem*, 48.

<sup>130</sup> Assemblée Nationale, “Séance du lundi 3 juin 2013”, 5923. Vincent Peillon, ‘L’intérêt de l’école est l’intérêt supérieur de la nation’.

general.<sup>131</sup> Patrick Hetzel (Republican Party) similarly states that ‘the education of young people is a crucial issue and indeed serves special attention because it is in the best interest of the nation’.<sup>132</sup>

Healthcare: ‘at the expense of the French taxpayer’

Healthcare in France for migrants has deteriorated over the years.<sup>133</sup> According to the CRC, there can be no differences in access to healthcare and the quality of it for national and migrant children. France nevertheless has a dual system of healthcare. National and unattended child refugees get healthcare from the Universal Health Coverage (CMU). Migrant children with their parents in an irregular situation (without papers), however, use the State Medical Aid (AME).<sup>134</sup> In theory, they get the same type of treatment, but the practice proves different. Unaccompanied minors, for instance, face barriers in search of healthcare treatment. Even though they have the right to healthcare before their age is assessed, this right is often withheld from them if they are ‘questionable cases’. In this case, their age must be confirmed first.<sup>135</sup> AME is often debated, seen by some as illegitimate, too generous and vulnerable to fraud. As migration increased over the years, and budget strains added to the friction, numerous attempts were made to limit the access of migrants to AME.<sup>136</sup>

On 19 July 2012, the finance bill was amended by the General Assembly. One of the provisions the parliament sought to change, was the requirement of a stamp fee for irregular migrants to have AME. Indeed, in 2011 it was decided that beneficiaries had to pay 30 euros for their healthcare. Similar to the education debates, the Socialists attempted to reverse Republican policies. Guillaume Larrivé (Republican Party) called the attempted repeal ‘a real attack on national solidarity. We cannot . . . ask for massive efforts from our compatriots and offer total free health care to illegal immigrants’.<sup>137</sup> The majority, however, welcomed the

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<sup>131</sup> Assemblée Nationale, “Session Ordinaire de 2012-2013: 2e séance du lundi 3 juin 2013”, *Journal Officiel de la République Française*, N. 68 [2] (2013), p. 5986. Vincent Peillon, ‘ont favorables à cette intelligence parce qu’elle est dans l’intérêt du pays’.

<sup>132</sup> Assemblée Nationale, “Séances du 11 mars 2013”, 2546. Patrick Hetzel, ‘l’éducation de nos jeunes est une question cruciale et mérite effectivement une attention toute particulière, car il en va de l’intérêt supérieur de la nation.’

<sup>133</sup> Jean-Marie André and Fabienne Azzedine, “Access to healthcare for undocumented migrants in France: a critical examination of State Medical Assistance” *Public Health Reviews* 37 (2016): 5, 2.

<sup>134</sup> European Agency for Fundamental Rights (FRA), “Migrants in an irregular situation: access to healthcare in 10 European Union Member States” (Luxembourg, 2011), 17.

<sup>135</sup> Medecins Sans Frontières, “Les Mineurs non-accompagnés, symbole d’une politique maltraite” (Paris, 2019), 26.

<sup>136</sup> André and Azzedine, “Access to healthcare”, 6.

<sup>137</sup> Assemblée Nationale, “Session Extraordinaire de 2011-2012: 3e Séance du jeudi 19 juillet 2012”, *Journal de la République Française*, N. 42 [3], (2012) p. 2315. Guillaume Larrivé, ‘c’est une véritable atteinte à la solidarité

reversal of the fee. Christian Paul (Socialist Party) ridiculed the republican belief that migrants come to France for ‘medical tourism’.<sup>138</sup> Marie George-Bufferet (Communist Party) also agrees that no recipient of aid comes to France for medical tourism ‘at the expense of the French taxpayer’, which is what the Republicans claimed they do.<sup>139</sup> These economic arguments of Republicans are commonplace for West-European states, which speak of those who are an economic burden on the national community.<sup>140</sup> This argument will therefore return in the case of Germany.

Separate from economic arguments, Republicans were also accused of betraying core values such as equality by trying to introduce stamp duties. According to Socialists, equality should be the root ideal of the Republican party. However, from the start of the emergence of the Republican ideals, some groups could not claim entitlement to equal rights.<sup>141</sup> Republicans have historically even used Republican values to argue against immigration.<sup>142</sup> The contradiction of Republican values is therefore seen as inherent to Republicanism. The Socialists would be correct, however, to conclude that the restrictive position on immigration has increased over the past few decades. During the 1980s, an influx of African immigrants made Jean-Marie Le Pen a popular politician with his Front National (FN). Other politicians began to play on fears to get votes. Until 1995, xenophobic fears and instincts led to further polarization and competition with the FN.<sup>143</sup> Around this time, a new Right-wing government began to roll back the rights of immigrants, going after civil rights (like healthcare) and political rights (such as citizenship).<sup>144</sup> All actions were at odds with republican principles, but at the same time, it is in the roots of the Republicans to do so, and with competition on the far-Right winning votes, it had to adopt a more conservative stance in order to regain or keep, a strong electoral base.<sup>145</sup>

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nationale. On ne peut pas . . . demander des efforts massifs à nos compatriotes et offrir aux clandestins la gratuité totale des soins.’

<sup>138</sup> Assemblée Nationale, “3e Séance du jeudi 19 juillet 2012”, 2318. Christian Paul, ‘On a même entendu parler en commission d’un risque de tourisme sanitaire!’

<sup>139</sup> Assemblée Nationale, “Session Ordinaire de 2012-2013: Séances du 11 octobre 2012”, *Journal Officiel de la République Française*, N. 58 (2012) p. 3583. Marie-George Buffet, ‘Ne vous en déplaise, les bénéficiaires de l’aide médicale ne viennent pas sur notre territoire pour faire du tourisme médical aux frais du contribuable français’.

<sup>140</sup> May, “Ideological justifications for restrictive immigration policies”, 300.

<sup>141</sup> Ibidem, 47; Scott, *The Politics of the Veil*, 12.

<sup>142</sup> James Hollifield, “Immigration, Integration, and the Republican Model in France”, *American Political Science Association 2010 Annual Meeting Paper* (2010), 42.

<sup>143</sup> Hollifield, “Immigration”, 43; Kimberly Morgan, “Gender, right-wing populism, and immigrant integration policies in France, 1989-2012,” *West European Politics* 40 (2017): 4, 901.

<sup>144</sup> Hollifield, “immigration”, 44.

<sup>145</sup> Ibidem; Morgan, “Gender, right-wing populism”, 901.

The Socialists argued that Republicans were not acting with the best interest as a primary consideration. Mattieu Hanotin (Socialist Party), for instance, said that the position to keep the stamp duty is ideologically motivated. ‘What was the original purpose of this stamp duty?’, Hanotin asked. ‘It could not be about money. The state would receive “only” 3 to 6 million euros. In my opinion,’ Hanotin said, ‘this stamp duty had only one goal: the stigmatization of foreigners’.<sup>146</sup> The debate ended with a vote, and the stamp duty was abolished.<sup>147</sup> The Republicans kept up their attempts to reintroduce the stamp and the Socialists continued to point out that the Republicans were acting out of ideology, not for the best interest of the migrants and children. On 11 October 2012, Republicans proposed the reintroduction of the stamp for AME, this time for 50 euros.<sup>148</sup> The Minister of Social Affairs and Health Marisol Touraine (Socialist Party) demonstrated this: ‘your only objective is to mark the difference between the Right and Left!’<sup>149</sup> Marie-George Buffet (Communist Party) adds that the Right has ‘made it an obsession to stigmatize and deprive the rights of the most fragile in France’.<sup>150</sup> According to Christophe Sirugue (Socialist Party), the timing of the debate, a priority debate, also proves that it is purely ideological. The expense for AME ‘only represents 0,2% of the 2011 general budget expenditure, but in the eyes of the UMP, this obviously deserved a priority debate!’<sup>151</sup>

Dominique Tian (Republican Party), rapporteur of the Social Affairs Committee returned to economic arguments to defend the reintroduction of the stamp. He said that the Left ‘wishes to allow foreigners who entered irregularly on the national territory free access to the most expansive care . . . all this without paying anything’.<sup>152</sup> According to him, the fee ‘is

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<sup>146</sup> Assemblée Nationale, “3e Séance du jeudi 19 juillet 2012”, 2319. Mattieu Hanotin, ‘Quel était l’objectif initial de ce droit de timbre? S’agissait-il de faire rentrer de l’argent dans les caisses de l’État? Les chiffres ont été répétés : ce dispositif rapporte, selon les années, de 3 à 6 millions d’euros. Ce n’est manifestement pas cela qui modifiera en profondeur l’équilibre financier du budget.’; ‘À mon avis, ce droit de timbre n’avait qu’un seul but : la stigmatisation des étrangers.’

<sup>147</sup> Ibidem, 2329.

<sup>148</sup> Assemblée Nationale, “Séances du 11 octobre 2012”, 3577.

<sup>149</sup> Ibidem, 3576. Marisol Touraine, ‘Vous l’avez dit, votre seul objectif, c’est marquer la différence entre la droite et la gauche!’

<sup>150</sup> Ibidem, 3582. Marie George-Buffet, ‘Cela tourne même à l’obsession, quand il s’agit de stigmatiser et de priver de droits des catégories bien ciblées, les plus fragiles, parmi les hommes et les femmes qui vivent sur notre territoire’.

<sup>151</sup> Ibidem, 3584. Christophe Sirugue, ‘Cependant, même avec 603 millions d’euros, elle ne représente que 0,2 % des dépenses du budget général de 2011 – mais, aux yeux de l’UMP, cela méritait visiblement un débat prioritaire!’

<sup>152</sup> Ibidem, 3575. Dominique Tian, ‘la gauche souhaite permettre aux étrangers entrés irrégulièrement sur le territoire national d’accéder gratuitement aux soins les plus coûteux . . . tout cela sans rien déboursier!’

nothing compared to the thousands they paid to get to France.<sup>153</sup> The Republicans, on many occasions in their speeches, strike a contrast between the migrants and the French population. Tian, for instance, differentiated migrants from the French by claiming that illegal migrants have more rights than a Frenchman.<sup>154</sup> Denys Robilliard (Socialist) says that the constitution demands that the nation should guarantee to all, especially children, the protection of health.<sup>155</sup> To which Guy Geoffroy (Republican Party) reacts that ‘the paragraph is understood for “the nation” and those who compose it.’<sup>156</sup> This is a selective interpretation of the constitution. Human rights treaties, the French constitution and the CRC demand that no matter their status, the host country bears the responsibility for the health of its inhabitants.

The bill of the Republicans was not even voted on, since all the articles were removed by amendments made during the debate. The stamp and new obstacles were therefore not implemented.<sup>157</sup> During the debate, there was a total absence of attention for migrant children. In this case, however, it could be a good sign. It was Xavier Bertrand (Republican) who pointed out that the stamp duty requested by the UMP is not for children: ‘In no case and at any time has the slightest restriction on access, for minors, to any support whatsoever, been provided for.’<sup>158</sup> The introduced bill also had no provisions for children, it only concerned adults.

This is, however, because past attempts to impose restrictions on children’s access to health were deemed illegal by the Council of State, and not necessarily from an intrinsic motivation to respect the CRC. Laws of 2002 and 2003, aimed to restrict access to AME even for children, were seen as a violation of the CRC by judges.<sup>159</sup> The Council of State in 2006 declared that any restriction for children regarding AME is illegitimate. Children, therefore, do not have to prove they have lived in France for three months or pay a fee as their adult counterparts do.<sup>160</sup>

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<sup>153</sup> Ibidem, 3576. Dominique Tian, ‘Cela vous paraît trop, alors que très souvent ces personnes ont payé des milliers d’euros pour venir illégalement sur le territoire national’.

<sup>154</sup> Ibidem, 3592. Dominique Tian, ‘puisque’en rentrant illégalement sur le territoire national, vous avez plus de droits qu’un Français, ce qui n’est pas tout à fait normal.’

<sup>155</sup> Ibidem, 3586.’

<sup>156</sup> Ibidem, 3586. Guy Geoffroy, ‘L’alinéa s’entend pour « la nation » et ceux qui la composent!’

<sup>157</sup> Ibidem, 3602.

<sup>158</sup> Assemblée Nationale, “3e Séance du jeudi 19 juillet 2012”, 2319. Xavier Bertrand, ‘En aucun cas et à aucun moment la moindre restriction à l’accès, pour les mineurs, à quelque prise en charge que ce soit, n’a été prévue’.

<sup>159</sup> Christel Cournil, “Precariousness in receiving state medical aid and difficulties in accessing healthcare for foreigners in an irregular situation”, in *Access to Healthcare*, ed. Isabelle Poirot-Mazères (PDF e-book 2018), 157.

<sup>160</sup> Cournil, “precariousness in receiving state medical aid”, 156.

On the one hand, the fact that children's rights are not discussed is a victory for the rights of the child, and especially migrant children in the case of AME. They were spared from the stigmatizing comments made by the UMP and are protected from continued efforts to have their access to healthcare restricted. On the other hand, however, the rights of child migrants concerning health have almost become taboo. It is perhaps assumed, because of the ruling of 2006, that child refugees are granted the same provisions as nationals. Existing problems and inequalities for child migrants are not discussed. For instance, child refugees in practice still face significant administrative hurdles to access health care provisions.<sup>161</sup> AME is also more complicated than CMU.<sup>162</sup> In practice, migrants often do not know their child has a right to AME. And children still need to prove their identity to get AME, which is difficult for undocumented children.<sup>163</sup> Recommendations of the CRC in 2016 also indicate that undocumented children continue to experience difficulties to exercise their right to health services.<sup>164</sup>

These problems and shortcomings, known or not by the National Assembly, are not discussed after the AME debate of 2012. In fact, until 2016, large debates on health were held. Most notable was the bill on 'equal access to healthcare across the territory'.<sup>165</sup> During the many debates on this bill, no mention of children, refugees, asylum seekers or migrants were made. The problems of child refugees are thus not discussed when dealing with national equality. There is thus less acknowledgement of the problems faced by child migrants who seek medical aid, especially compared to the debates on education.

### Conclusion

The CRC did have some victories in France. Policies that were clearly against the best interest of the child, such as the stamp duty for health and the suspension of family allowances, were not implemented for children. But the CRC also demands that the best interest of the child is taken as a primary consideration and their special needs are acknowledged and respected. This, as has been shown, does not happen in France. The best interest of the child is not necessarily a primary consideration and other interests still play a larger role. More importantly, the special

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<sup>161</sup> FRA, "Migrants in an irregular situation", 42.

<sup>162</sup> Ibidem, 43.

<sup>163</sup> Ibidem, 43.

<sup>164</sup> Committee on the Rights of the Child, "Concluding Observations on the fifth periodic report of France", CRC/C/FRA/CO/5 29 January 2016, 14.

<sup>165</sup> Assemblée Nationale, "Session Ordinaire de 2016-2017: Séances du Jeudi 24 Novembre 2016", *Journal Officiel de la République Française*, N. 117 (2016), p. 7853.

needs of migrant children are not discussed, and the overall topic of migrants played no role in education and health debates.

Both in the case of healthcare and education, the Republicans argued with the Socialists. The differences between their viewpoints are clear as well: Socialists most often used the best interest principles whereas the Republicans have introduced and defended policies that were against the interest of the child. But even with the attention given to the best interest principle by the Socialists, the overall presence of the notion was limited. Moreover, some of the Socialists, even the Minister of Education himself, used other interests to defend their policies, such as that of the nation and the school. Similarly, there was little to no attention to child migrants in the debates, either because discussing the racial and ethnic aspects of the problem is taboo, or because it was assumed that there is no need to discuss the situation of children. Politicians thus failed to consider some of the most vulnerable groups. This prevented the Assembly from taking the adequate solutions as required by the CRC.

The French politicians preferred to ignore ethnic differences, talk in universal terms and promote policies in the interest of the nation. Economic arguments also played a significant role, especially in the case of healthcare. Republican Universalism as an ideology proves to have a strong power over other considerations and prevents the best interest of the child from being genuinely considered. The next chapter looks at Germany, where more attention was given to child refugees as the refugee influx increased. At the same time, German politicians had even less attention for the best interest of the child, and the CRC was only rarely mentioned in the German Bundestag when education and health care for refugees were discussed.



### Chapter 3: The rights of the child in Germany

In 2010, Germany retracted its reservation to the CRC which allowed them to differentiate between German and refugee children.<sup>166</sup> After the mostly symbolic move, the German Bundestag (elected federal parliament) felt that their laws were in full compliance with the CRC.<sup>167</sup> Therefore, little real change took place. On 5 December 2014, the Bundestag celebrated the 25<sup>th</sup> anniversary of the CRC. The opening statement was given by Susan Rüttrich of the Sozialdemokratische Partei Deutschland (Social Democratic Party of Germany), who made four wishes before her fellow politicians. Her third wish regarded child refugees. She hoped that, in the next twenty-five years, refugee children will ‘no longer be treated differently’, ‘get the medical care that every other child gets’, and ‘go to school and the day-care centre next door as normal’.<sup>168</sup> Those wishes would be repeated many times in the following years but were not granted.

The political standpoints of primarily the Centre-Right Christian Democratic Union/Social-Christian Party (CDU/CSU) can be explained by the political climate of the time. The summer of 2015 saw a ‘wave of refugees’ arrive in Germany, which meant an increase of 110,6% compared with 2014.<sup>169</sup> The decision to open the borders came from Chancellor Angela Merkel, and it was deemed ‘uncharacteristically abrupt and personal’.<sup>170</sup> It had multiple consequences for the German position on child refugee rights. First, it contributed to increased attention for refugees after 2014. The large influx led to more concern over how to logistically and financially support the new refugees. Secondly, it contributed to a more conservative stance on refugees. Internal and external pressures led to an alteration in viewpoints. The approval rating of Merkel dwindled from 70% to below 50%, and support for the CDU similarly shrunk.<sup>171</sup> The radical Right-wing party Alternative für Deutschland (AfD) [Alternative for Germany], benefitted from this trend, and a third of their support came from CDU defectors, of

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<sup>166</sup> Förderverein Pro Asyl, ‘Kinderrechte für Flüchtlingskinder ernst nehmen!’, 4.

<sup>167</sup> Heiko Kauffmann, ‘Ein Jahr nach der Rücknahme der Vorbehalte: Jetzt erst Recht(e)! Für Flüchtlingskinder’, in *Kindeswohl und Kinderrechte für minderjährige Flüchtlinge und Migranten*, ed. Hans-Dieter Walker, commissioned by Deutsches Rotes Kreuz & Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Berlin, 2012), 8.

<sup>168</sup> Deutscher Bundestag, ‘18. Wahlperiode 74. Sitzung: Berlin, Freitag, den 5. Dezember 2014’, P. 7107. Susann Rüttrich: ‘werden diese Kinder nicht mehr anders behandelt’; ‘Sie erhalten die medizinische Versorgung, die jedes andere Kind auch bekommt’; ‘Flüchtlingskinder gehen dann ganz normal in die Schule und in die Kita nebenan’.

<sup>169</sup> Luise Goldi Schöneberg, ‘Mass Migration: German Political Parties’ responses to the refugee question,’ *Disruptive Politics* 2 (2019): 1, 72.

<sup>170</sup> Clay Clemens, ‘The CDU/CSU’s Ambivalent 2017 Campaign,’ *German Politics and Society* 127 (2018): 36 [2], 58.

<sup>171</sup> Clemens, ‘The CDU/CSU’s Ambivalent 2017 Campaign’, 58.

which 75% cited the refugee crisis as the decisive reason.<sup>172</sup> Even though almost every party lost supporters who moved to the AfD, it is likely that for the CDU it led to a reconsideration of some policy standpoints.<sup>173</sup> Internal policy disputes also contributed to more conservative opinions. For example, Jens Spahn of the CDU was asked more than anyone within the party, including Merkel herself, to campaign in their districts. Spahn, different from Merkel, insisted that refugees fostered anti-Semitism, homophobia, chauvinism and violence.<sup>174</sup>

The influx of refugees led to more approval for Right-wing populist values in the country.<sup>175</sup> Germany was criticised for using policies that intend to scare refugees away and children fell victim to these policies as well. Social benefits, for instance, were given to child refugees not as money, but as vouchers. The use of these was stimulated by the Minister of Domestic Affairs, Hans-Peter Friedrich, even though they ‘scare’ refugees from requesting social welfare.<sup>176</sup> Also, making use of the right to financial support can be a reason for being deported, which scares refugees away from using it.<sup>177</sup> Again, this chapter will not rewrite the history of migration in Germany but look at it through the analytical lens of the best interest of children.

#### Education: ‘we are working on it’

Organisations like UNICEF and Pro Asyl argued that child refugees still had unequal access to education in Germany. Various Bundesländer (states within the German federation) did not make school participation mandatory for refugee children.<sup>178</sup> Also, certain laws made it difficult to access education in the first place. Some schools did not have enough space to take up refugee children due to a lack of financial means. Child refugees were also segregated from other students on school or class level and had to deal with teachers whose expectations of their refugee students are too low.<sup>179</sup> Sometimes, access to linguistic training was not free or unfunded by social services. The housing of refugees was often not close to a school and child

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<sup>172</sup> Ibidem, 62.

<sup>173</sup> Matthias Dilling, “Two of the same kind? The rise of the AfD and its Implications for the CDU/CSU,” *German Politics and Society* 36 (2018): 1, 19-20.

<sup>174</sup> Ibidem, 69.

<sup>175</sup> Aleksanda Koluviija, “Rethinking Refugee Integration: The Importance of Core Values for Cultural Debate in Germany”, in *Transnational migration and border making*, ed. Robert Sata and Jochen Roose (Edinburgh: Edingurgh University Press, 2020), 84.

<sup>176</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, ‘Kinder Zweiter Klasse: Bericht zur Lebenssituationen junger Flüchtlinge in Deutschland an die Vereinten Nationen zum Übereinkommen über die Rechte des Kindes’ (Berlin, 2013), 12.

<sup>177</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, “Kinder Zweiter Klasse”, 12.

<sup>178</sup> Ibidem, 11.

<sup>179</sup> Ibidem, 25-26.

refugees dropped out of school disproportionately more than national children. Lastly, the fear of deportation highly influenced school results.<sup>180</sup>

Attention for migration-related topics started early on and increased as the number of incoming refugees grew.<sup>181</sup> Over time, more specialised debates were held, focussing more on refugees.<sup>182</sup> During these debates, education reports were discussed.<sup>183</sup> This resulted in attention for child refugees, and politicians acknowledged various policies which are not in the best interest of the refugee children. They did not, however, use the CRC or the best interest principle to argue that it is not. First and foremost, politicians like Ekin Deligöz of the Bündnis 90/Die Grünen (Alliance 90/The Greens), Rosemarie Hein of Die Linke (The Left Party) and Daniela De Ridder (Social Democrats) all argued that the social background of the child influences their educational success.<sup>184</sup> Others, like Reinhard Brandl (CDU/CSU), said that

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<sup>180</sup> Ibidem.

<sup>181</sup> Deutscher Bundestag, "17. Wahlperiode, 87. Sitzung: Berlin, Donnerstag den 27. Januar 2011", 9712, 'bildungsbericht, bildungssystem gerechter und besser machen', Deutscher Bundestag, "17. Wahlperiode, 120. Sitzung: Berlin, Donnerstag den 7. Juli 2011", 14096, 'alle kinder und jugendliche im leistungsbezug des asylbewerberleistungsgesetzes in das bildungs und theilhabepaket einbeziehen'; Deutscher Bundestag, "17. Wahlperiode, 133. Sitzung: Berlin, Donnerstag den 20. Oktober 2011", 15757, 'alle Kinder und Jugendliche im Leistungsbezug des Asylbewerberleistungsgesetzes in das Bildungs und Theilhabepaket einbeziehen'; Deutscher Bundestag, "17. Wahlperiode, 126. Sitzung: Berlin, Mittwoch, den 21. September 2011", 14870, 'faire teilhabechancen von anfang an frühkindliche betreuung und bildung fördern'.

<sup>182</sup> Deutscher Bundestag, "17. Wahlperiode, 162. Sitzung: Berlin, Donnerstag, den 1. März 2012", 19339, 'Niemanden abschreiben – Analphabetismus wirksam entgegnetreten, Grundbildung für alle sichern'; Deutscher Bundestag, "17. Wahlperiode, 222. Sitzung: Berlin, Donnerstag den 21. Februar 2013", 27639, 'Lehrkräfte von Integrationskursen stärken und den Kurszugang erweitern', Deutscher Bundestag, "17. Wahlperiode, 237. Sitzung: Berlin, Donnerstag den 25. April 2013", 29903, 'Bildung und Teilhabe für alle Kinder, Jugendliche und Junge Erwachsene in Deutschland sicherstellen – Das Bildungs- und Teilhabepaket reformieren'; Deutscher Bundestag, "17. Wahlperiode, 240. Sitzung: Berlin, den 16. Mai 2013", 30145, 'Projekt Zukunft – Deutschland 2020 – Eine moderne Integrationspolitik für mehr Chancengleichheit'.

<sup>183</sup> Deutscher Bundestag, "18. Wahlperiode, 8. Sitzung: Berlin, Donnerstag den 16. Januar 2014", 395, 'zur OECD-Studie PISA 2012: Schulische Bildung in Deutschland besser und gerechter'; Deutscher Bundestag, "18. Wahlperiode, 80. Sitzung: Berlin, den 16. Januar 2015", 7619, 'Nationaler Bildungsbericht – Bildung in Deutschland 2014'; Deutscher Bundestag, "18. Wahlperiode, 88. Sitzung: Berlin, den 26. Februar 2015", 8387, 'Bildung in Deutschland gemeinsam voran- bringen, Lehren aus dem nationalen Bildungsbericht 2014 ziehen, Chancen der Inklusion nutzen'; Deutscher Bundestag, "18. Wahlperiode, 106. Sitzung: Berlin, den 21. Mai 2015", 10079, 'Prinzipien des deutschen Bildungswesens stärken – Gleichwertigkeit und Durchlässigkeit der beruflichen und der akademischen Bildung durchsetzen' & 'Berufsbildungsbericht 2015'; Deutscher Bundestag, "18. Wahlperiode, 125. Sitzung: Berlin, Freitag, den 2. Oktober 2015", 12441, 'Bericht der Bundesregierung zur Auswärtigen Kultur- und Bildungspolitik'; Deutscher Bundestag, "18. Wahlperiode, 196. Sitzung: Berlin, Donnerstag, den 20. Oktober 2016", 19533, 'Bundesprogramm „Kultur macht stark. Bündnisse für Bildung“ weiterentwickeln und seine Fortführung jetzt vorbereiten'; Deutscher Bundestag, "18. Wahlperiode, 200. Sitzung: Berlin, Freitag, den 11 November 2016", 20004, 'Nationaler Bildungsbericht – Bildung in Deutschland 2016 und Stellungnahme der Bundesregierung'.

<sup>184</sup> Deutscher Bundestag, "17. Wahlperiode, 240. Sitzung: Berlin, Donnerstag den 16. Mai 2013", 30153, Ekin Deligöz: 'In diesem Land gibt es zu viele Bildungsverlierer; der Bildungserfolg in diesem Land hängt vom Einkommen des Elternhauses ab. . . Gerade Jugendliche mit Migrationshintergrund bleiben auf der Strecke'; Deutscher Bundestag, "18. Wahlperiode, 8. Sitzung: Berlin, Donnerstag, den 16. Januar 2014", 397, Rosemarie Hein: 'die Herkunft noch immer einen viel zu großen Einfluss auf den Bildungsabschluss und die erreichten Lernergebnisse hat'; Ibidem, 408, Daniela De Ridder: 'Es ist unbestritten, dass der familiäre Hintergrund eines

‘educational success is still too closely linked to social origin . . . Children with a migration background are particularly often affected’.<sup>185</sup> Dagmar Ziegler (Social Democrats) similarly stated that ‘Social selectivity . . . is and will remain the sad trademark of German educational policy’ and that ‘parents pass on their own chances in life to their children’.<sup>186</sup> Lastly, Gregor Gysi (The Left) called the German education system ‘Old-fashioned and antiquated, chronically underfunded and clearly differentiates educational opportunities according to social origin’.<sup>187</sup>

But other problems were also acknowledged such as the inequality and even segregation between students within the same school. Markus Kurth (The Greens) said that ‘all refugee children who are regularly going to kindergarten or school are stigmatized and treated differently than other children in terms of access to education and schoolbooks’.<sup>188</sup> Rosemarie Hein (The Left) pointed to the segregation experienced by refugee children: in ‘Magdeburg, the admission of children from refugee and immigrant families has so far been concentrated to a few schools. That will no longer work. They will have to be admitted to all schools.’<sup>189</sup> Also, according to Gabrielle Hiller-Ohm (Social Democrats), they are treated differently from German children in the sense that they receive

no warm lunch in daycare and school, no financial support for participation in sport and culture, no learning support, no cost reimbursement for school transport, no money for class trips and excursions, no 100 euros per year for school supplies. Only after four long years do refugees receive benefits analogous to social assistance.<sup>190</sup>

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Kindes einen immensen Einfluss auf dessen Bildungserfolg . . . betrifft die Schülerinnen und Schüler mit Migrationshintergrund’.

<sup>185</sup> Deutscher Bundestag, “17. Wahlperiode, 87. Sitzung: Berlin, Donnerstag den 27. Januar 2011”, 9731, Reinhard Brandl: ‘Der Bildungserfolg ist leider immer noch zu eng mit der sozialen Herkunft verknüpft . . . Besonders häufig sind Kinder mit Migrationshintergrund davon betroffen’.

<sup>186</sup> Deutscher Bundestag, “17. Wahlperiode, 223. Sitzung: Berlin, Freitag den 22. Februar 2013”, 27797, Dagmar Ziegler: ‘Soziale Selektivität . . . ist und bleibt . . . jedenfalls bisher das traurige Markenzeichen deutscher Bildungspolitik. Eltern geben die eigenen Lebenschancen an ihre Kinder weiter’.

<sup>187</sup> Ibidem, 27802, Gregor Gysi (Die Linke) 2013-5-16: ‘altmodisch und antiquiert, chronisch unterfinanziert und unterscheidet die Bildungschancen ganz klar nach sozialer Herkunft’.

<sup>188</sup> Deutscher Bundestag, “17. Wahlperiode, 133. Sitzung: Berlin, Donnerstag, den 20. Oktober 2011”, 15761, Markus Kurth: ‘alle Flüchtlingskinder, die regulär im Kindergarten oder in der Schule eingebunden sind, bei einer Sonderbehandlung gegenüber anderen Kindern, was Bildungszugänge und Schulbücher angeht’.

<sup>189</sup> Deutscher Bundestag, “18. Wahlperiode, 121. Sitzung: Berlin, Donnerstag, den 10. September 2015”, 11740, Rosemarie Hein: ‘Magdeburg wurde die Aufnahme von Kindern aus Flüchtlings- und Zuwandererfamilien bisher auf wenige Schulen konzentriert. Das wird nun nicht mehr gehen. Sie werden an allen Schulen aufgenommen werden müssen’.

<sup>190</sup> Deutscher Bundestag, “17. Wahlperiode, 133. Sitzung: Berlin, Donnerstag den 20. Oktober 2011”, 15759, Gabriele Hiller Ohm: ‘kein warmes Mittagessen in Kita und Schule, keine finanzielle Unterstützung bei Teilhabe an Sport und Kultur, keine Lernförderung, keine Kostenerstattung für Schülerbeförderung, kein Geld für Klassenfahrten und Ausflüge, keine 100 Euro jährlich für Schulbedarf. Erst nach vier langen Jahren erhalten Flüchtlinge Leistungen analog zur Sozialhilfe’.

Problems were acknowledged but when it came to providing solutions, the CDU and SPD defended themselves by arguing that a lot has already been done. In 2016, Rosemarie Hein (The Left) summarized that these problems were still not solved and asked, ‘Why do we not actually succeed in giving people who have immigrated to Germany the same educational opportunities that they would have had if they were born and raised here or if they had German parents?’<sup>191</sup> The Minister of Education and Research Johanna Wanka reacted to this by saying: ‘when the rhetorical question is: “Why can't we do it?” I can only say: We are working on it’.<sup>192</sup> The coalition indeed preferred to look at what has been done already, instead of focusing on what should still be done to improve the situation for refugee children. This focus could be used to justify past policies and frame them as successful.

The CDU/CSU and their coalition partners were more politically motivated and did not keep the best interest of the child as a primary concern. Paul Lehrieder of the CDU/CSU, for instance, argued that the problem talked about by the opposition ‘has long been recognized and . . . solutions have already been worked out’.<sup>193</sup> Dorothee Bär (CDU/CSU) found it shameful that ‘we negate all the successes that we have achieved in recent years’.<sup>194</sup> ‘What the opposition wants to represent with their motions’ according to Sibylle Laurischk of the Free Democratic Party (FDP) ‘is that we have done nothing. The opposite is the case’.<sup>195</sup> Marcus Weinberg (CDU/CSU) similarly argued that ‘never before has a federal government invested so much in education and research . . . and never - this is a perception of those affected - has the integration sector been perceived as so positively’.<sup>196</sup> Michael Kretschmer, Marcus Weinberg and the Minister of Education and Research Johanna Wanka all claimed that ‘the relationship between

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<sup>191</sup> Deutscher Bundestag, “18. Wahlperiode, 200. Sitzung: Berlin, Freitag den 11. November 2016”, 20010, Rosemarie Hein: ‘Warum gelingt es uns eigentlich nicht, den Menschen, die nach Deutschland zugewandert sind, die gleichen Bildungschancen zu geben, die sie hätten, wenn sie hier geboren und aufgewachsen wären oder deutsche Eltern hätten?’

<sup>192</sup> Ibidem, 20014, Johanna Wanka: ‘Wenn hier also rhetorisch gefragt wird: „Warum schaffen wir das nicht?“, dann kann ich nur sagen: Wir arbeiten daran’.

<sup>193</sup> Deutscher Bundestag, “17. Wahlperiode, 133. Sitzung: Berlin, Donnerstag, den 20. Oktober 2011”, 15758, Paul Lehrieder: ‘dessen Problematik längst erkannt wurde und für den bereits Lösungen erarbeitet worden sind’.

<sup>194</sup> Deutscher Bundestag, “17. Wahlperiode, 240. Sitzung: Berlin, Donnerstag, den 16. Mai 2013”, 30147, Dorothee Bär: ‘Dennoch finde ich es schade, dass Sie hier die Chance vertan haben, dass Sie hier einfach nur laut waren und ganz bewusst und wider besseres Wissen die ganzen Erfolge, die wir in den letzten Jahren erzielt haben, hier auch noch negieren’.

<sup>195</sup> Ibidem, 30161, Sibylle Laurischk; ‘was die Opposition mit ihren Anträgen darstellen will, nämlich dass wir nichts getan hätten’.

<sup>196</sup> Ibidem, 30163, Marcus Weinberg: ‘Dann werden Sie feststellen: Noch nie hat eine Bundesregierung so viel in Bildung und Forschung investiert, noch nie waren die Ergebnisse im Bildungsbereich so gut wie heute, und noch nie – das ist eine Wahrnehmung der Betroffenen – wurde der Bereich Integration so positiv wahrgenommen’.

educational success and social origin has decreased significantly'.<sup>197</sup> Finally, Karamba Diaby (SPD) said to the opposition that 'many of your requests are well-meant, but we have already initiated many of them'.<sup>198</sup>

It was primarily for political gain that politicians of the CDU and SPD argued that they were already working on solutions. During this period, political support for the coalition dwindled due to Merkel's decisions to open the German borders. The external loss of support led to internal policy disputes. The Young Union of the CDU, for instance, demanded tighter limits on the dual citizenship of immigrants. The Chancellery Chief Altmaier demanded that the new election program included a firm upper limit on refugee numbers.<sup>199</sup>

But voters too needed to know where the limit was for the CDU. This explains why the argument that a lot is already done became commonplace in German debates. The argument first showed that the policies of the CDU were working and that needs were met. This could be said to reassure supporters who also became fearful of the discussion to admit a large influx of refugees. Secondly, it was to show their supporters that this was the limit of what Germany could do in terms of education for refugees. Seeing the competition of the AfD with their 'no refugees' policy standpoint, the CDU too had to indicate where they draw the limit to keep and regain support. In this debate, they drew a limit while simultaneously arguing that their past policies were successful. All in an attempt to keep or regain their voter base.

It was the opposition that reminded the coalition that a lot still must be done and that the reports they talked about contain many proposals to improve the education for refugees.<sup>200</sup>

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<sup>197</sup> Deutscher Bundestag, "18. Wahlperiode, 8. Sitzung: Berlin, Donnerstag den 16. Januar 2014", 406, Michael Kretschmer: 'Genauso positiv ist, dass der Zusammenhang von Bildungserfolg und sozialer Herkunft deutlich abgenommen hat'; Ibidem, 412, Marcus Weinberg: 'dass der Zusammenhang zwischen sozialer Herkunft und Kompetenz nicht mehr so stark ausgeprägt ist'; Ibidem, 401, Johanna Wanka: 'dieser Einfluss hat aber abgenommen'.

<sup>198</sup> Deutscher Bundestag, "18. Wahlperiode, 125. Sitzung: Berlin, Freitag, den 2. Oktober 2015", 12491, Karamba Diaby: 'viele Ihrer Forderungen sind gut gemeint, aber wir haben bereits viele davon auf den Weg gebracht'.

<sup>199</sup> Clemens, "The CDU/CSU's Ambivalent 2017 Campaign", 68.

<sup>200</sup> Deutscher Bundestag, "17. Wahlperiode, 223. Sitzung: Berlin, Freitag den 22. Februar 2013", 27800, Rosemarie Hein: 'Ich will mich aus Zeitgründen vor allem auf die Stellungnahme der Bundesregierung konzentrieren; denn darin soll suggeriert werden, es gehe voran. – Ja, es geht voran, aber es geht viel zu langsam voran'; Ibidem, 27802, Kai Gehring: 'Ja, es gibt positive Entwicklungen. Aber es gibt ein ganz zentrales Defizit . . . Unserem Land fehlt Bildungsgerechtigkeit'; Deutscher Bundestag, "18. Wahlperiode, 8. Sitzung: Berlin, Donnerstag den 16. Januar 2014", 396, Rosemarie Hein: 'Doch schauen wir einmal genauer hin: Gibt es denn tatsächlich Grund zum Jubeln? Ich finde das nicht.'; Ibidem, 399, Özcan Mutlu: 'Eine ganze Schülergeneration musste unser Schulsystem durchlaufen, damit manche, wie auch heute hier, endlich sagen können: Hurra, wir befinden uns über dem OECD-Durchschnitt! „Schulische Bildung in Deutschland besser und gerechter“, heißt es im Titel unseres gemeinsamen Tagesordnungspunktes. Besser? Vielleicht. Gerechter? Nein, keineswegs'; Ibidem, 404, Hubertus Heile: 'Das ist kein Grund, im Bereich der Bildungspolitik in Deutschland die rosarote Brille aufzusetzen'; Deutscher Bundestag, "18. Wahlperiode, 200. Sitzung: Berlin,

In no case, however, did they refer to the Rights of the Child to promote best interest policies. Instead, they referred to rights and duties in general. Gabrielle Hiller-Ohm (Social Democrats), for instance, stated that ‘all children in our country have the right to education’.<sup>201</sup> Nicole Gohlke (The Left) warned that it is dangerous to look ‘for groups to which these rights should not apply’.<sup>202</sup> She also said that ‘anyone who thinks like this and does politics like this has not understood human rights’.<sup>203</sup> Ralph Lenkert (The Left) declared that ‘the human right to education applies to all children . . . without exception and regardless of their residence status’.<sup>204</sup> Similarly, Özcan Mutlu (The Greens) said that ‘all young people who live here, who grow up in our country, have a right to a good education. It is, therefore, the duty of all of us to integrate all young people, including refugees, into our education system in the best possible way’.<sup>205</sup>

In cases where the CDU/CSU, but other parties too, agreed that child refugees and migrants should get adequate support and access to education, they motivated so by focussing on integration, and not the best interest of the child, or the Rights of the Child. As a result of the focus on integration, much attention is given to the development of language skills.<sup>206</sup> Xaver Jung (CDU/CSU) explained that politicians should

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Freitag den 11. November 2016”, 20009, Rosemarie Hein: ‘Es gibt auch in diesem Jahr sehr viel Grund zu kritischem Nachfragen; der Bericht enthält auch sehr viel Kritisches’.

<sup>201</sup> Deutscher Bundestag, “17. Wahlperiode, 237. Sitzung: Berlin, Freitag den 25. April 2013”, 29907, Gabriele Hiller-Ohm: ‘Alle Kinder in unserem Land haben ein Recht auf Bildung und Teilhabe am kulturellen und gesellschaftlichen Leben. Leider sieht die Realität viel zu oft anders aus’.

<sup>202</sup> Deutscher Bundestag, “18. Wahlperiode, 125. Sitzung: Berlin, Freitag, den 2. Oktober 2015”, 12490, Nicole Gohlke: ‘Es ist sehr gefährlich, wenn hier ständig nach Gruppen gesucht wird, für die diese Rechte nicht gelten sollen’.

<sup>203</sup> Ibidem, 12490, Nicole Gohlke: ‘Wer so denkt und so Politik macht, hat die Menschenrechte nicht verstanden. Die Bundesregierung steht in der Pflicht, allen Menschen’.

<sup>204</sup> Deutscher Bundestag, “18. Wahlperiode, 133. Sitzung: Berlin, Donnerstag den 5. November 2015”, 13015, Ralph Lenkert: ‘Bei Bildung kann und darf man nicht warten. Das Menschenrecht auf Bildung gilt für alle Kinder . . . ohne Ausnahmen und ungeachtet ihres Aufenthaltsstatus’.

<sup>205</sup> Deutscher Bundestag, “18. Wahlperiode, 153. Sitzung: Berlin, Freitag den 29. Januar 2016”, 15091, Özcan Mutlu: ‘Wir sagen: Alle jungen Menschen, die hier leben, die in unserem Land aufwachsen, haben ein Recht auf gute Bildung. Es ist daher unser aller Pflicht, alle jungen Menschen, inklusive der Geflüchteten, bestmöglich in unser Bildungssystem zu integrieren und ihnen bestmögliche Chancen zu bieten’.

<sup>206</sup> Deutscher Bundestag, “18. Wahlperiode, 196. Sitzung: Berlin, Donnerstag, den 20. Oktober 2016”, 19538, Stefan Müller: ‘Selbstverständlich kann Integration nur dann gelingen, wenn Flüchtlinge die deutsche Sprache erlernen’; Deutscher Bundestag, “17. Wahlperiode, 240. Sitzung: Berlin, den 16. Mai 2013”, 30161, Sibylle Laurischk: ‘Wir brauchen gute Möglichkeiten für alle Kinder, die deutsche Sprache so zu lernen (...) Denn nur die Kinder, die verstehen, was in der Schule passiert, haben echte Bildungschancen’.

focus on teaching basic skills such as the German language. With language as a key competence, we can integrate these children more into society and thus open up ways for them to successfully graduate from school and, if necessary, also to the job market.<sup>207</sup>

Uda Heller (CDU/CSU) also argued that ‘language is a very important factor for greater equity in education. Language is the key to education and integration’.<sup>208</sup> Education is framed as the ‘glue that holds our society together’, at the risk that education for refugees is reduced to a tool to integrate refugees.<sup>209</sup>

Germany, like France as a capitalist state views immigration ambivalently.<sup>210</sup> It speaks in terms of those who are an economic burden on the national community, and those who will make money for the country. In the case of education, it is argued that good education for refugees will bring economic success. Some rights were thus granted because it was said to be ‘in the interest of the country’. This way of reasoning fits in the context, especially for the CDU. During this time, many refugees were allowed to enter the country and the CDU lost many of their supporters because they felt uneasy about the decision. Many wanted to know how far the CDU was willing to go, and when it came to many policies, the CDU became more conservative. But some educational policies were easier to accept for the CDU because they could argue that it would be for the benefit of the country. Better education, for instance, would make good German citizens, integrate foreigners and prevent radicalism.

Cemile Giousouf (CDU/CSU), for instance, argued that ‘integration is also quite simply in our own interest if we want to continue to be strong and competitive as a nation’.<sup>211</sup> Wolfgang Stefinger (CDU/CSU) also focused on what educating refugees will give the Germans when he argued that ‘good education is an indispensable prerequisite for economic and social success, but also for successful integration’.<sup>212</sup> Hubertus Heil (Social Democrats) warned that a ‘society

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<sup>207</sup> Deutscher Bundestag, “18. Wahlperiode, 88. Sitzung: Berlin, den 26. Februar 2015”, 8388, Xaver Jung: ‘die Vermittlung von Grundkompetenzen wie die deutsche Sprache in den Fokus nehmen. Mit Sprache als Schlüsselkompetenz können wir diese Kinder mehr in die Gesellschaft integrieren und ihnen so Wege zu erfolgreichen Schulabschlüssen und gegebenenfalls auch zum Arbeitsmarkt eröffnen’.

<sup>208</sup> Ibidem, 8392, Uda Heller: ‘Ein ganz wichtiger Faktor für ein Mehr an Bildungsgerechtigkeit ist die Sprache. Sprache ist der Schlüssel zu Bildung und Integration’.

<sup>209</sup> Deutscher Bundestag, “18. Wahlperiode, 125. Sitzung: Berlin, Freitag, den 2. Oktober 2015”, 12486, Beate Walter-Rosenheimer, ‘Teilhabe durch Bildung ist auch der soziale Kitt, der unsere Gesellschaft zusammenhält’.

<sup>210</sup> May, “Ideological justifications for restrictive immigration policies”, 300.

<sup>211</sup> Deutscher Bundestag, “18. Wahlperiode, 125. Sitzung: Berlin, Freitag, den 2. Oktober 2015”, 12492, Cemile Giousouf: ‘darüber hinaus ist Integration auch ganz einfach in unserem eigenen Interesse, wenn wir weiterhin als Nation stark und wettbewerbsfähig sein wollen’.

<sup>212</sup> Deutscher Bundestag, “18. Wahlperiode, 200. Sitzung: Berlin, Freitag den 11. November 2016”, 20021, Wolfgang Stefinger: ‘eine gute Bildung ist eine unabdingbare Voraussetzung für wirtschaftlichen und gesellschaftlichen Erfolg, aber auch für gelungene Integration’.



in which social inequality is not overcome, a society that is drifting apart . . . creates the climate for radicalism and extremism, fears about the future and leads to dissatisfaction'.<sup>213</sup> Opposition members have used similar warnings of extremism to promote education. Kai Gehring (The Greens) argued that 'good education immunizes against fundamentalisation and fanaticism and at the same time against every form of prejudice and misanthropy. That is why good education is an answer to Islamism and Islamophobia'.<sup>214</sup>

#### 'Health system, not sickness system'

Humanitarian organisations like UNICEF and Pro Asyl argued that in Germany, access to healthcare is often only granted in the case of medical emergencies. Even though the goal of the Bundestag is to prevent diseases, improve health and decrease health inequalities, these promises in reports did not refer to refugees.<sup>215</sup> In many cases, the decision to grant a child treatment is not in the hands of medical experts, but administration workers. The administration processes also prevent timely treatment by significantly delaying the process.<sup>216</sup> Bureaucratic obstacles and financing are the biggest challenges to a child seeking treatment. It is especially difficult to get access to treatments in the case of chronic diseases and psychological illnesses.<sup>217</sup>

Many of these shortcomings are caused because politicians use of economic arguments. Similar to France, economic arguments play a role in advocating restricted access to healthcare for refugees. Research has shown, despite the claims of Centre-Right politicians, that restricting access to care for asylum seekers is more expensive than granting regular access and it does not contribute to increased immigration.<sup>218</sup> Nevertheless, politicians continued to use this argument. The limited attention and access to psychological healthcare can be explained by this economic reasoning. Bioethics scholar Peter West-Oram wrote that 'mental health issues often

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<sup>213</sup> Ibidem, 20017, Hubertus Heil: 'Eine Gesellschaft, in der soziale Ungleichheit nicht überwunden wird, eine Gesellschaft, die auseinanderdriftet . . . schafft das Klima für Radikalismus und Extremismus, schürt Ängste vor der Zukunft und führt zu Unzufriedenheit'.

<sup>214</sup> Deutscher Bundestag, "18. Wahlperiode, 80. Sitzung: Berlin, den 16. Januar 2015", 7637, Kai Gehring: 'Gute Bildung immunisiert gegen Fundamentalisierung und Fanatisierung und gleichzeitig auch gegen jede Form von Vorurteilen und Menschenfeindlichkeit. Deshalb ist gute Bildung eine Antwort auf Islamismus und Islamophobie'.

<sup>215</sup> BundesFachverband Unbegleitete Minderjährige Flüchtlinge, 'Kinder Zweiter Klasse', 23.

<sup>216</sup> Ibidem, 23-24.

<sup>217</sup> Ibidem, 23-24.

<sup>218</sup> Peter G.N. West-Oram, "From self-interest to solidarity: One Path towards delivering refugee health," in *Migration, health and ethics*, special issue, *Bioethics* 32 (2018): 6, 345; Olivier Razoum, "Restricted entitlements and access to health care for refugees and immigrants: The example of Germany," *Global Social Policy* 16 (2016): 3, 322.

demand a more personalized therapeutic approach, which may not confer health benefits to those beyond targeted populations'.<sup>219</sup> In other words: mental healthcare is perceived to be only for the benefit of the refugee itself, and not for the population. Economic 'we-thinking' leads to stigmatizing refugees and impairs achieving best interest policies for them. Children are especially vulnerable to the economic argument as they mostly cost money before they can generate it.

Some of the challenges faced by refugees and migrants were acknowledged by politicians on the Left, Centre and Right. Martina Bunge (The Left) said that 'people with low social status die, on average, ten years earlier than people with high social status' and that 'social inequality leads to unequal health'.<sup>220</sup> Stefanie Vogelsang (CDU/CSU) acknowledged that 'poorer people are, on average, sicker than the middle class . . . this also applies to many children with a migration background'.<sup>221</sup> Ute Bertram of the CDU/CSU wanted quick and consistent treatments for children because if this comes too late, there is the danger of 'chronification of trauma-related disorders'.<sup>222</sup> So did Maria Klein-Schmeink (The Greens), who said that 'it is more humane and more ethically correct if we include refugees as early as possible in standard medical health care'.<sup>223</sup> Kathrin Vogler (The Left) was concerned about the fact that 'In our country, the refugee must first run to the town hall and describe his or her complaints to a clerk there. This person, usually without medical training, then decides whether the patient will receive a treatment certificate and may go to the doctor'.<sup>224</sup>

Attention for child refugees was fairly limited but increased as the refugee crisis gained momentum in Germany. It was in 2015 that special debates were held, and the needs of children appeared more evident to the politicians. This did not mean that the CRC or the best interest principle was used more as well. Instead, political parties again referred to human rights in

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<sup>219</sup> West-Oram, "From self-interest to solidarity", 348.

<sup>220</sup> Deutscher Bundestag, "17. Wahlperiode, 87. Sitzung: Berlin, Donnerstag den 27. Januar 2011", 8789, Martina Bunge, 'Menschen mit niedrigem Sozialstatus im Durchschnitt bis zu zehn Jahre früher sterben als Menschen mit Hohem Socialstatus'; 'Soziale Ungleichheit führt zu ungleicher Gesundheit'.

<sup>221</sup> Ibidem, 9791, Stefanie Vogelsang: 'dass ärmere Menschen im Durchschnitt kränker sind als die Mittelschicht' . . . das betrifft auch viele Kinder mit Migrationshintergrund'.

<sup>222</sup> Deutscher Bundestag, "18. Wahlperiode, 125. Sitzung: Berlin, Freitag den 25. September 2015", 12151, Ute Bertram: 'Chronifizierung von traumabedingten Störungen'.

<sup>223</sup> Deutscher Bundestag, "18. Wahlperiode, 158. Sitzung: Berlin, Donnerstag den 25. Februar 2016", 15596, Maria Klein-Schmeink: 'es erstens humaner und medizinethisch richtiger ist, wenn wir Flüchtlinge so früh wie möglich in die medizinische gesundheitliche Regelversorgung einbeziehen'.

<sup>224</sup> Deutscher Bundestag, "18. Wahlperiode, 125. Sitzung: Berlin, Freitag den 25. September 2015", 12153, Kathrin Vogler: 'Flüchtlinge auch mit der Karte noch langem nicht vollen Zugang zu unserem Gesundheitssystem haben. Es ist doch so: Bislang muss sein Flüchtling in unserem Land zunächst ins Rathaus laufen und dort einem Sachbearbeiter oder einer Sachbearbeiterin seine Beschwerden schildern. Dieser Mensch, meistens ohne medizinische Ausbildung, entscheidet dann, ob der Kranke einen Behandlungsschein erhält und zum Arzt gehen darf'.

general. Kathrin Vogler (The Left), for instance, said that ‘it is a violation of human rights if chronic illnesses are not treated or if treatment is at the discretion of a social welfare worker who has no medical training’.<sup>225</sup> Harald Weinberg (The Left) said that ‘human rights always have priority over wrong migration policy considerations’.<sup>226</sup> Maria Klein-Schmeink (The Greens) similarly said that that ‘Germany, too, has fundamentally entered into human rights obligations’ and ‘that cannot be downplayed for reasons of migration policy’.<sup>227</sup>

Another way they attempted to promote policies that could be considered in the best interest of the child, was by arguing that the coalition is required to take adequate care of refugees because the party is ideologically Christian and socialist. For instance, in reaction to the position of the CDU/CSU to not grant refugees the health card quicker, Volker Beck (The Greens) said: ‘You are probably familiar with the story of the merciful Samaritan, which describes how someone lies sick on the street. Her [The minister’s] speech symbolized the priest walking past the patient, not the Good Samaritan’.<sup>228</sup> According to him, the minister preferred to talk about the fact that poor health care helps deter refugees; ‘I think this logic is perfidious and definitely not appropriate for a Christian party’.<sup>229</sup> Kathrin Vogler (The Left) said that the coalition aims to deport refugees as quickly as possible, including the sick and traumatized, ‘We find that neither Christian nor social’.<sup>230</sup>

The argument that the core values of the country and ruling party are betrayed was also used in France, where inequality was fostered by a party that has equality as a core value. It was argued, however, that Republicanism is inherently contradictory, as from the start of the French Revolution, not everyone could enjoy equality. The same is true for Germany. Here, opposition members argued that the CDU/CSU is betraying their Christian and social values. The reality is, however, that the Christian and socialist values of the CDU have always been well suited to promote conservative policies. The CDU has historically been keen to mobilize

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<sup>225</sup> Deutscher Bundestag, “18. Wahlperiode, 196. Sitzung: Berlin, Donnerstag, den 20. Oktober 2016”, 19528, Kathrin Vogler: ‘Es verstößt gegen Menschenrechte, wenn chronische Erkrankungen nicht behandelt werden oder wenn die Behandlung vom Ermessen eines Sozialamtsmitarbeiters abhängt, der keine medizinische Ausbildung hat’.

<sup>226</sup> Deutscher Bundestag, “18. Wahlperiode, 155. Sitzung: Berlin, Donnerstag den 2. Juli 2015”, 11079, Harald Weinberg: ‘Menschenrechte haben immer Vorrang vor falschen migrationspolitischen erwägungen’.

<sup>227</sup> Ibidem, 11082, Maria Klein-Schmeink: ‘auch Deutschland grundsätzlich menschenrechtliche Verpflichtungen eingegangen ist’; ‘Das Menschenrecht ist aus migrationspolitischen Erwägungen nicht zu relativieren’.

<sup>228</sup> Ibidem, 11089, Volker Beck: ‘Ihnen ist sicher die Geschichte vom barmherzigen Samariter bekannt, in der geschildert wird, wie jemand krank auf der Straße liegt. Ihre Rede symbolisierte den Priester, der an dem Patienten vorbeigegangen ist, und nicht den barmherzigen Samariter’.

<sup>229</sup> Ibidem, 11090, Volker Beck: ‘Ich finde, diese Logik ist perfide und einer christlichen Partei auf jeden Fall nicht angemessen’.

<sup>230</sup> Deutscher Bundestag, “18. Wahlperiode, 158. Sitzung: Berlin, Donnerstag den 25. Februar 2016”, 15594, Kathrin Vogler: ‘Wir finden das weder christlich noch sozial.’

support by adopting restrictive approaches on immigration.<sup>231</sup> In the 1980s, the CDU saw a similar erosion of its voter base and looked for new issues to mobilize lost support. It was then that the CDU adopted more restrictive policies on immigration.<sup>232</sup> This combined well with CDU's established traditions of membership of the German nation around ethnocultural criteria.<sup>233</sup> At the end of the Cold War, Germany saw an influx of refugees (1.2 million) and the far-Right German People's Union (DVU) exploited the resulting panic. The Christian democrats back then also based their position concerning refugee issues on the political climate.<sup>234</sup> The situation of 2014-2016, in that sense, is a repetition and proved to be at the cost of the best interest of the child.

As said and demonstrated, the CRC was not a topic for politicians when they talked about healthcare for refugees. They did use it, however, in other debates, such as on 25 September 2015. Katja Dörner (The Greens) and Manuele Schwezig, Minister of Family, Seniors, Women and Youth both applauded the raising of the minimum age for the ability to act in the asylum procedure from 16 years to 18 years, as stipulated by the UN Convention on the Rights of the Child'.<sup>235</sup> Norbert Müller (The Left) said there was an area of tension between the CRC on the one hand, and the interest of the Bundesländer in redistributing refugees on the other hand.<sup>236</sup> Furthermore, Müller said that even when redistribution of refugees works, 'you cannot secure the best interests of the children - which is stipulated by the UN Convention on the Rights of the Child'.<sup>237</sup>

Gülstan Yüksel (Social Democrats) said that 'the UN Convention on the Rights of the Child stipulates that all children, regardless of their origin, have the same rights', and therefore calls on all parties to help every refugee.<sup>238</sup> Members of the CDU/CSU also point to the CRC in this debate, but only in addition to other obligations. Marcus Weinberg, for instance, said

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<sup>231</sup> Christina Boswell & Dan Hough, "Politcising Migration: Opportunity or Liability for the Centre-Right in Germany?" *Journal of European Public Policy* 15 (2008): 3, 338.

<sup>232</sup> Boswell & Hough, "Politcising Migration", 340.

<sup>233</sup> Ibidem, 341.

<sup>234</sup> Ibidem, 345-346.

<sup>235</sup> Deutscher Bundestag, "18. Wahlperiode, 125. Sitzung: Berlin, Freitag den 25. September 2015", 12136, Manuele Schwezig: 'Wir heben das Mindestalter für die Handlungsfähigkeit im Asylverfahren von 16 Jahren auf 18 Jahre an, wie es auch die UN-Kinderrechtskonvention vorsieht'; Ibidem, 12142, Katja Dörner: '16- bis 18-Jährige werden in ihren Asylverfahren zukünftig nicht mehr wie Erwachsene behandelt, sondern, konform mit der UN-Kinderrechtskonvention, als Minderjährige'.

<sup>236</sup> Ibidem, 12137, Norbert Müller: 'Getrieben von den betroffenen Bundesländern standen Umverteilungsinteressen der Länder einerseits gegen Grundsätze der Jugendhilfe und der UN-Kinderrechtskonvention andererseits'.

<sup>237</sup> Ibidem, 12138, Norbert Müller: 'dann können Sie das beste Interesse der Kinder – das schreibt die UN-Kinderrechtskonvention vor – damit nicht sichern'.

<sup>238</sup> Ibidem, 12143, Gülstan Yüksel: 'Die UN-Kinderrechtskonvention gibt vor, dass für alle Kinder, egal welcher Herkunft, gleiches Recht gilt'.

that not only the CRC but also their own constitution demands that they treat children and teenagers equally.<sup>239</sup> And Paula Lehrieder claimed that ‘Not only in accordance with . . . the UN Convention on the Rights of the Child, but also in accordance with our Christian and humanitarian view of mankind, must we ensure care that is adapted to the needs of children and young people’.<sup>240</sup> The debate which followed immediately after concerned the healthcare of refugees. But the talk about the CRC and the interest of the child, the obligations Germany has concerning this topic, fully disappeared from their speeches and comments, even though there were only a few minutes in between.

It is not only the opposition that underused the CRC during debates. The CDU/CSU and coalition partner SPD were similarly not motivated by the CRC to have the best interest of the child as a primary consideration. Instead, they argued that doing more would cost too much, which would be unfair to the German taxpayers. Andrea Lindholz (CDU/CSU) said that giving the health card to refugees in less than 15 months would drive up the costs of accommodation and care for asylum seekers, which in Bavaria is already ‘more than the budget for economy, health and the environment combined.’<sup>241</sup> Roy Kühne of the CDU/CSU said ‘I think [of] the taxpayer . . . everyone has the right, that we handle the money responsibly’.<sup>242</sup> Reiner Meier (CDU/CSU) similarly told the opposition: ‘What you are asking costs a lot of money, a lot of taxpayers' money, which in my opinion is urgently needed elsewhere, be it for the integration of refugees’.<sup>243</sup>

Similar to France, politicians also oppose broadening health policies for refugees by arguing that it would attract more refugees.<sup>244</sup> Andrea Lindholz (CDU/CSU), for instance, used the argument of deterrence:

Together with Sweden, we are the most attractive destination country in Europe . . . In order to relieve our communities, we have to reduce the large number of hopeless asylum applications.

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<sup>239</sup> Ibidem, 12140, Marcus Weinberg: ‘Ich möchte das noch einmal ausdrücklich betonen: Es gibt nicht nur die UN-Kinderrechtskonvention, sondern bei uns gilt ohnehin der Grundsatz, dass wir Kinder und Jugendliche gleichbehandeln’.

<sup>240</sup> Ibidem, 12144, Paula Lehrieder: ‘nicht nur nach . . . der UN-Kinderrechtskonvention, sondern auch nach unserem christlichen und humanitären Menschenbild müssen wir eine den Bedürfnissen der Kinder und Jugendlichen angepasste Betreuung sicherstellen’.

<sup>241</sup> Deutscher Bundestag, “18. Wahlperiode, 155. Sitzung: Berlin, Donnerstag den 2. Juli 2015”, 11081, Andrea Lindholz: ‘Das ist mehr als der Landesetat von Wirtschaft, Gesundheit und Umwelt zusammen’.

<sup>242</sup> Ibidem, 11091, Roy Kühne: ‘Ich denke, der Steuerzahler, alle Menschen haben ein Anrecht darauf, dass wir verantwortungsvoll mit dem Geld umgehen’.

<sup>243</sup> Deutscher Bundestag, “18. Wahlperiode, 158. Sitzung: Berlin, Donnerstag den 25. Februar 2016”, 15595, Reiner Meier: ‘Was Sie fordern, kostet sehr viel Geld, viel Geld der Steuerzahler, das meines Erachtens an anderer Stelle dringend benötigt wird, sei es für die Integration von Flüchtlingen’.

<sup>244</sup> Deutscher Bundestag, “18. Wahlperiode, 155. Sitzung: Berlin, Donnerstag den 2. Juli 2015”, 11079.

If you followed your application and introduced a nationwide health card and granted every asylum seeker full access to the German health system . . . the already extremely high asylum numbers would continue to rise, and to a considerable extent.<sup>245</sup>

Similarly, Heiko Schmelzle (CDU/CSU) said that the proposal to give the health card to refugees would ‘would counteract our efforts to reduce immigration from safe third countries. Above all, however, that would really overwhelm the solidarity community of statutory health insurances’.<sup>246</sup> Roy Kühne (CDU/CSU) also said that ‘It is statistically demonstrable that more and more asylum applications land precisely for these reasons’.<sup>247</sup> Emmi Zeulner (CDU/CSU) declared that the health card ‘would result in further pull effects, and it is precisely these pull effects that must be avoided.’<sup>248</sup> Talk about the CRC and the child’s best interest disappeared right after the politicians started to talk about health care for refugees. Immediately, financial, political and ideological interests became more important.

### Conclusion

The CRC was a declaration of states who agreed that the Rights of the Child apply to all children, no matter their legal status. All signatories should uphold these values, and for instance, take the best interest of the child as a primary consideration. That means that other interests should not stand in the way of providing children equal education, healthcare and protection. Germany, however, showed that other interests still play a bigger role. Children had to wait longer to get access to funds relating to education and healthcare, between a few months up to four years. This was not because politicians argued it was in the best interest of the child. Instead, they argued that doing more would cost too much, which is unfair to the German taxpayer. Especially the CDU was driven by political and economic motives at a time they faced decreasing support. When it came to education, they did allow more liberal policies

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<sup>245</sup> Ibidem, 11080, Andrea Lindholz: ‘Gemeinsam mit Schweden sind wir das attraktivste Zielland innerhalb Europas . . . Um unsere Kommunen zu entlasten, müssen wir die große Zahl der aussichtslosen Asylanträge reduzieren. Wenn man Ihrem Antrag folgen würde und bundesweit eine Gesundheitskarte einführen und jedem Asylbewerber den vollen Zugang zum deutschen Gesundheitssystem schon nach drei Monaten ermöglichen würde, dann würden die sowieso schon extrem hohen Asylzahlen weiter ansteigen, und zwar in erheblichem Umfang’.

<sup>246</sup> Ibidem, 11085, Heiko Schmelzle: ‘würde unseren Anstrengungen, die Zuwanderung aus sicheren Drittstaaten zu reduzieren, entgegenwirken. Vor allem aber würde das die Solidargemeinschaft der gesetzlichen Krankenkassen wahrlich überfordern’.

<sup>247</sup> Ibidem, 11092, Roy Kühne: ‘Es ist statistisch nachweisbar, dass zunehmend Asylanträge genau aus diesen Gründen auflanden’.

<sup>248</sup> Deutscher Bundestag, “18. Wahlperiode, 125. Sitzung: Berlin, Freitag den 25. September 2015”, 12156, Emmi Zeulner: ‘Selbstverständlich brächte das weitere Pull-Effekte mit sich, und genau diese Pull-Effekte gilt es zu vermeiden’.

because they were able to argue that it is in the interest of the nation. Healthcare, however, as Oram already showed, is often seen to only come to the benefit of the receiver, not society as a whole. Economically and politically, they argued against expanding healthcare provisions, even though this is not in the best interest of the child.

It is striking that the opposition also did not use the best interest principle or referred to the CRC. In the case of healthcare, it was demonstrated that although politicians were familiar with the treaty and the best interest principle, it was not used in the debates concerning refugees. Instead, they referred to human rights and duties in general or argued that the CDU/CSU should do more because they are a Christian and socialist party. But similar to French Republicanism, the ideology of the CDU is also inherently contradictory, promoting only certain kinds of Christian socialist policies. Both the political motivations and the under-using of the CRC led to the fact that many problems faced by refugee children in the case of healthcare and education were left undiscussed, and thus untreated. Political and ideological motivations stand in the way of achieving policies that are in the best interest of the child.

	France	Germany
<b>Healthcare</b>	<ul style="list-style-type: none"> <li>- Republicans (Centre-Right) in favour of conservative policies, motivated out of economic interests, solidarity with French taxpayers, and fear for ‘medical tourism’.</li> <li>- Child refugees, and as a result the CRC, are not discussed, because the Council of State decided that it is illegal to alter their right to health care.</li> </ul>	<ul style="list-style-type: none"> <li>- Christian democrats (Centre-Right) against Left opposition.</li> <li>- Attention for the health care of child refugees increased over time.</li> <li>- References to human rights in general, and Christian/socialist values. Not to the CRC or best interest.</li> <li>- Conservative policies were motivated by economic arguments and fears that they would attract more refugees.</li> </ul>
<b>Education</b>	<ul style="list-style-type: none"> <li>- Use of CRC and ‘best interest principle’ (primarily by the opposition)</li> <li>- Other interests also played a role, such as ‘the interest of the nation’.</li> <li>- Politicians did not refer to child refugees. Instead, they mentioned disadvantaged neighbourhoods, social classes, etc.</li> <li>- Ethnic problems are actively avoided.</li> <li>- Attention did not increase over time. Most special debates were held before 2014.</li> </ul>	<ul style="list-style-type: none"> <li>- Conservative policies justified by CDU/CSU with economic and political arguments (enough is already done, doing more would cost too much).</li> <li>- Opposition refers to human rights in general, not CRC.</li> <li>- Attention for child refugees increased over time, with more special debates on education for refugees after 2015.</li> </ul>

Table 1: overview of differences and similarities between French and German political viewpoints.

With both German and French debates discussed, similarities and differences have also become clearer. Table 1 gives a concise overview of French and German political viewpoints

on the Rights of the Child regarding education and healthcare. What stands out firstly are the similarities.

In both France and Germany, the Centre-Right (Republicans and Christian Socialists) advocated for more conservative policies, while the Left opposition parties were in favour of generous policies. In both France and Germany, the CRC was not used very often. Instead, political, economic, and ideological considerations played a larger role in arguments. Even the opposition parties in both countries did not often refer to the CRC and instead pointed to human rights in general. But the opposition also claimed, in both countries that the majority was betraying their core values: in Germany the Socialist and Christian values, and in France the republican promise of equality. In addition to the economic arguments and thinking in the interest of the nation, these arguments were probably deemed strategically better than referring to the CRC treaty commitments.

There are, of course also some differences. In Germany, the attention to specific problems faced by child refugees increased over time, especially after 2014. In Germany, an argument often used and less often found in France, was that of ‘we are doing enough’. In France, on the other hand, the CRC was used more often in the debates, but issues of race and ethnicity were deliberately ignored in their debates. The different refugee crises these countries faced contributed to these differences, but the ideologies of the country and the competition of extreme Right-wing parties should be considered as well.



## **Conclusion**

Children are part of a subaltern group. As a result, they depend on others to defend their rights. The UN Convention on the Rights of the Child established that everyone who decides over child matters needs to have the best interest of the child as a primary consideration. Children's rights are not political but universal and thus for every child, regardless of their legal status. State parties are furthermore not allowed to discriminate between children and are obliged to adhere to the CRC. The goal was to prevent other interests from being too dominant. But already during the development of the CRC, it became clear that the choice for 'a primary' and not 'the primary' signified that other interests would continue to play a role. The various reservations countries like France and Germany had also signalled that they wanted to preserve the right to not extend certain rights to some societal groups. Child refugees especially face restrictions to certain rights and services. It is the discrepancy of the promise for universal rights of children and the best interest principle on the one hand, and the political reality of restrictions for child refugees on the other hand that motivated this research.

The aim was to analyse how the French and Germans differed in applying the best interest principle to child refugees during their parliamentary debates between 2011 and 2016. It did so by first establishing what political parties were most conservative vis-à-vis rights for child refugees and what arguments were used to underpin these restrictive policies. Interestingly, in both France and Germany it was the Centre-Right party that was most hesitant to provide certain provisions to child refugees. It was, thus, not a story of the far-Right. The arguments they used were not related to the CRC. On the one hand, this is a good sign. The best interest principle was criticised for being open to abuse, meaning that it could be exploited to promote policies that are not in the best interest of the child but are still framed as such. This thesis has shown that politicians in France and Germany did not exploit the notion this way. On the other hand, the CRC has proven to have a weak influence in political debates. The interest of the child is not actually considered in debates. Instead, politicians in both France and Germany have focussed more on economic, political and ideological considerations. Especially Centre-Right parties worried about burdening taxpayers, attracting more refugees, spending too much money, and losing voters to upcoming far-Right parties. All these considerations influenced their standpoint on refugee policies of children. Because of this, it is likely that the best interest has not become a primary consideration.

Although the opposition, consisting of Left, Socialist, and progressive parties promoted policies that can be considered to be more in the best interest of the child, they rarely promoted

these by referring to the CRC or the best interest principle. Instead, they referred to general human rights, duties and responsibilities. In France and Germany, politicians of the opposition also claimed that more should be done for child refugees because of the values which lay at the core of not only the ruling parties but the country.

Contrary to the claims of the opposition parties, this thesis argued that the treatment of child refugees in France and Germany fits within their national ideologies of Christian socialism and Republican Universalism. Christian socialists in Germany have a history of using their core values to promote immigration when needed and used the same values to argue in favour of restrictive immigration policies, especially during economically uncertain times. France is known to value equality, a Republican principle born during the French revolution. But from the start, sameness was considered the basis for equality, and some groups were deemed unassimilable. Many academic works have already considered the difficulties faced by foreigners, Jews, women and homosexuals to acquire equality. This thesis has shown that foreign children are also victims of this way of thinking. The ethnic root causes of problems are not recognized, and politicians do not want to discuss them, because this goes against their belief in Republican Universalism.

The paradoxical foundation of these ideas (promoting equality for all but excluding certain groups) thus impact children too. What this shows, is that the evolution of children's rights has overcome many obstacles throughout the decades, but certain ideologies still slow down the process of giving children what they need. The label of refugee holds a strong power over the label of child. Child refugees continued to receive what was considered to be in the interest of the country. Education was promoted because this will integrate the children. The focus is therefore on language development. Health care is also given to the degree to which politicians can argue it is still in the interest of the nation. Giving too much in both countries was argued to be more expensive, so only limited access was granted. Certain psychological treatments, necessary for some refugees were perhaps not given because it was perceived that the only beneficiary is the person who is treated and not the country.

This thesis has not looked at international court cases of Europe or the recommendations, remarks and reports given by the CRC and national governments. It did so because this thesis wanted to take away the traditional legal focus of the topic, and also views the recommendations as a consequence, not a causation of the problems. Research on this topic would nevertheless add weight to existing criticism of how the CRC does not have the means to make member states commit to their promises. On the other hand, more research could also be done on what role NGOs play in providing access to rights when politicians fail to do so.

Expanding this comparative research with other national contexts could also be useful. There is, for instance, not much research on the political attitudes vis-à-vis refugee policies of Southern European countries. It would nevertheless be a valuable case because these countries are the first place many refugees arrive. This geographical position, along with their national political contexts have certainly translated to their own way of political motivations and given rise to other parties. More studies also have to be conducted on the experience of children, especially because their voice is one of the pillars of the CRC.

One of the limitations of the thesis was the word count. When given more space, this thesis would have included integration or participation along with education and healthcare as case studies. Further research therefore on this topic would make a strong case as well, because participation rights are one of the most important and new types of rights the CRC gave children, but the reality is still that child migrants are unable to participate in society to the same degree as national children. Another limitation was logistical. There are many debates to be found and this thesis has focussed on debates which contain in the title 'education' or 'healthcare'. But it is plausible that many of the education and healthcare policies for refugees were decided in debates that only contain 'refugees' or 'immigration' in the title. This thesis focussed deliberately on the first type of debates because it wanted to analyse the special attention given to a minor group within larger debates, but in order to create a more complete view of all debates and arguments, the second type of debates also have to be considered in the future.

This thesis started with the story of Alan Kurdi. His death was in every newspaper and had the power to open borders and change certain attitudes towards refugees. This thesis showed that one thing did not change by the death of Kurdi: child refugees continued to be represented by politicians who work in the interest of the nation, of which child refugees are not considered to be a part of. They continue to have their rights to equal opportunities and access to healthcare restricted. This is the reality for hundreds of thousands of children. This story is, contrary to that of Alan Kurdi, unknown to the population of Europe, including the politicians who should work in their best interest.

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## PLAGIARISM RULES AWARENESS STATEMENT

### **Fraud and Plagiarism**

Scientific integrity is the foundation of academic life. Utrecht University considers any form of scientific deception to be an extremely serious infraction. Utrecht University therefore expects every student to be aware of, and to abide by, the norms and values regarding scientific integrity.

The most important forms of deception that affect this integrity are fraud and plagiarism. Plagiarism is the copying of another person's work without proper acknowledgement, and it is a form of fraud. The following is a detailed explanation of what is considered to be fraud and plagiarism, with a few concrete examples. Please note that this is not a comprehensive list!

If fraud or plagiarism is detected, the study programme's Examination Committee may decide to impose sanctions. The most serious sanction that the committee can impose is to submit a request to the Executive Board of the University to expel the student from the study programme.

### **Plagiarism**

Plagiarism is the copying of another person's documents, ideas or lines of thought and presenting it as one's own work. You must always accurately indicate from whom you obtained ideas and insights, and you must constantly be aware of the difference between citing, paraphrasing and plagiarising. Students and staff must be very careful in citing sources; this concerns not only printed sources, but also information obtained from the Internet.

The following issues will always be considered to be plagiarism:

- cutting and pasting text from digital sources, such as an encyclopaedia or digital periodicals, without quotation marks and footnotes;
- cutting and pasting text from the Internet without quotation marks and footnotes;
- copying printed materials, such as books, magazines or encyclopaedias, without quotation marks or footnotes;
- including a translation of one of the sources named above without quotation marks or footnotes;
- paraphrasing (parts of) the texts listed above without proper references: paraphrasing must be marked as such, by expressly mentioning the original author in the text or in a footnote, so that you do not give the impression that it is your own idea;
- copying sound, video or test materials from others without references, and presenting it as one's own work;
- submitting work done previously by the student without reference to the original paper, and presenting it as original work done in the context of the course, without the express permission of the course lecturer;
- copying the work of another student and presenting it as one's own work. If this is done with the consent of the other student, then he or she is also complicit in the plagiarism;
- when one of the authors of a group paper commits plagiarism, then the other co-authors are also complicit in plagiarism if they could or should have known that the person was committing plagiarism;
- submitting papers acquired from a commercial institution, such as an Internet site with summaries or papers, that were written by another person, whether or not that other person received payment for the work.

The rules for plagiarism also apply to rough drafts of papers or (parts of) theses sent to a lecturer for feedback, to the extent that submitting rough drafts for feedback is mentioned in the course handbook or the thesis regulations.


The Education and Examination Regulations (Article 5.15) describe the formal procedure in case of suspicion of fraud and/or plagiarism, and the sanctions that can be imposed.

Ignorance of these rules is not an excuse. Each individual is responsible for their own behaviour. Utrecht University assumes that each student or staff member knows what fraud and plagiarism



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entail. For its part, Utrecht University works to ensure that students are informed of the principles of scientific practice, which are taught as early as possible in the curriculum, and that students are informed of the institution's criteria for fraud and plagiarism, so that every student knows which norms they must abide by.

I hereby declare that I have read and understood the above.	
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Submit this form to your supervisor when you begin writing your Bachelor's final paper or your Master's thesis.

Failure to submit or sign this form does not mean that no sanctions can be imposed if it appears that plagiarism has been committed in the paper.