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**THE INTEGRATION OF UKRAINIAN
MIGRANT CHILDREN INTO THE
GERMAN SCHOOL SYSTEM:**
the implementation of Articles 22 and 28 of the CRC in North Rhine-
Westphalia

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After the experiences I have lived through, I can say with all certainty that it is impossible to live alone. In a ballet spectacle, success depends on the performance of each dancer but also on all the people who contribute behind the scenes, such as choreographers, sound operators, and teachers. Life is like a spectacle; our achievements are the result of our own efforts, but also the efforts of all the people who form the support network for our goals to be reached. At the end of this Master's thesis, I want to thank all the people who were my support network in all these years of study, especially the last one.

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Abstract

After Russia invaded Ukraine, a significant displacement movement began, bringing one of the most wide-reaching migration crisis. More than one million Ukrainians have already been received in Germany. From them, 35,613 children are enrolled at school in NRW, the German federal state who receives the most significant number of Ukrainians. Under Articles 22 and 28 of the CRC, Germany must protect migrant children and provide them equal opportunities in accessing education. The German school system is not federally centralized; each federal state has the competence to legislate and apply its policies. Furthermore, what makes the system even more complicated is the division inside the levels of education; for example, lower secondary school is composed of five types of schools in NRW. Analysing the implementation of those articles to Ukrainian children in Germany, especially in NRW, it was possible to find that despite the many flaws, the country is not in violation of Articles 22 and 28 of the CRC because it recognizes the rights of migrant children and meets the minimum core obligation under the right to education. However, there is much room for improvement regarding the progressive implementation, especially in the transitions between secondary schools that are not presented equally for migrant students. In addition, increasing the number of professionals working in schools and increasing school space are urgent measures that must be taken to improve the quality and capacity of education not only in NRW but in Germany as a whole.

Zusammenfassung

Nach dem Einmarsch Russlands in die Ukraine setzte eine erhebliche Vertreibungsbewegung ein, die die weitreichendste Migrationskrise mit sich brachte. Mehr als eine Million ukrainische Flüchtlinge sind bereits in Deutschland aufgenommen worden. Von ihnen werden in NRW, dem Bundesland, das die meisten Ukrainer aufgenommen hat, insgesamt 35.613 Kinder eingeschult. Gemäß Artikel 22 und 28 der KRK ist Deutschland verpflichtet, Migrantenkinder zu schützen und ihnen gleiche Chancen beim Zugang zu Bildung zu gewähren. Das deutsche Schulsystem ist nicht föderalistisch zentralisiert, jedes Bundesland ist für die Gesetzgebung und die Anwendung seiner eigenen Politik zuständig. Was das System außerdem noch komplizierter macht, ist die Aufteilung innerhalb der Bildungsstufen, z. B. besteht die Sekundarstufe I in NRW aus fünf Schulformen. Bei der Analyse der Umsetzung dieser Artikel für ukrainische Kinder in Deutschland, insbesondere in NRW, konnte festgestellt werden, dass das Land trotz der vielen Mängel nicht gegen die Artikel 22 und 28 der KRK verstößt, da es die Rechte von Migrantenkidern anerkennt und die minimale Kernverpflichtung im Rahmen des Rechts auf Bildung erfüllt. Was die schrittweise Umsetzung angeht, gibt es jedoch noch viel Raum für Verbesserungen, insbesondere bei den Übergängen zwischen den weiterführenden Schulen, die für Schüler mit Migrationshintergrund nicht gleichwertig gestaltet sind. Darüber hinaus sind die Erhöhung der Zahl der in den Schulen tätigen Fachkräfte und die Vergrößerung des Schulraums dringende Maßnahmen, die ergriffen werden müssen, um die Qualität und die Kapazität der Bildung nicht nur in NRW, sondern in ganz Deutschland zu verbessern.

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List of Abbreviations

CIC – Communal Integration Centers

CPR – Civil and Political Rights

CRC – United Nations Convention on the Rights of the Child

EU – European Union

HSU – Language of Origin Instruction

ICESCR – International Covenant on Economic, Social, and Cultural Rights

ISCED – International Standard Classification of Education

KMK – Standing Conference of the Ministers of Education and Cultural Affairs

NATO – North Atlantic Treaty Organization

NRW – North Rhine-Westphalia

PISA – Program for International Student Assessment

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

ZoiS – Centre for East European and International Studies

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1. INTRODUCTION

The massive arrival of migrants brings serious social challenges. After Russia invaded Ukraine, a significant displacement movement began, bringing one of the most wide-reaching migration crises. More than one million Ukrainians have already been received in Germany, according to UNHCR data, last updated in June 2023.¹ Of them, around 36% are under 18 years old.² Children per se are considered a vulnerable group. However, refugee children have particularities that increase their vulnerability and must be considered. That is why the UN Convention on the Rights of the Child has a specific provision focusing on the rights of refugee children (Article 22).³ Regarding children's protection, one of the biggest challenges States face during this displacement humanitarian crisis is ensuring the full enjoyment of the right to education for refugees. According to Article 28 of the CRC, states must secure free and compulsory primary education for all, as well as accessibility to higher education, reinforcing the principle of non-discrimination.⁴ However, considering a newly arrived child, language, culture, and religion can be a huge barrier to enjoying this right.⁵

Germany has ratified the CRC. However, Ukrainian still face problems in their integration into the German school system. Education in Germany is not federally centralized; each federal state has competence over education, which makes integration harder. Furthermore, Germany adopts a complex school system. It is differentiated because secondary schools are divided into at least three types, and they are based on merits. That is, depending on each child's performance, they will be assigned to one of the categories, which constitutes a non-inclusive system.⁶ NRW, the German federal state with the highest number of school-age Ukrainians in Germany, has the secondary education level I divided into five types of schools. This division makes difficult the integration of Ukrainian children because, with their

¹ UNHCR, 'Ukraine Refugee Situation', UNHCR Operational Data Portal (ODP), accessed 13 July 2023, https://data.unhcr.org/en/situations/ukraine#_ga=2.134816561.1161200648.1679162725-104077269.1673700959.

² Bundesministerium des Innern und für Heimat, 'Mehr Als 967.000 Menschen Sind Aus Dem Krieg In Der Ukraine Nach Deutschland Geflüchtet', Bundesministerium des Innern und für Heimat, 23 August 2022, https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2022/08/ukraine_gefluechtete.html.

³ United Nations General Assembly, 'Convention on the Rights of the Child', Pub. L. No. 1577 UNTS 3 (1989), art. 22, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

⁴ United Nations General Assembly, art. 28.

⁵ Stefanie Schmahl, 'Integration of Foreign Students in the German School System', *The International Journal of Children's Rights* 9, no. 4 (2001): 285, <https://doi.org/10.1163/15718180120494991>.

⁶ Pia Jäger et al., 'Integration of Newly Arrived Refugee Children into the German School System', *International Journal of Environmental Research and Public Health* 18, no. 15 (25 July 2021): 2–3, <https://doi.org/10.3390/ijerph18157854>.

knowledge of German language and Ukrainian curriculum studies, it is hard to determine the best type of school for each migrant child. Moreover, in upper secondary school, the difficulties increase because proficiency in German and equivalent certificates are required.

Listed the problem, the research question is: to what extent do the German procedures, especially in North Rhine-Westphalia, follow Article 22 of the CRC and integrate Ukrainian children and guarantee the full enjoyment of their right to education provided by Article 28 of the CRC?

1.1. Motivation and Research Objective

Refugee and children's rights have always been areas of my interest. First, as the last requirement to obtain my Law degree, my bachelor's thesis was written on international protection for refugees. Later, my paperwork to complete the specialization in Public Law was regarding the Dublin System. Furthermore, I have worked for one year and a half in the child protection services of my city, where I had contact with the reality faced by migrant children.

Living in Germany before and after the beginning of the War in Ukraine revived my interest in the topics. I was able to have contact with Ukrainians who fled the war, especially children, in my workplace, but communication was a significant barrier. This reality made me think about their many difficulties with an involuntary migration background and after traumatic events caused by the war, especially in the educational system, which they must attend every day. Applying my background in Law and being a human rights advocate, an overview of the situation made me conclude that having access to schools does not effectively ensure their right to education.

Considering that the right to education is the essential pillar to integrate refugee children, the State's obligations under Articles 22 and 28 of the CRC, and the complexity of the educational system in Germany, I propose to examine these legal provisions, provide an overview of the school system in Germany, address the best practices on integration, as well as the German rules, and in the end, analyse the implementation of those rights in Germany, especially in NRW, and evaluate if Germany fulfils its obligation of ensuring refugee children the right to education provided by CRC.

1.2. Methodology

This thesis has legal, social, and political perspectives. Legal because it analyses the international Human Rights Law, specifically the rights of migrant children (Article 22) and the right to education (Article 28) provided by the Convention on the Rights of the Child. The social perspective is justified in analysing the *de facto* challenges Ukrainian children face in their access to education in Germany. Finally, the political perspective is founded in examining the German reports to the CRC Committee and the policies adopted in NRW to better integrate Ukrainian children into the school system.

Due to the limited time for the development and completion of this academic work, qualitative data was not produced but extracted from primary research sources, especially reports. The thesis is also based on legal sources and secondary literature about the subject.

A considerable part of this academic work focuses on the analysis and interpretation of the applicable law, named Articles 22 and 28 of the CRC, and current practices in Germany, specifically in NRW, to understand whether the implementation of the mentioned articles represents in practice the full enjoyment of the right to education for Ukrainian children.

To be able to answer the research question, this academic work, after this brief introduction, brings four more chapters. The second chapter elucidates the different status of Ukrainians in the EU and explains the complexity of the German school system. The third chapter covers the scope of Articles 22 and 28 of the CRC. Further, to analyse the implementation of those articles in Germany and NRW, the fourth chapter analyses reports of the CRC Committee, Centre for East European and International Studies, and Ministry of School and Education of the State of North Rhine-Westphalia. Finally, chapter 5 brings the conclusions and recommendations.

2. THE UKRAINIAN MIGRANT CHILDREN IN GERMANY AND THE GERMAN SCHOOL SYSTEM

There is no single cause that triggered the war between Russia and Ukraine. The war is the consequence of a sum of many historical reasons.⁷ The tensions between the two countries are not recent. Since Ukraine's independence in 1991, Russia has kept treating them as a mere province and not an independent State. In 2014, conflicts began in the eastern part of Ukraine, and the situation worsened when Russia annexed Crimea in the same year. This situation ended up in an agreement signed in Belarus in 2015, which envisaged removing military installations from Russia and recognizing special status to the separatist areas of Ukraine. However, the fighting did not stop completely, so Russia started to send peacekeepers to the region, and Kyiv did not implement its part of the agreement.⁸

There are many other socio-linguistic, economic, political, and cultural aspects behind the war. Despite its independence, Ukraine keeps some knots to Russia. For example, the Russian language is spoken by many Ukrainians. Besides that, Ukraine is strategically positioned and economically, politically, and militarily important to Russia, especially to its will to revive as a global superpower.⁹

In 2019, Ukraine made some changes to its constitution to closer the relations with NATO and EU, which increased, even more, the tensions in the region because Russia saw it as a threat since the West would get closer to its borders, and NATO may want to get back to Ukraine the Crimea territory.¹⁰ That is why some say, 'This is not Russia's war against Ukraine; it is Putin's war against the West'¹¹.

It was with this background of conflicts that, on 24 February 2022, the Russian military invasion of Ukraine started. This invasion constitutes a vast violation of international law, and there is no sign of when it will end. The war's economic, social, and human consequences are felt globally.¹² According to UNHCR data, more than eight million people have fled Ukraine,

⁷ Snežina Michailova, 'An Attempt to Understand the War in Ukraine – An Escalation of Commitment Perspective', *British Journal of Management* 33, no. 4 (2022): 1674, <https://doi.org/10.1111/1467-8551.12633>.

⁸ Mohammad Rubel and Md Sazzad Hossain, 'Analyze The Causes of The Russian-Ukraine War with Waltz's Three Images (Individual, Domestic Politics, International System)', *Journal of Social Science* 3, no. 5 (26 September 2022): 1113–14, 1118, <https://doi.org/10.46799/jss.v3i5.407>.

⁹ Rubel and Hossain, 1113–15.

¹⁰ Rubel and Hossain, 1117.

¹¹ Michailova, 'An Attempt to Understand the War in Ukraine – An Escalation of Commitment Perspective', 1676.

¹² Council of the European Union, 'Council Implementing Decision (EU) 2022/382 of 4 March 2022 Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine within the Meaning of Article 5

and more than five million are estimated to be internally displaced.¹³ In Germany, more than one million have already been received.¹⁴

The massive arrival of Ukrainian nationals and residents has challenged the EU's ability to receive and process such a large amount of asylum claims. Consequently, the best solution found by the European Commission and the Council of the European Union was to activate the Temporary Protection Directive (Council Directive 2001/55/EC).¹⁵

2.1. The Ukrainian Refugee Status in Europe

The European Union has established the Common European Asylum System to assist in a better reception of asylum seekers in the region. Since 1999, the CEAS has set up standards to be applied in the Member States to every migrant. Nonetheless, every member State is responsible for putting procedures to grant asylum status in place.¹⁶ In Germany, all the procedure is regulated by the German Asylum Act. Regardless of where they come from, once arrived in Germany and willing to obtain refugee status, foreigners should fill out the application for asylum at one of the Federal Office for Migration and Refugees offices and wait for their binding decision.¹⁷ However, because of the EU Temporary Protection Directive approved by the Council of the European Union, Ukrainians do not need to follow the general migration procedures. They can arrive in the EU without a visa and receive immediate protection without being dependent on lengthy asylum policies.¹⁸

2.1.1. EU Temporary Protection Directive for Displaced Persons

The Temporary Protection corresponds to a tool of the European Union in case of a mass influx of non-EU migrants who cannot return safely to their countries of origin. It aims, on the

of Directive 2001/55/EC and Having the Effect of Introducing Temporary Protection.' (2022), para. (3), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32022D0382>; Michailova, 'An Attempt to Understand the War in Ukraine – An Escalation of Commitment Perspective', 1676.

¹³ UNHCR, 'Ukraine Situation Flash Update #43', UNHCR Operational Data Portal (ODP), 24 March 2023, 1, <https://data.unhcr.org/en/documents/details/99736>.

¹⁴ UNHCR, 'Ukraine Refugee Situation', UNHCR Operational Data Portal (ODP), accessed 18 March 2023, https://data.unhcr.org/en/situations/ukraine#_ga=2.134816561.1161200648.1679162725-104077269.1673700959.

¹⁵ European Union Agency for Asylum., *Providing Temporary Protection to Displaced Persons from Ukraine: A Year in Review*. (LU: Publications Office, 2023), 29, <https://data.europa.eu/doi/10.2847/02014>.

¹⁶ European Commission, 'Common European Asylum System', European Commission, accessed 2 June 2023, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en.

¹⁷ Parlamentarische Rat, 'Asylgesetz (AsylG)' (2008), secs 5, 14, https://www.gesetze-im-internet.de/asylvfg_1992/BJNR111260992.html.

¹⁸ Council of the European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

one hand, to the immediate collective protection of those who immigrated to the EU and, on the other hand, to reduce the negative impacts on the efficiency of the asylum procedures in EU countries.¹⁹ It takes place when the Council of the European Union approves the European Commission's proposal. This proposal must have three main information: the group of persons to be the beneficiary, an estimation of how many displaced and the date to start its effects.²⁰ This dispositive was developed during the conflict in the former Yugoslavia (Council Directive 2001/55/EC), and just more than 20 years later, it was again activated, according to Article 5²¹, in response to the war in Ukraine.²²

The massive arrival of Ukrainians expected in Europe when the war started on 24 February 2022 would jeopardize the effectiveness of the asylum procedures across the EU and negatively affect the rights of people applying for protection. In this scenario, the Commission, considering it the most appropriate action to be taken, proposed activating the directive on 2 March 2022, which the Council approved two days later.²³ In order to protect the rights of the migrants, the directive brings some obligations to the EU countries, such as issuing a residence permit, promoting appropriate information, providing access to asylum procedures, employment, housing, social welfare, medical care, opportunities to family reunion, and, for children, legal guardianship (if the child is unaccompanied) and access to education.²⁴

The persons displaced from Ukraine that fall into this Directive are, including their family members, nationals from Ukraine residing in the country before the beginning of the war, and non-Ukrainians or stateless, if they were under international protection in Ukraine, granted before the war. Besides that, EU Member States also have the possibility to extend the category of beneficiaries to non-Ukrainians or stateless with a Ukrainian permanent residence

¹⁹ Council of the European Union, para. (16).

²⁰ Council of the European Union, 'Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts between Member States in Receiving Such Persons and Bearing the Consequences Thereof' (2001), art. 5, <http://data.europa.eu/eli/dir/2001/55/oj/eng>.

²¹ Council of the European Union, art. 5.

²² European Commission, 'Migration and Home Affairs: Temporary Protection', European Commission, accessed 28 March 2023, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en.

²³ European Commission.

²⁴ Council of the European Union, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, arts. 12–16.

permit issued before 24 March 2022 and are not able to return safely to their own countries.²⁵ Although it is not mandatory, most of the EU countries adopted this provision on their territories, and Germany is one of them.²⁶

The Temporary Protection, once activated, is automatically applied in all Member States but Denmark.²⁷ Nevertheless, the migrants need to apply for a residence permit. They have the right to move for 90 days and choose where to stay.²⁸ This option, in addition to giving the migrants the freedom to choose, also divides responsibilities among the member States. Once the place is chosen and the beneficiary applies for the residence permit, the State must issue the document for the duration of the temporary protection.²⁹ With the residence permit, the beneficiaries have the right to travel in the Schengen space for 90 days in a 180-day period but only receive the benefits of the Directive from the country that issued the document.³⁰ Furthermore, being a beneficiary of the directive does not preclude the possibility of receiving any other international protection available in the EU, such as refugee status.³¹

The Temporary Protection activated by the unanimous decision of the Council of the European Union stipulates an initial duration of one year, automatically extendable for a period of six months to one year.³² Following the provision, the European Commission has already extended the period of Temporary Protection until March 2024.³³

2.1.2. *The Difference in Treatment of Ukrainians in the EU*

Many EU Countries are not open to provide refugee protection to non-EU citizens in their territory as they are to the Ukrainians. This mindset, and the special Temporary Protection activated for the persons fleeing from Ukraine, brought some questioning to the EU asylum

²⁵ Council of the European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection., para. 2.

²⁶ European Union Agency for Asylum., *Providing Temporary Protection to Displaced Persons from Ukraine*, 13.

²⁷ Council of the European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection., para. (26).

²⁸ Council of the European Union, para. (16).

²⁹ Council of the European Union, para. (16).

³⁰ Council of the European Union, para. (16).

³¹ Council of the European Union, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, art. 3.

³² Council of the European Union, Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection., para. (21).

³³ European Union Agency for Asylum., *Providing Temporary Protection to Displaced Persons from Ukraine*, 12.

policies. The difference in treatment is discriminatory, especially with Syrians, Afghans, Iraqis, and other non-Europeans seeking international protection, who are not subjected to temporary protection.³⁴

By activating the Temporary Protection Directive, the EU opened the doors to Ukrainians, allowing them to choose the place to stay and immediately start enjoying their rights, which is an extraordinary response in terms of human rights and refugee protection. However, with other protection seekers, the actions of the EU are not the same. Generally, States tend to respond to migration crises by imposing visas so that they can control the number of entrances in their territories. Consequently, migrants fleeing from outside the EU cannot legally enter the EU without a visa. When they enter (sometimes illegally), they must respect the Dublin System's provisions (the EU regulation for asylum).³⁵ It constitutes a lengthy procedure and does not always have a positive outcome.

One example of this difference in treatment is the 2015 migration crisis caused by the war in Syria. At that time, no specific protection system was activated for displaced persons fleeing from Syria to the EU. They were under the Dublin System, i.e., they could not choose where to stay and are obliged to pass all the bureaucracies to have legal status.³⁶ On the other hand, a specific protection was activated for the war in Ukraine, reinforcing that the EU adopted two different standards and systems for distinct nationalities with the same conflict setting.³⁷

For this reason, after the activation of the Directive, the claim for a human-centric and non-discriminatory European law for asylum procedures has intensified even more.³⁸ Considering the level of protection brought by the Directive to the displaced persons from Ukraine, the Temporary Protection, despite all the criticism, represents a positive move to improve the international protection of refugees, at least showing that a more protective approach is possible and that the EU can be more flexible and sensible regarding migrants.³⁹

One cannot find it in the concluding remarks; however, this difference of status, as it will be explained in topic 4.2, does not have any impact on accessing the school system in Germany

³⁴ Sergio Carrera et al., 'The EU Grants Temporary Protection for People Fleeing War in Ukraine', *CEPS Policy Insights*, no. No 2022-09 (March 2022): 19, <https://www.ceps.eu/ceps-publications/eu-grants-temporary-protection-for-people-fleeing-war-in-ukraine/>.

³⁵ Cathryn Costello and Michelle Foster, '(Some) Refugees Welcome: When Is Differentiating between Refugees Unlawful Discrimination?', *International Journal of Discrimination and the Law* 22, no. 3 (1 September 2022): 245, 265, <https://doi.org/10.1177/13582291221116476>.

³⁶ Anders Åslund, 'A New Perspective on the Ukrainian Refugee Crisis', *CESifo Forum* 23, no. 04 (2022): 5.

³⁷ Costello and Foster, '(Some) Refugees Welcome', 245–46.

³⁸ Carrera et al., 'The EU Grants Temporary Protection for People Fleeing War in Ukraine', 27.

³⁹ Carrera et al., 32; Åslund, 'A New Perspective on the Ukrainian Refugee Crisis', 7.

because the country guarantees the right to primary school compulsory and free for every migrant child regardless of their nationality. However, the explanation of the Ukrainian status in the EU is essential to this academic work because, according to Article 22 of the CRC, as presented in topic 3.2.1, only refugee children and children seeking refugee status are right holders but, using the rules of interpretation, this protection can also be extended to Ukrainian children.

2.2. Ukrainian Children in Germany (and in NRW) and Education as a Tool for Integration

According to UNHCR data from July 2023, almost six million Ukrainians fled to Europe since 24 February 2022, and more than one million were received in Germany.⁴⁰ Because of the military activity in Ukraine, men are not allowed to leave the country, so from this data, more than 80% of the adults who had left are women, and one-third of the total number are children.⁴¹

After leaving their country of origin, migrants continue to face difficulties. Although the Refugee Convention does not explicitly mention the word integration, it is encouraged in many provisions, willing refugees to constantly enjoy their rights, which is the basis to restart their lives in the host country. The UNHCR supports that the same integration rights should be applied to beneficiaries of subsidiary protection, which would represent not just a positive outcome for the migrants but also for the society to which they will contribute to.⁴² Although the Ukrainians are not called refugees inside the EU, but beneficiaries of the EU Temporary Protection Directive, considering the objective and purpose of the Refugee Convention and the opinion of the UNHCR, they can be included as recipients of integration provisions.⁴³

Integration constitutes a two-way effort. On the one hand, the migrants have their role to adapt to the host society without giving up on their own culture. On the other hand, the community must commit to meeting the needs of newly migrated people. Even though there is

⁴⁰ UNHCR, 'Ukraine Refugee Situation'.

⁴¹ Irina Mützelburg and Félix Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', *Centre for East European and International Studies (ZOiS) ZOiS Report 1/2023* (April 2023): 4, https://www.zois-berlin.de/fileadmin/media/Dateien/3-Publikationen/ZOiS_Reports/2023/ZOiS_Report_1_2023.pdf.

⁴² UNHCR, 'The Integration of Refugees: A Discussion Paper', July 2014, paras 2–4, https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/02/integration_discussion_paper_July_2014_EN.pdf.

⁴³ Anthony Aust, *Modern Treaty Law and Practice*, 3rd ed. (Cambridge: Cambridge University Press, 2013), 10–11; UNHCR, 'The Integration of Refugees: A Discussion Paper', paras 2–4.

not an integration model that works everywhere, every time, some standards can be widely applied, such as protecting human rights.⁴⁴

Considering children, ‘their separation from families, poor language proficiency, segregation, cultural dissonance, stress, different expectations between families and school management and limited financial means’⁴⁵ are the most common challenges preventing their integration into the new environment.⁴⁶ Schools play a crucial role in the integration of children by mediating and helping them to adapt to the new environment.⁴⁷ Quality and inclusive programs at school are examples of practices to integrate migrant children better because they make them interact favorably with their development.⁴⁸ However, a positive outcome of integration is not only dependent on schools. Other actors such as government, community, family, including efforts from the migrants themselves, also play essential roles.⁴⁹

Until 9 July 2023, Germany has reported 213,462 Ukrainian children assigned to schools.⁵⁰ From them, 40,969 in NRW, the German federal state with the highest number, focus of this academic work.⁵¹ Integration of foreign children into the school system has been a problem in Germany for a long time. At the beginning of the 1950s, the Standing Conference of the Ministers of Education and Cultural Affairs introduced special classes in different languages, believing that integration was made by two factors: introduction to the German language and culture and support in the migrants’ native language. However, from 1971, the migrants started to attend public schools as a result of the ‘Instruction of the Children of Foreign Workers’.⁵² This document introduced some recommendations to the German federal states, such as general compulsory school attendance to all children with residence or domicile in Germany; classes according to age and abilities; encouraging German language learning; and supplementary lessons focusing on their mother tongue. Those recommendations are not

⁴⁴ UNHCR, ‘The Integration of Refugees: A Discussion Paper’, paras 5, 11.

⁴⁵ Rasheedah Adams-Ojugbele and Nontokozo Mashiya, ‘Interventions Supporting the Integration of Refugee Children in the Primary School Life: Roles of the Child’s Contexts of Development’, *The Journal for Transdisciplinary Research in Southern Africa* 16 (5 November 2020): 2, <https://doi.org/10.4102/td.v16i1.769>.

⁴⁶ Adams-Ojugbele and Mashiya, 2.

⁴⁷ Adams-Ojugbele and Mashiya, 3.

⁴⁸ Adams-Ojugbele and Mashiya, 3.

⁴⁹ Adams-Ojugbele and Mashiya, 3.

⁵⁰ Kultusminister Konferenz, ‘Abfrage Der Geflüchteten Kinder/Jugendlichen Aus Der Ukraine: 27. Kalenderwoche (03.07. - 09.07.2023)’ (Kultusminister Konferenz, 07. - 09.07. 2023), <https://www.kmk.org/dokumentation-statistik/statistik/schulstatistik/gefluechtete-kinderjugendliche-aus-der-ukraine.html>.

⁵¹ Kultusminister Konferenz.

⁵² Schmahl, ‘Integration of Foreign Students in the German School System’, 286, 300.

binding and permit a margin of appreciation of the federal states since education in Germany is not federally centralized. Nonetheless, they are widely accepted.⁵³

2.3. The Complexity of the School System(ns) in Germany

The vulnerabilities faced by migrant children in the school environment, their educational path, and their performance and success are heavily influenced by family.⁵⁴ ‘Vulnerability within the school/education system arises from the fact that the family has a significant influence on children’s educational success. In general, vulnerabilities occur during educational transitions, i.e., from kindergarten to school, from school to vocational training, and from vocational training to the labor market. Strategies of guidance and support are usually recommended because future development and success depend on the design of these transitions’⁵⁵.

However, it is unfair to blame families for discrimination at school and the failure to achieve a high degree of education. Under international law, the States are responsible for ensuring access to education for every child without discrimination. More than providing this right under domestic law, the States must also implement policies to achieve the rights.⁵⁶

The type of school system a country adopts can be a barrier to the full enjoyment of the right to education. It can directly or indirectly affect the educational trajectory of a child. The school system in Germany is complex and rigid, which is not a good characteristic for migrant children.⁵⁷ The biggest problems they face are the lack of German language and the loss of familiarization with the particular German school system.⁵⁸ According to a study by PISA, the Program for International Student Assessment, the stricter an educational system is, the more it enhances the inequalities, especially related to economic and migration backgrounds.⁵⁹

As already explained, the integration of migrant children is a complex phenomenon, and education has a vital role in helping to achieve this primary goal. However, in Germany,

⁵³ Schmahl, 286, 300.

⁵⁴ Alina Boutiuc-Kaiser, ‘30 Years of United Nations Convention on the Rights of the Child in Germany’, *Hungarian Educational Research Journal* 12, no. 1 (9 November 2021): 68, <https://doi.org/10.1556/063.2021.00084>.

⁵⁵ Boutiuc-Kaiser, 72.

⁵⁶ Christian Curtis and John Tobin, ‘Article 28. The Right to Education’, in *The UN Convention on the Rights of the Child: A Commentary*, ed. John Tobin (New York: Oxford University Press, 2019), 1076–77.

⁵⁷ Gülseli Baysu and Helga Valk, ‘Navigating the School System in Sweden, Belgium, Austria and Germany: School Segregation and Second Generation School Trajectories’, *Ethnicities* 12 (1 December 2012): 778–79, <https://doi.org/10.1177/1468796812450857>.

⁵⁸ Boutiuc-Kaiser, ‘30 Years of United Nations Convention on the Rights of the Child in Germany’, 72.

⁵⁹ Baysu and Valk, ‘Navigating the School System in Sweden, Belgium, Austria and Germany’, 778–79.

migrant children face even more difficulties because of the complicated system adopted by the country. That is why the complexity of the system is further explained below.

2.3.1. German School System

The school system in Germany is not federally centralized. The responsibilities are shared between the Federal government and the German federal states (Länder), always following the German Basic Law. Even though the Basic Law provides the scope of action of the Federal government, the federal states can also legislate about education, sometimes providing different systems. Furthermore, administrative procedures are from the competence of the federal states. To better coordinate the different practices of the federal states, there is a national conference with the states' ministers of education.⁶⁰

There is no federal guideline on the education of migrant children in Germany. For this reason, depending on the state that Ukrainian children live in, they are allocated directly to regular classes or first have to attend 'welcome classes' until achieving a higher level of the German language.⁶¹

Article 7 of the German Basic Law provides the general rules of the school system.⁶² Compulsory school attendance is not explicit in this provision. However, in conjunction with Articles 22 and 28 of the CRC (explained in the next chapter) and considering that the German Basic Law in Article 25 establishes the primacy of international law, the interpretation is that migrant children registered in Germany must attend school as German citizens.⁶³

Before compulsory education, institutes provide early childhood education and care until the child reaches primary education age. Although some institutes are public, it does not constitute part of the public educational system.⁶⁴ As shown in Figure 1, the German school system comprises nine years of compulsory education from six to 15 years old. As a federal rule, school attendance is compulsory from the year the child completes six years old. The primary education comprehends grades 1 to 4. Just in Berlin and Brandenburg, it lasts until

⁶⁰ Boutiuc-Kaiser, '30 Years of United Nations Convention on the Rights of the Child in Germany', 72; 'Eurydice - Germany', European Commission, 19 April 2023, <https://eurydice.eacea.ec.europa.eu/national-education-systems/germany/overview>.

⁶¹ Sabine Kinkartz, 'Ukrainian Refugee Kids Face a Challenge in German Schools', DW, accessed 2 June 2023, <https://www.dw.com/en/ukrainian-refugee-kids-face-a-challenge-in-german-schools/a-64109244>.

⁶² Parlamentarische Rat, 'Grundgesetz Für Die Bundesrepublik Deutschland' (1949), art. 7, <https://www.gesetze-im-internet.de/gg/GG.pdf>.

⁶³ Schmahl, 'Integration of Foreign Students in the German School System', n. 1; Schmahl, 285.

⁶⁴ 'Eurydice - Germany'.

grade 6. At the age of ten, when primary education is finished, the different paths of qualifications start, which differ from each federal state.⁶⁵

Germany – 2022/2023

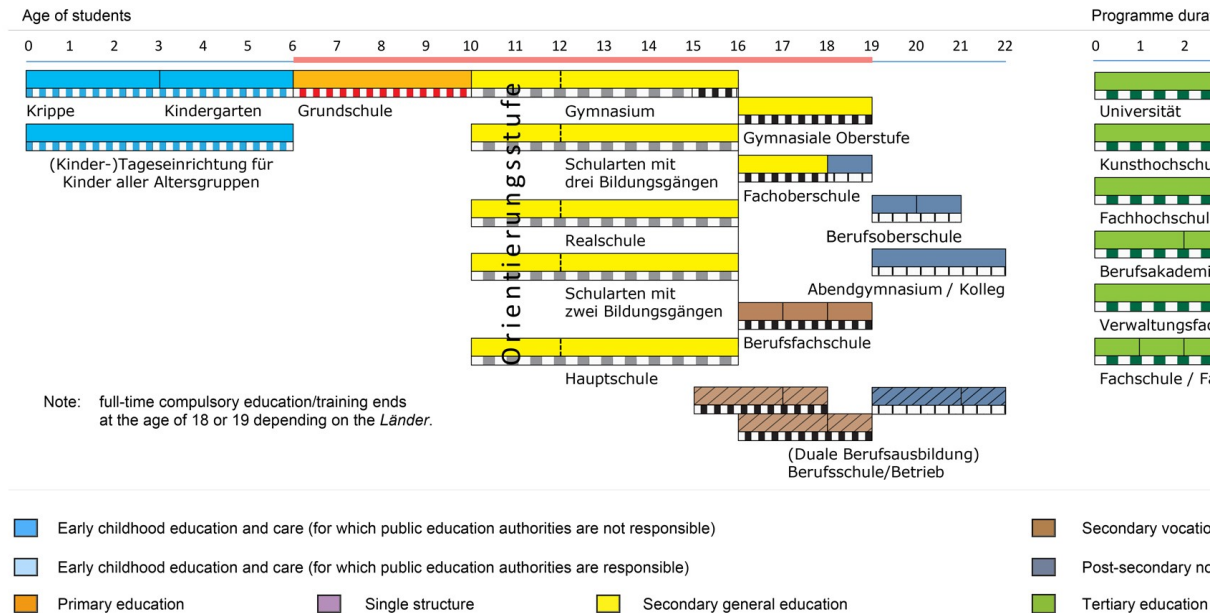


Figure 1. *German School System* (European Commission, ‘Eurydice - Germany’, 19 April 2023, <https://eurydice.eacea.ec.europa.eu/national-education-systems/germany/overview>)

The secondary education is composed of different school types depending on the qualifications. Those types can vary from federal state to federal state, but traditionally, ‘Hauptschule’, ‘Realschule’, and ‘Gymnasium’ are applied^{66,67} Once the child is designated to one type of secondary school, it is not definitive. There is the possibility to change if they meet the requirements, even though it does not commonly happen in practice.⁶⁸ There is also the possibility of special schools for children with disabilities or any other disorder.⁶⁹

Once the compulsory schooling is completed, the students move to upper secondary education, which is also composed of different paths. The path the student will follow depends on their results. Here is possible to have full-time general education, vocational schools, and vocational education and training as part of the dual system.⁷⁰ When this period is finished, the students are ready to enter higher education at universities or other institutions.

⁶⁵ Baysu and Valk, ‘Navigating the School System in Sweden, Belgium, Austria and Germany’, 778–79.

⁶⁶ The terms will be explained in the topic 2.3.2 *School System in NRW*.

⁶⁷ ‘Eurydice - Germany’.

⁶⁸ The German Way & More, ‘The German School System’, The German Way & More, 16 March 2013, <https://www.german-way.com/history-and-culture/education/the-german-school-system/>.

⁶⁹ ‘Eurydice - Germany’.

⁷⁰ ‘Eurydice - Germany’.

The school system is complex and an object of criticism, even for German nationals. This complexity increases when talking about migrant children that need to be integrated into one of the levels. Since secondary and upper secondary education vary in different federal states, the next topic will further develop the school system in NRW.

2.3.2. School System in NRW

Article 8, paragraph 1 of the NRW Constitution, establishes the right to education for every child.⁷¹ Besides that, paragraph 2, in conjunction with the Schools Act North Rhine-Westphalia, states that schooling is compulsory.⁷² The compulsory school period comprises ten years of studies and starts in the year when the child completes six years old until 30 September. As demonstrated in Figure 2, the compulsory period is composed of primary education and secondary education level I, which encompasses grades 1 to 4 and 5 to 10, respectively.⁷³ To better understand Figure 2, the definitions of each type of education follow.

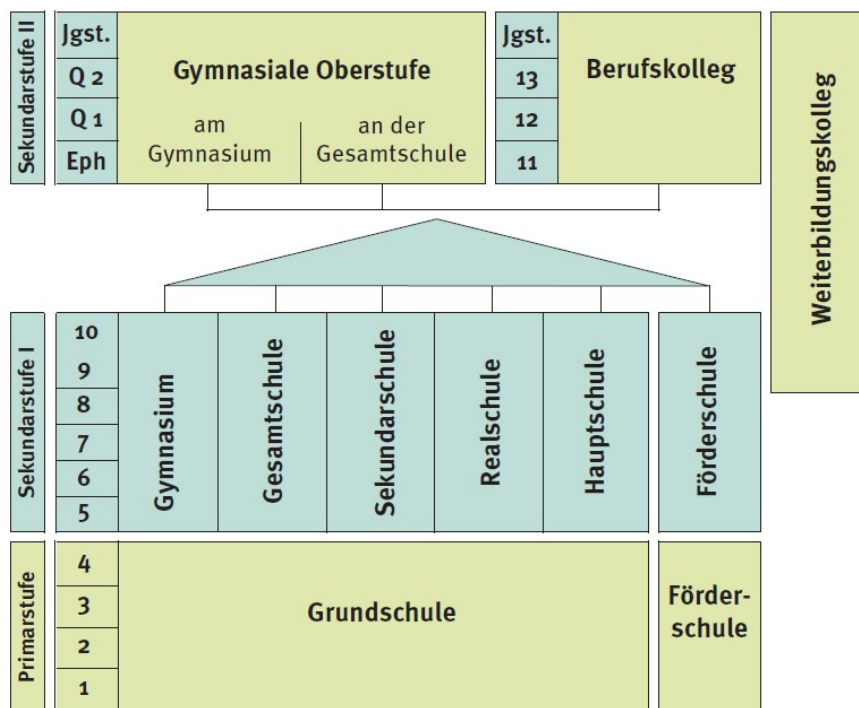


Figure 2. *The school system in NRW* (Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, April 2022, https://www.bra.nrw.de/system/files/media/document/file/flyer_nrw_schulsystem_a4_englisch_0.pdf)

⁷¹ Landtag Nordrhein-Westfalen, ‘Verfassung für das Land Nordrhein-Westfalen’ (1950), art. 8.1, https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=2320020927105939563.

⁷² Landtag Nordrhein-Westfalen, art. 8.1.

⁷³ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, April 2022, 2, https://www.bra.nrw.de/system/files/media/document/file/flyer_nrw_schulsystem_a4_englisch_0.pdf.

‘Grundschule’ is the primary education from grades 1 to 4 and is the foundation of the school career.⁷⁴ The secondary education level I (Sekundarstufe I) aims the preparation of children for the transition to Sekundarstufe II and vocational education. It embraces five types of education, determined according to children’s performance and inclinations:

a) ‘Hauptschule’ is the basic general education focusing on practice, orientation to professional choices, and starting vocational training. Children are also encouraged to do regular internships, and most of the time, it is dedicated to industrial employment.⁷⁵

b) ‘Realschule’ is the extended general education that focuses on practice but with scientific perspectives. Children develop competencies to further studies after the tenth grade and taking classes in at least one foreign language is mandatory.⁷⁶

c) ‘Gymnasium’ is the in-depth general education that focuses on developing skills for the university career or vocational training. Two foreign languages are required.⁷⁷

d) ‘Gesamtschule’ is not linked to specific programs as the ones explained above. It was adopted in the 1960s as a more inclusive alternative to replacing the different types of secondary schools. However, it did not work as planned and was just added as another type of secondary school.⁷⁸ Children with different skills work together and are prepared for university life or vocational training. Students do not need to assign to one of the different school forms, so to accommodate the diversity, some subjects are taught at basic and extended levels.⁷⁹

e) ‘Sekundarschule’ also encompasses children with different abilities but focuses on preparing students to transition to the ‘Gymnasiale Oberstufe’. All Sekundarschule schools have binding cooperation with at least one ‘Gymnasiale Oberstufe’ school.⁸⁰

⁷⁴ NRW Parlamentarische Rat, ‘Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG)’ (2005), para. 11, <https://bass.schul-welt.de/pdf/6043.pdf?20230603090817>.

⁷⁵ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 4; NRW Parlamentarische Rat, Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG), para. 14.

⁷⁶ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 4; NRW Parlamentarische Rat, Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG), para. 15.

⁷⁷ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 4; NRW Parlamentarische Rat, Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG), para. 16.

⁷⁸ The German Way & More, ‘The German School System’.

⁷⁹ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 4; NRW Parlamentarische Rat, Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG), para. 17.

⁸⁰ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 4; NRW Parlamentarische Rat, Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG), para. 17a.

In ‘Realschule’, ‘Gymnasium’ and ‘Gesamtschule’ comprise three years of secondary education level II (Sekundarstufe II) with ‘Gymnasiale Oberstufe’.⁸¹ For children with disabilities or a special development disorder, there is the ‘Förderschule’. However, the parents can choose if they prefer their children’s attendance in general schools or in ‘Förderschule’.⁸²

For those who want to continue their studies, the secondary education level II (Sekundarstufe II) is composed of general education (Gymnasiale Oberstufe) and vocational training (Berufskolleg). The Gymnasiale Oberstufe is composed of a one-year period of introduction plus two years of qualification and can take place in a Gymnasium school, Gesamtschule school, or Berufliches Gymnasium.⁸³ At the end of the secondary education level II, students take a test, and if they succeed, they acquire the ‘Abitur’, which is the qualification to enroll in a university. ‘Berufskolleg’ is focused on professional orientation, preparation for work, or vocational qualification or training. Those designated to this level can also take part in general secondary education and obtain the Abitur diploma to enter some university.⁸⁴

‘Weiterbildungskolleg’ is not applied to children. It is the opportunity to take education levels for adults who work and have not finished one of the education levels.⁸⁵

North Rhine-Westphalia is the German region with the highest number of school enrollment of Ukrainian school-age migrant children (40,969 until July 2023).⁸⁶ Each district has a school ministry responsible for the migrant children. Besides that, each district and some independent municipalities are equipped with Communal Integration Centers (CIC) responsible for assisting newly arrived families in the enrollment of children at school age.⁸⁷ The families receive a letter to present themselves in the CIC, and with their visit, the Center can collect data, send it to the educational authority and analyse the assignment to the educational system that fits better to each child. All this procedure is necessary because Germany does not have an inclusive type of education. Another criticized aspect of this

⁸¹ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 4.

⁸² Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, 5.

⁸³ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, 5–6; Schulgesetz für das Land Nordrhein-Westfalen (Schulgesetz NRW - SchulG), para. 18.

⁸⁴ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, ‘The School System in Nordrhein-Westfalen Explained Quickly and Easily’, 5–6.

⁸⁵ Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, 6.

⁸⁶ Kultusminister Konferenz, ‘Abfrage Der Geflüchteten Kinder/Jugendlichen Aus Der Ukraine: 27. Kalenderwoche (03.07. - 09.07.2023)’.

⁸⁷ Jäger et al., ‘Integration of Newly Arrived Refugee Children into the German School System’, 2.

procedure is that the letter is sent in the German language, which causes anxiety to a considerable number of families.⁸⁸

Language represents the most prominent barrier also in the meeting in the CIC. Still, there are professionals with language skills in this situation, and family members and volunteers are always welcome to help with translations.⁸⁹

Children with migration background, especially those fleeing a war context, are susceptible to mental illnesses such as post-traumatic stress disorder, depression, and anxiety, which directly affects their school performance and need to be considered when assigning a child to a school. Diagnosing and treating these diseases is the first step that the hosting states should adopt to provide a better enjoyment of the right to education, increase their school performance and better integrate them into the new environment.⁹⁰

In this context, education faces two main challenges: psychological issues due to the challenging history of the child and the disadvantages present in this complex educational system.⁹¹ Therefore, the CICs have essential roles in this scenario. After the first meeting with the family, the center collects all the relevant data and documents and analyses the information before including the child in a type of school. In Germany, besides the consultation with the CIC, there is a children's examination in the health office because mental status also influences school choice. However, this first mental health examination does not work properly most of the time, and since there is no standardized guideline to evaluate the psychological development of the child, the procedure depends on the personal engagement of the CIC's staff.⁹²

For enrollment, the guideline that is binding is based on children's grades. However, having a standardized procedure is not always the best way because the experiences are never the same. Sometimes the professionals of the centers recognize that the potential of a child does not fit into the correlation grade/type of school. In those cases, the professional reports the situation and makes some exceptions, which reinforces the fact that the path followed by each child is dependent on the center that they are linked.⁹³

Once designed for a specific school and type of education, besides the regular attendance, the migrant children also enjoy the welcome classes, which improve their language skills and

⁸⁸ Jäger et al., 3, 8, 10.

⁸⁹ Jäger et al., 8, 10.

⁹⁰ Jäger et al., 3–4.

⁹¹ Jäger et al., 4.

⁹² Jäger et al., 8, 10.

⁹³ Jäger et al., 8, 10, 12.

help to develop a better school performance. The grades are not considered in the first two years, and the child cannot fail a school year. After this period, it is possible to change to a higher school level, and the CIC advises in the transition between the levels.⁹⁴ From this point of the procedure, the CIC also plays an essential role in connecting the children with the school and explaining the following steps to the parents or legal guardians. After all this in loco actions, the CIC transmits all the data to the educational authority and gives recommendations on a case-by-case basis.⁹⁵

Inadequate assignments have a negative influence on the development of the child, especially in school performance. The enrollment can be inadequate when, for example, a child is connected to a degree or type of school that does not match their characteristics, and it usually happens because of the lack of school places.⁹⁶ For this reason, even though the CICs play a role of enormous importance, much improvement must be made. Increasing personnel would have a positive impact on supporting treatment for mental issues and opening up more school places. Besides that, a consistent procedure shared by all CICs in NRW would provide equal opportunities for newly arrived students.⁹⁷

⁹⁴ Jäger et al., 8; Ministerium für Schule und Bildung des Landes Nordrhein-Westfalen, 'The School System in Nordrhein-Westfalen Explained Quickly and Easily', 2.

⁹⁵ Jäger et al., 'Integration of Newly Arrived Refugee Children into the German School System', 8.

⁹⁶ Jäger et al., 13.

⁹⁷ Jäger et al., 15, 18.

3. THE HUMAN RIGHT TO EDUCATION ENSURED BY THE UN CONVENTION ON THE RIGHTS OF THE CHILD

The Conventions that represent the foundation of the right to education for children with a migration background are the CRC, the 1951 Geneva Convention relating to the Status of Refugees (Refugee Convention), and the ICESCR.⁹⁸ This academic work focuses on the CRC because it is a human rights treaty developed stressing the particular needs of children. Children, in general, are considered vulnerable because of their dependence on adults. Nevertheless, the levels of vulnerability change depending on specific circumstances, such as age, maturity, and background. For this reason, migrant children present a high level of vulnerability and are also considered in the CRC, pointedly in Article 22.⁹⁹

The CRC was ratified by Germany on 06 March 1992 and entered into force in the German territory on 5 April 1992 after the validation by the two houses of the German Parliament: the *Bundestag* (German parliament elected by German citizens) and the *Bundesrat* (German federal council composed by representatives of the 16 federal states).¹⁰⁰ More than 30 years after the ratification, amendments in the German Constitution still need to be done to accord it to the Convention because no provision explicitly guarantees children's rights in the German Basic Law.¹⁰¹ The CRC does not bring an express obligation to the States to include children's rights in their constitutions. However, Article 4 establishes that all measures must be taken by the States prone to implementing all the rights of the CRC.¹⁰²

A Constitutional amendment has been planned since January 2021 to add, explicitly, that children are right holders, to ensure the best interest of the child, and the right to be heard in front of the law.¹⁰³ The German Basic Law can only be amended by a specific law for this

⁹⁸ Sarah Carsley and S. Russell, 'Exploring the Enforceability of Refugees' Right to Education: A Comparative Analysis of Human Rights Treaties', *Journal on Education in Emergencies* 5 (1 January 2020): 10, <https://doi.org/10.33682/xwx5-eau3>.

⁹⁹ Boutiuc-Kaiser, '30 Years of United Nations Convention on the Rights of the Child in Germany', 66–67.

¹⁰⁰ OHCHR, 'UN Treaty Body Database', United Nations Human Rights Office of the High Commissioner, accessed 28 April 2023, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en; National CRC Monitoring Mechanism, 'Children's Rights into the Basic Law: Questions on the Current Legislative Proposal for Article 6 (2) of the Basic Law', Factsheet (Berlin: German Institut for Human Rights, January 2021), 4, https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Fact_Sheet/Factsheet_Childrens_Rights_into_the_Basic_Law.pdf.

¹⁰¹ Boutiuc-Kaiser, '30 Years of United Nations Convention on the Rights of the Child in Germany', 66.

¹⁰² United Nations General Assembly, Convention on the Rights of the Child, art. 4.

¹⁰³ The Federal Government, 'Children's Rights to Be Enshrined in the German Basic Law', The Federal Government, 20 January 2021, <https://www.bundesregierung.de/breg-en/service/archive/rights-of-child-in-basic-law->

purpose and approved by a two-thirds majority in favour in both houses of the federal legislature (*Bundestag* and *Bundesrat*).¹⁰⁴

However, it does not mean the CRC is not applied in Germany. Its application occurs through interpretation. According to the Basic Law, human rights conventions, of which Germany is part, have the same hierarchy as an ordinary federal statute.¹⁰⁵ However, since the principles are not explicitly stipulated in the Basic Law, their applicability faces difficulties in the German courts and administrative institutions.¹⁰⁶

Furthermore, the CRC Committee insisted on the lack of a German national mechanism to monitor the implementation of the CRC at the national level. A formal recommendation was issued by the Committee in 2014, and after that, the German Institute for Human Rights was charged with developing such a mechanism.¹⁰⁷ Even though the National CRC Monitoring Mechanism is part of the German Institute for Human Rights, its work is independent. Its mandate is to promote and protect children's rights, especially monitoring the implementation of the CRC in Germany.¹⁰⁸

The National CRC monitoring mechanism addressed some issues relating to the legislative proposal of amendment of the German Basic Law to add children's rights, mainly because the amendment should provide the same guarantees of the human rights treaty.¹⁰⁹ However, the proposal was a result of years of discussions, and after the change of the federal government at the end of 2021, new debates took place, and they had the opportunity to come up with a new and better legislative proposal to add children's rights to the German Constitution in consonance with the CRC.¹¹⁰

Although children's rights are not explicitly mentioned in the German Constitution, the CRC is binding to Germany. For this reason, this chapter has the purpose of analysing the general principles and Articles 22 and 28 of the CRC to better understand their scope of application

1841338#:~:text=Since%20Germany%20ratified%20the%20United,advance%20the%20rights%20of%20children.

¹⁰⁴ Parlamentarische Rat, Grundgesetz für die Bundesrepublik Deutschland, art. 79.

¹⁰⁵ Philipp B. Donath, "They're Not Little Adults": The Struggle for Proper and Standalone Children's Rights in the German Basic Law', *Constitutionnet*, 26 February 2021, <https://constitutionnet.org/news/theyre-not-little-adults-struggle-proper-and-standalone-childrens-rights-german-basic-law>.

¹⁰⁶ Donath.

¹⁰⁷ Deutsches Institut für Menschenrechte, 'The National CRC Monitoring Mechanism', Deutsches Institut für Menschenrechte, accessed 3 May 2023, <https://www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-kinderrechtskonvention/national-crc-monitoring-mechanism>.

¹⁰⁸ Deutsches Institut für Menschenrechte.

¹⁰⁹ National CRC Monitoring Mechanism, 'Children's Rights into the Basic Law: Questions on the Current Legislative Proposal for Article 6 (2) of the Basic Law', 4–5.

¹¹⁰ Donath, "They're Not Little Adults": The Struggle for Proper and Standalone Children's Rights in the German Basic Law'.

and to further analyse the implementation of those rights in Germany, especially in the situation of Ukrainian children in the country.

3.1. Umbrella Provisions of the CRC

The CRC brings the minimum standards for child protection, binding to the States that ratified.¹¹¹ To guide the implementation of all the provisions, four general principles, called umbrella provisions, require respect: right to protection against discrimination; best interest of the child; right to life, survival, and development; right to be heard.¹¹²

3.1.1. *Best Interest of the Child*

The best interest of the child is contemplated in Article 3, paragraph 1 of the CRC. The concept can be characterized as flexible and adaptable, as its definition varies depending on the specific circumstances that pertain to children.¹¹³ It requires that States and institutions, in all procedures affecting children, directly or indirectly, take into consideration all the levels of vulnerability of each child, implement children's rights in accordance with their best interest, think about every possible consequence of their decisions, and chose the one that represents the least harmful and benefits children the most.¹¹⁴ Defining all procedures affecting children, the Committee highlighted that inaction or omissions are also included in the principle. For example, the failure to protect children against a harmful situation, such as abuse, violates Article 3 of the CRC.¹¹⁵ Further, the interest of the child cannot be at the same level as other interests. It needs to be the primary consideration.¹¹⁶

The CRC Committee considers the best interest of the child a threefold concept. The principle is a substantive right: when different interests are being considered, the children's must be primarily considered, and it is self-executing, i.e., can also be invoked in national courts.¹¹⁷ Furthermore, it is an interpretative legal principle: if a legal provision can be interpreted in multiple ways, the one to be adopted is the one that better represents the child's best

¹¹¹ Boutiuc-Kaiser, '30 Years of United Nations Convention on the Rights of the Child in Germany', 66.

¹¹² Navena Vučković Šahović, Jaap E. Doek, and Jean Zermatten, *The Rights of the Child in International Law*, 1st ed. (Bern: Stämpfli Verlag Ltd, 2012), 91–92.

¹¹³ UN Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para.1)' (Geneva (62nd sess.): UN Committee on the Rights of the Child, 29 May 2013), para. 32, <https://digitallibrary.un.org/record/778523>.

¹¹⁴ Vučković Šahović, Doek, and Zermatten, *The Rights of the Child in International Law*, 97–100.

¹¹⁵ UN Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para.1)', paras 17–18.

¹¹⁶ UN Committee on the Rights of the Child, para. 37.

¹¹⁷ UN Committee on the Rights of the Child, para. 6.

interest.¹¹⁸ Finally, the principle is also a rule of procedure: when a decision affects a specific child or group, it must include an evaluation of its impacts on children.¹¹⁹

The principle of the best interest of the child influences the other principles of the CRC.

3.1.2. *Right to Protection Against Discrimination*

The Right to protection against discrimination is established in Article 2 of the CRC. It aims to ensure equal opportunities for all children to enjoy the rights of the Convention.¹²⁰ That is, exactly situations and conditions require the exact same treatment. However, different treatments are acceptable to eliminate discrimination, for example, to vulnerable groups, as far as they are lawful, proportionate, and in line with the child's best interest. The article gives some examples but allows States to add other situations that are not explicitly mentioned, like migration, which is further developed in Article 22.¹²¹

3.1.3. *Right to Life, Survival, and Development*

The third principle is the right to life, survival, and development, established in Article 6 of the CRC. The inherent right to life means that life must be protected from birth. This provision justifies the ban on the death penalty for those under 18.¹²² By survival, it is included the result of natural hazards and situations of distress, such as armed conflicts and poverty. In both cases, the children are restricted to the enjoyment of their rights, so the priority is to protect their survival under those situations.¹²³ The CRC Committee addresses that the enjoyment of the right to education is crucial in providing the right to survival because schools are a protected environment in most catastrophic events or armed conflicts.¹²⁴ Furthermore, education builds the capability of resisting adversity contexts.

Development is associated with the child's evolving capacities and englobes physical, mental, moral, psychological, and social development.¹²⁵ It is directly related to the right to life and survival. Children cannot be just alive and survive; they have the right to have a progressive

¹¹⁸ UN Committee on the Rights of the Child, para. 6.

¹¹⁹ UN Committee on the Rights of the Child, para. 6.

¹²⁰ UN Committee on the Rights of the Child, para. 41.

¹²¹ Vučković Šahović, Doek, and Zermatten, *The Rights of the Child in International Law*, 92, 95.

¹²² Vučković Šahović, Doek, and Zermatten, 101.

¹²³ Vučković Šahović, Doek, and Zermatten, 102.

¹²⁴ UN General Assembly, 'The Right to Education in Emergency Situations: Resolution Adopted by the General Assembly' (New York (64th sess.: 2009-2010): UN, 27 July 2010), para. 10, <https://digitallibrary.un.org/record/685964>.

¹²⁵ Vučković Šahović, Doek, and Zermatten, *The Rights of the Child in International Law*, 104–5.

development, which encompasses the enjoyment of all the other rights set in the CRC.¹²⁶ Furthermore, according to the CRC Committee, respecting the right to life, survival, and development is implicit in determining the child's best interests.¹²⁷

3.1.4. *Right to be Heard*

The right to be heard is contemplated in Article 12 of the CRC. It brings the child participation in all matters affecting them (and the right to refuse it) as well as substantial participation as an active agent in society, promoting, protecting, and monitoring their rights.¹²⁸ The States must ensure conditions for them to freely express their views and consider them in decision-making.¹²⁹ The principle is dual-right based: the right of children to express themselves freely and, consequently, the right to have those views taken into account with the proper weight, considering their age and maturity.¹³⁰ An adult mediator plays a vital role in determining the child's capacity and deciding the final weight to be given to the child's opinion.¹³¹

3.2. Article 22 of the CRC: Refugee Children

Article 22 of the CRC aims to protect refugee children and children seeking refugee status. For this, the provision stipulates the obligation of States to ensure protection and humanitarian assistance for the mentioned children in the enjoyment of their rights, regardless if provided by the CRC or other Human Rights or Humanitarian instruments.¹³² To achieve the protection and humanitarian assistance of migrant children and provide family reunification when children are unaccompanied or detached from their families, paragraph 2 of Article 22 includes the importance of States' cooperation with the United Nations and other organizations.¹³³

¹²⁶ Vučković Šahović, Doek, and Zermatten, 104–5.

¹²⁷ UN Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para.1)', para. 42.

¹²⁸ Vučković Šahović, Doek, and Zermatten, *The Rights of the Child in International Law*, 106–8, 112.

¹²⁹ Vučković Šahović, Doek, and Zermatten, 106–8, 112.

¹³⁰ UN Committee on the Rights of the Child, 'General Comment No. 12 (2009), The Right of the Child to Be Heard' (Geneva (51st sess.): UN Committee on the Rights of the Child, 20 July 2009), para. 15, <https://digitallibrary.un.org/record/671444>.

¹³¹ Vučković Šahović, Doek, and Zermatten, *The Rights of the Child in International Law*, 106–8, 112.

¹³² United Nations General Assembly, Convention on the Rights of the Child, art. 22.1.

¹³³ United Nations General Assembly, art. 22.2.

This subchapter will explain the scope of Article 22 of the CRC, especially regarding refugee children and children seeking refugee status as right holders, and how it is interpreted to include Ukrainian children in the protection scope of the provision.

3.2.1. *Refugee Children and Children Seeking Refugee Status as Right Holders*

The CRC fails to define a refugee. Whereas, according to Article 22, international or domestic law is applicable to define the term, which means that refugee status is not dependent just on domestic law, but if it is silent, international law is applicable.¹³⁴

Besides the refugee definition explored below, to interpret Article 22, it is unavoidable to consider that the beneficiary is a child, which imposes a higher level of protection.¹³⁵ Under Article 1 of the CRC, a child is a human being under 18 years old or under the age of majority, if the domestic law provides differently.¹³⁶ Germany adopts the same standard as the CRC, every person who has not achieved the age of 18 has the legal status of a minor.¹³⁷

The Refugee Convention has the role at the international level of defining refugee.¹³⁸ According to Article 1, the term refugee shall apply to persons (and, thus, also children), who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, is unable or, owing to such fear, are unwilling to return to it.¹³⁹ However, although the term does not bring an age limitation, the interpretation mainly considers adult experiences.¹⁴⁰ A child-sensitive way of interpretation is

¹³⁴ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 3rd ed. (Geneva: UNICEF, 2007), 307, <https://www.unicef.org/reports/implementation-handbook-convention-rights-child>.

¹³⁵ Jason M. Pobjoy, 'Article 22. Refugee Children', in *The UN Convention on the Rights of the Child: A Commentary.*, ed. John Tobin (New York: Oxford University Press, 2019), 825–26.

¹³⁶ United Nations General Assembly, Convention on the Rights of the Child, art. 1.

¹³⁷ Germany, 'Combined 5th and 6th Periodic Reports Submitted by Germany under Article 44 of the Convention, Due in 2019' (Geneva: Committee on the Rights of the Child, 13 November 2020), para. 51, <https://digitallibrary.un.org/record/3892519>.

¹³⁸ United Nations General Assembly, 'Convention Relating to the Status of Refugees', Pub. L. No. 189 UNTS 137 (1951), art. 1, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>.

¹³⁹ United Nations General Assembly, art. 1.

¹⁴⁰ UNHCR, 'Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees' (UNHCR, 22 December 2009), para. 1, <https://www.unhcr.org/media/guidelines-international-protection-no-8-child-asylum-claims-under-articles-1-2-and-1-f-1951>.

necessary. It does not mean the status should automatically be granted to children; they must also meet the requirements of Article 1 of the Refugee Convention.¹⁴¹

Four important elements are essential to develop the refugee definition of Article 1: alienage, well-founded fear, persecution, and membership of a particular social group. According to the Refugee Convention, the first requirement is that the person must be outside their country of origin, not being able to return or not willing to because of fear.¹⁴²

Additionally, well-founded fear is understood as a dual concept: with evidence of subjective fear and objective validation.¹⁴³ The objective part of the provision determines that well-founded fear is a risk directly connected to the life, liberty, or security of a person due to the current situation in the country of origin and because of their ‘race, religion, nationality, membership of a particular social group or political opinion’¹⁴⁴.¹⁴⁵ Interpreting well-founded fear child-sensitively, the circumstances a child faces in their country of origin must be accessed. For example, the nonexistence of child protection services, where a child could ask for help, can objectively validate the well-founded fear.¹⁴⁶ On the other hand, the subjective component is based on the personal feeling of fear of being persecuted, related to personal characteristics and psychological vulnerabilities. However, since the subjective fear is hard to demonstrate, the human rights approach to the refugee definition excludes it from the interpretation of well-founded fear, being enough to suffer the objective risk in the country of origin, allowing more people to fall into the refugee definition.¹⁴⁷

The fear of persecution encompasses severe harm and the failure of the State to provide protection. Serious harm needs to be offensive. In practice, the offensiveness is determined by judges. For this reason, the most used interpretation is also based on human rights standards, considering as offensive harm all the situations contrary to human rights, for example, discrimination of any kind.¹⁴⁸ From a child’s perspective of persecution, the principle of the best interest of the child requires the analysis of the impact of the harm on the children’s

¹⁴¹ UNHCR, para. 4.

¹⁴² Spyridoula Katsoni, ‘Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention’, *Cambridge International Law Journal* 10, no. 1 (21 June 2021): 99, <https://doi.org/10.4337/cilj.2021.01.05>.

¹⁴³ Katsoni, 99–100.

¹⁴⁴ United Nations General Assembly, Convention relating to the Status of Refugees, art. 1A(2).

¹⁴⁵ Katsoni, ‘Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention’, 99–100.

¹⁴⁶ UNHCR, ‘Guidelines on International Protection No. 8’, para. 11.

¹⁴⁷ Katsoni, ‘Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention’, 99–100.

¹⁴⁸ Katsoni, 100–101.

rights and interests. For example, ill-treatment does not meet the requirements to be considered persecution for an adult, but for a child, it can meet.¹⁴⁹

Last, the provision of the Refugee Convention enumerates some examples of reasons for persecution.¹⁵⁰ For a child, violation of human rights, especially those rights detailed in the CRC, are reasons for persecution.¹⁵¹ Considering their level of dependency, violations of ESCR are as grave as those of CPR.¹⁵² Generally, the children's request for refugee status is based on the reason for membership of a particular social group.¹⁵³ When persecution occurs based on this reason, there was some difficulties in interpreting what is considered a particular social group.¹⁵⁴ The UNHCR defined: 'a particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be innate, unchangeable, or otherwise fundamental to identity, conscience or the exercise of one's human rights'¹⁵⁵.

According to the definition of the UNHCR, children may be considered a social group.¹⁵⁶ Even though Article 1 brings a particular social group membership as an example of persecution's reason, it is essential to emphasize that the risk of persecution must be personal and individualized. Groups of people do not automatically enter under the refugee definition. There is a need to analyse if individual persons of the group fall under the refugee definition. So, in summary, membership of a particular social group can be a reason for persecution, but the risk needs to be analysed individually in each case.¹⁵⁷

Article 1F of the Refugee Convention also provides exclusion clauses, enumerating cases in which some individuals are excluded from the refugee definition.¹⁵⁸ However, interpreting the refugee definition in line with the relevant human rights treaties suggests that these exclusion

¹⁴⁹ UNHCR, 'Guidelines on International Protection No. 8', para. 10.

¹⁵⁰ Katsoni, 'Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention', 101–3.

¹⁵¹ UNHCR, 'Guidelines on International Protection No. 8', para. 13.

¹⁵² UNHCR, para. 14.

¹⁵³ UNHCR, para. 48.

¹⁵⁴ Katsoni, 'Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention', 101–3.

¹⁵⁵ UNHCR, 'Guidelines on International Protection: "Membership of a Particular Social Group" within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees', 7 May 2002, 3, <https://www.unhcr.org/media/guidelines-international-protection-no-2-membership-particular-social-group-within-context>.

¹⁵⁶ UNHCR, 'Guidelines on International Protection No. 8', para. 50.

¹⁵⁷ Katsoni, 'Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention', 100.

¹⁵⁸ United Nations General Assembly, Convention relating to the Status of Refugees, art. 1F.

clauses should be interpreted narrowly.¹⁵⁹ This interpretation should be even more narrow when it is applied to children.¹⁶⁰ According to UNHCR, an exclusion clause can just be applied to children when they reach the age of criminal responsibility established by international or national law.¹⁶¹ However, because of the distinction of such age in different countries, the maturity and mental capacity of the child must be evaluated before excluding them from the refugee status based on Article 1F.¹⁶²

Once the definitions of refugee and children have been presented, next step is the interpretation of Article 22 of the CRC.

Article 22 provides protection not just for the children who have already gotten refugee status but also for those seeking it.¹⁶³ By considering the children seeking refugee status as right holders, the CRC called attention to the protection of those who are not eligible to get refugee status and made clear that they are also protected on the basis of equal treatment.¹⁶⁴

Under international law, migrants from Ukraine usually fall into the refugee definition of the Refugee Convention's Article 1.¹⁶⁵ However, as explained in topic 2.1.1, they are defined as beneficiaries of temporary protection under EU law. This does not exclude the possibility of granting refugee status. Although the term refugees from Ukraine is broadly used internationally, also to refer to those in the EU territory, the correct legal term to indicate migrants from Ukraine in the EU is not refugees, if a given State has not formally acknowledged them as such, but as beneficiaries of temporary protection. However, in other parts of the world, the only legal protection that they have is refugee status, so for non-EU countries, they can be either called refugees, provided that a given State has granted them refugee status, or protection seekers if they have applied for some form of protection in a given State.

This terminology issue can lead us to another discussion: since the Article 22 of the CRC brings the right expressly for refugee children and children seeking refugee status, are the children benefiting temporary protection also covered by the provision?

¹⁵⁹ UNHCR, 'Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees' (UNHCR, 4 September 2023), para. 2, <https://www.unhcr.org/media/guidelines-international-protection-no-5-application-exclusion-clauses-article-1f-1951>.

¹⁶⁰ UNHCR, 'Guidelines on International Protection No. 8', para. 59.

¹⁶¹ UNHCR, para. 60.

¹⁶² UNHCR, para. 61.

¹⁶³ United Nations General Assembly, Convention on the Rights of the Child, art. 22.

¹⁶⁴ Pobjoy, 'Article 22. Refugee Children', 833.

¹⁶⁵ Francesco Pasetti and Carmine Conte, 'Refugees and Beneficiaries of Subsidiary Protection: Measuring and Comparing Integration Policies', *Global Policy* 12, no. 3 (2021): 350, <https://doi.org/10.1111/1758-5899.12951>.

As a provision on an international treaty, Article 22 of the CRC should be interpreted in line with the customary rules of treaty interpretation enshrined in Articles 31-33 of the Vienna Convention on the Law of Treaties.¹⁶⁶ More specifically, under Article 31.1, the treaties must be interpreted in the light of their objective and purposes.¹⁶⁷ Following this interpretative guidance, it is possible to conclude that they are considered right holders. It is because, since the provision adds, besides the children that have refugee status, those that are seeking international protection, it is clear that the purpose of the CRC provision is to protect all migrant children, regardless of their status or nomenclature.¹⁶⁸

3.2.2. *Protection Scope of Article 22 of the CRC*

According to UNHCR data, more than 50% of the World's refugees are children.¹⁶⁹ Since the 20th century, international documents and institutions such as the 1924 Geneva Declaration on the Rights of the Child have developed and recognized the need to prioritize refugee children.¹⁷⁰ However, Article 22 of the CRC is the only provision in human rights treaties that brought specific attention to refugee children.¹⁷¹

The CRC is the international turning point for assuring particular protection to refugee children. This human rights treaty has been ratified by a larger number of countries than any other, making it the most extensively endorsed international agreement concerning human rights.¹⁷² Besides that, among the set of children's rights brought by the Convention, refugee children are constantly emphasized as right holders as much as citizens, with the additional protection of Article 22.¹⁷³

The first paragraph of Article 22 protects refugee children and children seeking refugee status and the enjoyment of their rights, whether provided in the CRC or another international treaty.¹⁷⁴ The article, besides assuring the rights of refugee children, also includes in the protection the children seeking refugee status and establishes for them the same assistance and

¹⁶⁶ Aust, *Modern Treaty Law and Practice*, 10–11.

¹⁶⁷ United Nations General Assembly, 'Vienna Convention on the Law of Treaties', Pub. L. No. 1155 UNTS 331 (1969), art. 31.1, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

¹⁶⁸ United Nations General Assembly, art. 31.1; United Nations General Assembly, Convention on the Rights of the Child, art. 22.

¹⁶⁹ UNHCR, 'Children', UNHCR The UN Refugee Agency, accessed 3 April 2023, <https://www.unhcr.org/children.html>.

¹⁷⁰ Pobjoy, 'Article 22. Refugee Children', 819–22.

¹⁷¹ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 305.

¹⁷² UNICEF, 'Convention on the Rights of the Child: For Every Child, Every Right.', UNICEF, accessed 3 April 2023, <https://www.unicef.org/child-rights-convention>.

¹⁷³ Pobjoy, 'Article 22. Refugee Children', 821.

¹⁷⁴ United Nations General Assembly, Convention on the Rights of the Child, art. 22.1.

facilities as those who have been granted refugee status.¹⁷⁵ Inert to this paragraph is the principle of non-discrimination. States must take all appropriate measures to ensure the enjoyment of the rights without any discrimination.¹⁷⁶ Nevertheless, States must also consider all the particular needs and vulnerabilities that refugee children can face.¹⁷⁷

To understand this provision better, it is essential to go deeper into some terms used in the Convention text. The verb ‘shall’ means that this provision is mandatory for all States Parties.¹⁷⁸ The interpretation to have in consideration about ‘appropriate measures’ is to adopt the measures in all governmental activities; legislation, policies, and practice must be in accordance with Article 22 of the CRC.¹⁷⁹ Finally, ‘to ensure’ means that ensuring must be effective, i.e., the measures must be successfully implemented by States to ensure the genuine enjoyment of the rights by the children.¹⁸⁰ It is essential to highlight that this provision does not fall into progressive implementation. It must be applied by States regardless of the resources available.¹⁸¹

Further analysing the provision, despite the article provides the principle of non-discrimination, equal treatment is not necessarily the right approach to the principle.¹⁸² Refugee children have their own noticeable vulnerabilities and needs. However, every child has particularities that must be taken into consideration, such as age, maturity, and whether they are accompanied or not. That is why, ensuring ‘appropriate protection’ requires the adoption of positive steps from States considering the circumstances of each child.¹⁸³

Finally, ‘applicable rights’, as mentioned before, means that refugee children or those seeking this status are holders of all rights provided by the CRC and other international human rights treaties. Childhood is a life period that never comes back again. That is why the adoption of measures must be prompt and bring durable solutions aiming at the development of the child.¹⁸⁴ About unaccompanied or separated children, the CRC Committee reinforced the need

¹⁷⁵ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 319.

¹⁷⁶ UNICEF, 313.

¹⁷⁷ Pobjoy, ‘Article 22. Refugee Children’, 824.

¹⁷⁸ Pobjoy, 836.

¹⁷⁹ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 318.

¹⁸⁰ Pobjoy, ‘Article 22. Refugee Children’, 836.

¹⁸¹ Pobjoy, 836.

¹⁸² Pobjoy, 819, 837–38.

¹⁸³ UN Committee on the Rights of the Child, ‘General Comment No. 6 (2005), Treatment of Unaccompanied and Separated Children Outside Their Country of Origin’ (Geneva: UN Committee on the Rights of the Child, 1 September 2005), para. 18, <https://digitallibrary.un.org/record/566055>.

¹⁸⁴ Pobjoy, ‘Article 22. Refugee Children’, 839.

for immediate implementation of durable solutions.¹⁸⁵ In the case of migrant children, the three leading durable solutions are: voluntary repatriation, local integration, or resettlement.¹⁸⁶ Considering that the first and the last are not always possible to implement, this academic work focuses on integration, especially into schools.

Involuntary migration of children has a substantial negative impact on the right to education. Considering that Article 22 provides the right to migrant children to enjoy all applicable rights, the Committee on the Rights of the Child and UNHCR have been reaffirming the States' obligation to ensure refugee children and children seeking refugee status the full enjoyment of the right to compulsory and free education provided by Article 28 of the CRC.¹⁸⁷ The checklist on the implementation of Article 22 developed by UNICEF includes the recognition of their culture, language, and need for social integration when integrating children at school.¹⁸⁸

3.3. Article 28 of the CRC: the Right to Education

Article 28 of the CRC brings the recognition by all States Parties of the human right to education and its progressive realization. For providing equal opportunities for the access to education, it enumerated some measures to be adopted by States, such as primary education being free and compulsory, the development of different types of secondary education, accessibility to higher education, and encouraging attendance.¹⁸⁹ Besides that, the article outlines the protection of human dignity and teaching in accordance with it and with the rights listed in the Convention.¹⁹⁰ At last, the provision also mentioned the importance of international cooperation, as Article 22, but here with the purpose to eliminate ignorance and illiteracy and to reach modern teaching methods.¹⁹¹

The main interpretation of Article 28 leads to four different characteristics that will be further developed. The first one is that the meaning of education goes beyond the formal forms of education enumerated in the article. The right to education also englobes preschool, homeschooling, as well as open-air and community-based education. Secondly, education must be available, accessible, acceptable, and adaptable, constitutes a progressive obligation

¹⁸⁵ UN Committee on the Rights of the Child, 'General Comment No. 6 (2005)', para. 79.

¹⁸⁶ Pobjoy, 'Article 22. Refugee Children', 839.

¹⁸⁷ Pobjoy, 844–45.

¹⁸⁸ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 319.

¹⁸⁹ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1.

¹⁹⁰ United Nations General Assembly, art. 28.2.

¹⁹¹ United Nations General Assembly, art. 28.3.

subject to the availability of resources, and the measures taken must be effective and in accordance with other provisions of the CRC. Third, disciplinary methods must be in accordance with the child's dignity. And finally, international cooperation in good faith is essential to ensure the right to education.¹⁹²

3.3.1. *The Right to Education Compared: differences between the CRC and the ICESCR*

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) defines the right to education as a cultural right. However, the most accepted opinion is that this right reinforces the indivisibility and interdependence of Human Rights. The UN Special Rapporteur on the Right to Education and the Committee on Economic, Social, and Cultural Rights believe that the right to education does not fit into just one category.¹⁹³

The ICESCR predates the CRC and brings in its Article 13, the right to education. However, since this academic work is focused on Ukrainian children, it is coherent to analyse the *lex specialis* for children. Article 28 of the CRC was written based on Article 13 of the ICESCR, but the content of both differs in some aspects. The first difference is that, in the CRC, the aim of education is in a different article.¹⁹⁴ Secondly, point (e) of the first paragraph and the second paragraph bring new obligations compared to the ICESCR, to 'encourage regular school attendance and reduce dropout rates'¹⁹⁵, and the disciplines need to be in accordance with child dignity.¹⁹⁶ Third, the CRC provides a specific paragraph encouraging international cooperation related to education, which is not seen in the ICESCR.¹⁹⁷ Fourth, the CRC does not provide explicitly the liberty of parents to choose the school based on their religion or convictions.¹⁹⁸ However, those and other weaknesses of the CRC do not reduce child protection because Article 41 of the CRC assures that children have the benefit of the higher standard, meaning that, even though there is a provision that lowers the standard of protection in comparison to another international instrument, the highest standard must be applied for children.¹⁹⁹

¹⁹² Courtis and Tobin, 'Article 28. The Right to Education', 1061–62.

¹⁹³ Courtis and Tobin, 1058.

¹⁹⁴ United Nations General Assembly, Convention on the Rights of the Child, art. 29.

¹⁹⁵ United Nations General Assembly, art. 28.1 (e).

¹⁹⁶ United Nations General Assembly, art. 28.2.

¹⁹⁷ United Nations General Assembly, art. 28.3.

¹⁹⁸ United Nations General Assembly, 'International Covenant on Economic, Social and Cultural Rights', Pub. L. No. 993 UNTS 3 (1966), art. 13.3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

¹⁹⁹ Courtis and Tobin, 'Article 28. The Right to Education', 1059.

Talking about Article 28 specifically, its interpretation is challenging, and it needs to consider the evolving capacities of each child. Childhood is not a universal experience. Children require different degrees of protection at different stages of their life depending on their age, maturity, and circumstances. Furthermore, every child presents their physical, mental, psychological, and social development differently.²⁰⁰

Article 28 is divided into three paragraphs that will be further developed.

3.3.2. *Paragraph 1: scope of the right*

The first paragraph provides the nature and scope of the right to education, defining the right, the States' obligation, and the measures required from them.²⁰¹

The first challenge faced when interpreting the article is that the meaning of education is not defined in the CRC, in the ICESCR, or in any other human rights treaty. What is unquestionable is that the right to education englobes formal education, which means primary, secondary, tertiary, and vocational.²⁰² Furthermore, the International Standard Classification of Education (ISCED) established key concepts essential in an educational program.²⁰³ It needs to be organized and sustained, which means be planned with specific aims and be durable and continuous and have educational activities, communication, and learning, where the children can be able to express themselves, share any kind of information, and improve their knowledge, understanding, skills, and experiences.²⁰⁴ Although this definition seeks some information, it is vital because it brought a significant development in the meaning of education. It can serve as a guide to Article 28 and can also be supported by other provisions, such as Article 29 of the CRC.²⁰⁵

Regarding informal education, defined as learning outside institutions, according to the CRC Committee's opinion, it is also assured by the right to education.²⁰⁶ The Committee constantly recommends that States ensure access to informal education, especially for vulnerable

²⁰⁰ Chiara Altafin, 'Children's Rights' (Master Class Week 5, Global Campus of Human Rights, 20 October 2022).

²⁰¹ Curtis and Tobin, 'Article 28. The Right to Education', 1061.

²⁰² Curtis and Tobin, 1063.

²⁰³ UNESCO, *International Standard Classification of Education (ISCED) 2011* (Montreal, Canada: UNESCO Institute for Statistics, 2012), 7.

²⁰⁴ UNESCO, 7.

²⁰⁵ Curtis and Tobin, 'Article 28. The Right to Education', 1063.

²⁰⁶ UN Committee on the Rights of the Child, 'Annex 9. General Comment No. 1 (2001), Article 29 (1), The Aims of Education' (Geneva: UN Committee on the Rights of the Child, 17 April 2001), para. 2, <https://digitallibrary.un.org/record/447223>.

groups.²⁰⁷ The CRC Committee understands that preschool is also guaranteed by Article 28.²⁰⁸ Even though General Comment No. 7 and Article 28 of the CRC do not explicitly mention preschool, this understanding is based on the broader interpretation of the right to survival and development, established in Article 6 of the CRC.²⁰⁹ Homeschooling has been contradictory when analysing whether it is in the scope of Article 28 of the CRC. As stated by the European Commission of Human Rights, the right to education does not imply that it is mandatory to happen in the school environment.²¹⁰ However, when considering this opinion, it is essential to highlight that the right to homeschooling is not unlimited. The content of the homeschooling needs to be in accordance with the aims of education (Article 29 of the CRC), and when it is not, the State has the right and duty to interfere, assuring that the child has the full enjoyment of the right to education.²¹¹

Article 28 is omitted on the right to fundamental education, established in Article 13 of the ICESCR.²¹² The reasoning behind this is that those looking to enforce this right would not be children but adults who were denied this right when they were children. However, the right to education on the CRC needs to be interpreted broader so the right to fundamental education is implicit.²¹³

Still talking about paragraph 1 of Article 28, the first Special Rapporteur on the Right to Education suggested four subjective components to the right to education: availability, accessibility, acceptability, and adaptability. They have been used by ESCR and CRC Committees.²¹⁴ Availability means that sufficient human budget and national resources must be provided by States.²¹⁵ Accessibility indicates that education needs to be open to all, first without discrimination and providing equal opportunities; second, be physically accessible,

²⁰⁷ UNESCO, *International Standard Classification of Education (ISCED) 2011*, 12; Courtis and Tobin, 'Article 28. The Right to Education', 1064.

²⁰⁸ UN Committee on the Rights of the Child, 'General Comment No. 7 (2005), Implementing Child Rights in Early Childhood' (Geneva: UN Committee on the Rights of the Child, 1 November 2005), paras 29–30, <https://digitallibrary.un.org/record/570528>.

²⁰⁹ Courtis and Tobin, 'Article 28. The Right to Education', 1065.

²¹⁰ *Leuffen v. Germany*, No. 19844/92 (European Commission of Human Rights 9 December 1992).

²¹¹ Courtis and Tobin, 'Article 28. The Right to Education', 1065–66.

²¹² United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights, art. 13.2(d).

²¹³ Courtis and Tobin, 'Article 28. The Right to Education', 1066–67.

²¹⁴ UN Commission on Human Rights, 'Preliminary Report of the Special Rapporteur on the Right to Education, Katarina Tomasevski, Submitted in Accordance with Commission on Human Rights Resolution 1998/33.' (Geneva: UN Commission on Human Rights, 13 January 1999), para. 50, <https://digitallibrary.un.org/record/1487535>.

²¹⁵ UN Commission on Human Rights, paras 51–52.

especially to children with disabilities; third, it must be economically affordable.²¹⁶ Acceptability is related to the methods used, for example, the number of children per class, how long children stay at school, and the curriculum content.²¹⁷ Adaptability is understood that education must be flexible to adapt to the children's needs and reality, particularly in conflict settings and humanitarian crises.²¹⁸

Another characteristic of the right to education is that it is not subordinated. It is a right and imposes a legal duty to the States Parties of the CRC.²¹⁹ States have an obligation to respect, protect and fulfil the right to education.²²⁰ The obligation to respect means that States cannot violate the right to education, for example, by adopting discriminatory legislation or closing schools without justification, which can just be done if it is proportional and extremely necessary.²²¹ Protecting the right to education, States cannot let others violate this right, for example, by providing access to vulnerable groups and monitoring private schools to ensure the principle of non-discrimination.²²² Fulfilling the right to education requires States to provide full and effective enjoyment of the right to every child.²²³

3.3.3. *Paragraph 1: progressive realization of the Right to Education*

Article 28 is a provision considered a progressive obligation. The progressive implementation's definition can be found in Articles 2.1 of the ICESCR and 4 of the CRC.²²⁴ It is a practical solution because States have different levels of development, and most of the time, the full realization of some rights is not achieved in a short period. Furthermore, for a children rights approach to the principle of progressive realization, it needs to be applied in accordance with the children's four general principles, explained in the beginning of this chapter.²²⁵ States are obliged to immediately take steps and allocate all their efforts and available resources and, over time, enlarge the level of protection and promotion of those

²¹⁶ UN Commission on Human Rights, para. 57.

²¹⁷ UN Commission on Human Rights, para. 62; Courtis and Tobin, 'Article 28. The Right to Education', 1069.

²¹⁸ UN Commission on Human Rights, 'Preliminary Report', paras 70–72; Courtis and Tobin, 'Article 28. The Right to Education', 1070.

²¹⁹ United Nations General Assembly, Convention on the Rights of the Child, arts. 2, 28.

²²⁰ UN Committee on the Rights of the Child, 'General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Art. 24)' (Geneva: UN Committee on the Rights of the Child, 17 April 2013), para. 71, <https://digitallibrary.un.org/record/778524>.

²²¹ Courtis and Tobin, 'Article 28. The Right to Education', 1071–72.

²²² Courtis and Tobin, 1072.

²²³ Courtis and Tobin, 1072.

²²⁴ Seamus Byrne, 'Reclaiming Progressive Realisation: A Children's Rights Analysis', *The International Journal of Children's Rights* 28, no. 4 (14 December 2020): 751, <https://doi.org/10.1163/15718182-28040011>.

²²⁵ Byrne, 753; Agata Hauser, 'Economic, Social and Cultural Rights' (Master Class Week 5, Global Campus of Human Rights, 17 October 2022).

rights.²²⁶ However, the steps to be taken and the available resources depend not just on monetary actions. Substantive and procedural measures, such as legislative improvements and new policies, can be implemented without cost.²²⁷ Furthermore, the maximum available resources are not delimited to the domestic level. External resources must be considered.²²⁸ Even though Article 28 mentions that the right to education will be achieved progressively, there are some steps that States should take, which are the minimum core obligations, i.e., the obligations that need to have immediate effect to meet the essential level of the right, without it the right loses its reason to exist.²²⁹

Regarding the minimum core obligation on the right to education, the ESCR Committee extended it to englobe the right to access public institutions, the curriculum in accordance with international human rights law, implementation of a strategy to include in a national level secondary and higher education, and the right to free choice of education.²³⁰ However, this extension is considered exorbitant to be the minimum necessary.²³¹ According to UNICEF, the minimum core of Article 28 of the CRC covers the free primary school accessible to all and the principles of non-discrimination and non-interference in education.²³² Additionally, the minimum core obligation cannot be confused with the principle of progressive realization. The progressive realization starts when the minimum core finishes. In this case, primary education is not subject of progressive realization, but once it is implemented as the minimum core of the right to education, it opens space to the progressive realization of secondary and tertiary education.²³³

Besides that, under progressive implementation, it is also prohibited for States to adopt retrogressive measures without reasonable justifications.²³⁴ The retrogressions ‘must be temporary, necessary, and proportionate, reasonable, and non-discriminatory, must not

²²⁶ UN Committee on the Rights of the Child, ‘General Comment No. 5 (2003), General Measures of Implementation of the Convention on the Rights of the Child’ (Geneva: UN Committee on the Rights of the Child, 27 November 2003), para. 7, <https://digitallibrary.un.org/record/513415>.

²²⁷ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 413.

²²⁸ Byrne, ‘Reclaiming Progressive Realisation’, 754–55.

²²⁹ Hauser, ‘Economic, Social and Cultural Rights’; Byrne, ‘Reclaiming Progressive Realisation’, 753.

²³⁰ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 13 (1999), Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Education (Article 13 of the Covenant)’ (Geneva (21st sess.): UN Committee on Economic, Social and Cultural Rights, 8 December 1999), para. 57, <https://digitallibrary.un.org/record/407275>.

²³¹ Curtis and Tobin, ‘Article 28. The Right to Education’, 1075.

²³² UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 408.

²³³ Byrne, ‘Reclaiming Progressive Realisation’, 754.

²³⁴ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No. 3 (1990): The Nature of States Parties’ Obligations (Art. 2, Para 1 of the Covenant)’, in *Committee on Economic, Social and Cultural Rights: Report on the 5th Session, 26 November-14 December 1990.*, E/1991/23 - E/C.12/1990/8 (New York: UN, 1991), para. 9, <https://digitallibrary.un.org/record/114868>.

disproportionally impact the rights of marginalised groups and must protect the minimum core content of rights'²³⁵.

As established in Article 22 of the CRC, all the CRC's set of rights, including the right to education, are applied to refugee and migrant children.²³⁶ To be able to respect, protect and fulfil the enjoyment of the right to education to children who fled their country of origin, the four components pointed out by the Special Rapporteur, especially adaptability, need to be taken into account. 'States must take all necessary measures, subject to the maximum extent of their available resources, to provide a system for the delivery of education which adapts to, and accommodates as far as possible, situations resulting from conflicts or other crises'²³⁷.

In this statement is possible to observe that the principle of progressive implementation is also applicable to the adaptation of the education system to integrate migrant children better, meaning that, as far as the minimum core was implemented, the improvements need to take place time by time. Furthermore, since Article 22 is not susceptible to progressive implementation, when interpreted together with Article 28, the minimum core obligations on the right to education (primary education free to all, non-discrimination and non-interference) are automatically assured to refugee and migrant children as well as if they were State's citizens.²³⁸

3.3.4. Paragraph 1: examples of measures to be taken by States

The subparagraphs of paragraph 1 of Article 28 bring examples of States' duties based on equal opportunities and guided by the principle of non-discrimination.²³⁹ Discrimination against a child related to the right to education happens when any distinction, exclusion, restriction, or preference are made based on their status with the, intended or not, purpose of diminishing or preventing the enjoyment of the right in public or private schools.²⁴⁰ It is necessary to call attention to the fact that difference of treatment is not always unlawful. There are some situations in which extraordinary measures must be taken for vulnerable groups, which does not violate Article 28.²⁴¹

²³⁵ Byrne, 'Reclaiming Progressive Realisation', 759.

²³⁶ UNICEF, 'Convention on the Rights of the Child: For Every Child, Every Right.', art. 22.

²³⁷ Courtis and Tobin, 'Article 28. The Right to Education', 1071.

²³⁸ Pobjoy, 'Article 22. Refugee Children', 836; Courtis and Tobin, 'Article 28. The Right to Education', 1075.

²³⁹ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 411.

²⁴⁰ Courtis and Tobin, 'Article 28. The Right to Education', 1076–77.

²⁴¹ Courtis and Tobin, 1076–77.

Topics (a) to (e) are examples of measures to be taken by States based on the levels of education. However, the CRC does not define those levels (primary, secondary, and higher education). The definitions can be found in the 2011 ISCED.

Topic (a) refers to primary education as compulsory and free.²⁴² According to the ISCED, primary education provides the first steps in personal and social development and focuses on the essential knowledge in reading, writing, and mathematics, providing the basis for secondary education.²⁴³ There is no established age to begin and end primary education, but a minimum of six years is expected.²⁴⁴ States are not binding by a common model of primary education; however, it needs to be in line with all the standards on the right to education explained above.²⁴⁵ Besides that, even though the CRC does not mention it explicitly, based on assuring the highest standard of protection, the parents have the right to choose the school according to their culture and beliefs, so States cannot oblige the attendance of a child to a certain specific school.²⁴⁶ Concerning primary education being compulsory, there is no established age for States to make education compulsory. This put the children in a limbo between the end of primary education and the minimum labour age. That is why some States have been extending the period of compulsory education over primary education, approved by the CRC Committee.²⁴⁷ However, sometimes it can become a problem because compulsory education can go further than the minimum employment age, and it does not make sense to keep the children at school against their will when they want to work and can do it legally.²⁴⁸ Furthermore, primary education must be provided free of charge, and this right is not susceptible to progressive realization; it is considered a minimum core that must be reached.²⁴⁹

Topic (b) mentions the development of secondary education.²⁵⁰ Secondary education aims the human development for ongoing learning, preparing for higher education, or opportunities in the labour market.²⁵¹ In this way, Article 28 establishes that different forms of secondary education must be provided, including general and vocational.²⁵² This last one considers the

²⁴² United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (a).

²⁴³ UNESCO, *International Standard Classification of Education (ISCED) 2011*, 30.

²⁴⁴ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 412.

²⁴⁵ UNICEF, 422.

²⁴⁶ Courtis and Tobin, 'Article 28. The Right to Education', 1087.

²⁴⁷ Courtis and Tobin, 1088.

²⁴⁸ Courtis and Tobin, 1089.

²⁴⁹ Courtis and Tobin, 422.

²⁵⁰ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (b).

²⁵¹ UNESCO, *International Standard Classification of Education (ISCED) 2011*, 33, 38.

²⁵² United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (b).

child's reality, background, culture, skills, and employment needs of the region to develop their capability to enter professional employment.²⁵³

Topic (c) refers to the accessibility of higher education.²⁵⁴ Higher education is called by the ISCED as tertiary education, which is the specialization level of education. It can be short-cycle higher education, bachelor's, Master's, Doctoral's, or equivalent degrees.²⁵⁵ The principle of non-discrimination also applies here, higher education must be accessible to all, but some exclusions based on the capacity (expertise) of the students are allowed.²⁵⁶

Educational and vocational guidance is mentioned in the topic (d), and it represents a complement to the vocational education mentioned in Article 28.1 (b).²⁵⁷ The educational and vocational information and guidance make the link between the end of the school period and the work market. By providing vocational guidance, children can develop their skills and preferences prone to employment opportunities.²⁵⁸ However, this development is just possible to achieve when opportunities are accessible for students as well as information about them.²⁵⁹

Finally, topic (e) calls attention to regular attendance and avoidance of school evading.²⁶⁰ How to ensure attendance is a challenge. States play an important role not only in providing access to education but also in keeping it attractive to children to avoid dropouts.²⁶¹ States should develop a set of measures with parents, children, and teachers, not based on the imposition of penalties but focused on incentives to keep attendance high.²⁶² Furthermore, the CRC Committee, aware of the problem, encourages States to analyse and tackle the reasons behind the dropout.²⁶³

3.3.5. Paragraphs 2 and 3: child's dignity and international cooperation

The second paragraph looks at the disciplinary measures. It establishes that they cannot violate the child's dignity, which is the basis of the child's human rights, and States have the

²⁵³ Courtis and Tobin, 'Article 28. The Right to Education', 1094–96.

²⁵⁴ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (c).

²⁵⁵ UNESCO, *International Standard Classification of Education (ISCED) 2011*, 46.

²⁵⁶ UN Committee on Economic, Social and Cultural Rights, 'General Comment No. 13', para. 19.

²⁵⁷ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (d).

²⁵⁸ Courtis and Tobin, 'Article 28. The Right to Education', 1101.

²⁵⁹ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 426.

²⁶⁰ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (e).

²⁶¹ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 426.

²⁶² Courtis and Tobin, 'Article 28. The Right to Education', 1089.

²⁶³ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 426.

positive obligation to ensure that violation of the child's dignity does not occur.²⁶⁴ All the disciplinary techniques applied contrary to any provision of the CRC are considered indignity.²⁶⁵ Interference on a child's right can just be justified if there is a legitimate aim and the action taken was necessary to achieve it.²⁶⁶ This provision was added with the purpose of ending the historically violent forms of disciplining. Corporal punishment and any other action negatively affecting a child's self-esteem are never under the child's dignity.²⁶⁷ The CRC Committee believes that corporal punishment is never a legitimate way of discipline.²⁶⁸ There will always be alternative punishment measures rather than corporal to meet the child's dignity in practice.²⁶⁹

The third paragraph encourages international cooperation. Even though Article 4 of the CRC brings the general obligation to international cooperation, it is so essential that it is reinforced in Article 28 because it can strengthen the fulfilment of the right to education, especially in emergent countries, where funds are scarce.²⁷⁰ Article 28.3 set some specific goals of international cooperation, focusing on 'facilitating access to scientific and technical knowledge and modern teaching methods'²⁷¹ and eliminating 'ignorance and illiteracy'²⁷², not only in writing, reading, and mathematics but also in media illiteracy, for example. The encouragement of international cooperation does not constitute a result obligation. It motivates States to cooperate, focusing on developing countries, but they are not obliged to have a positive outcome. They indeed need to adopt all the efforts to cooperate for the right to education, which also includes avoiding international obligations that can negatively affect the right to education.²⁷³

According to the CRC Committee, States have the obligation, when ratifying the CRC, not just to implement the rights nationally but also to cooperate in a global implementation. The responsibility for promoting and protecting children's rights is shared between States.²⁷⁴

²⁶⁴ United Nations General Assembly, Convention on the Rights of the Child, art. 28.2.

²⁶⁵ Courtis and Tobin, 'Article 28. The Right to Education', 1105.

²⁶⁶ Courtis and Tobin, 1106.

²⁶⁷ Courtis and Tobin, 1062.

²⁶⁸ UN Committee on the Rights of the Child, 'General Comment No. 8 (2006), The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, Inter Alia)' (Geneva (42nd sess.): UN Committee on the Rights of the Child, 2 March 2007), para. 11, <https://digitallibrary.un.org/record/583961>.

²⁶⁹ Courtis and Tobin, 'Article 28. The Right to Education', 1108.

²⁷⁰ United Nations General Assembly, Convention on the Rights of the Child, art. 28.3.

²⁷¹ United Nations General Assembly, art. 28.3.

²⁷² United Nations General Assembly, art. 28.3.

²⁷³ Courtis and Tobin, 'Article 28. The Right to Education', 1061, 1111–14.

²⁷⁴ UN Committee on the Rights of the Child, 'General Comment No. 5', para. 7.

4. IMPLEMENTATION OF ARTICLES 22 AND 28 OF THE CRC IN GERMANY, ESPECIALLY IN NRW

This academic work aims to analyse the implementation of Articles 22 and 28 of the CRC in Germany, especially in NRW, after the arrival of Ukrainians who fled their country of origin following the Russian invasion. This is to check if the German school system complies with the mentioned provisions, fulfilling the rights of the child on the integration of Ukrainians. Since the school system in Germany is not centralized, the focus is on the most populated federal state and where the most significant number of Ukrainians was received, NRW.

As the name indicates, the Human Rights Treaty Bodies are committees of independent experts established by each HR treaty, responsible for analysing their implementation in States who ratified.²⁷⁵ For this purpose, the CRC established the Committee on the Rights of the Child.²⁷⁶ The latest report of Germany to the Committee does not cover the period of the arrival of Ukrainians. However, the analysis of the report is essential to this academic work because it shows difficulties Germany faces in the fulfilment of the right to education for migrants even before the arrival of Ukrainians. Besides that, the Concluding Observations of the Committee were sensitive to the current situation and mentioned its concerns regarding the situation of Ukrainian children in Germany.²⁷⁷

The State report and the Concluding Observations of the Committee are important but not enough to address the challenges faced by Ukrainian children in accessing education in Germany. Therefore, this chapter also explores the report ‘Education and Displacement: Ukrainian Families in Germany’²⁷⁸, written by the Centre for East European and International Studies, which focuses on education in the context of displacement.

Considering the competence of each federal state in legislating and adopting administrative procedures regarding education, in order to analyse the implementation of Articles 22 and 28 of the CRC in NRW to Ukrainian children, an analysis of the report on the policies adopted

²⁷⁵ OHCHR, ‘Reporting to the United Nations Human Rights Treaty Bodies: Part 1 - Manual’ (New York and Geneva: OHCHR, 2017), 8, <https://www.ohchr.org/en/publications/professional-training-series/reporting-un-human-rights-treaty-bodies-part1>.

²⁷⁶ UN General Assembly, ‘UN Convention on the Rights of the Child’ (1989), art. 43, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

²⁷⁷ UN Committee on the Rights of the Child, ‘Concluding Observations on the Combined 5th and 6th Periodic Reports of Germany’ (Geneva (91st sess.): UN, 13 October 2022), para. 39, <https://digitallibrary.un.org/record/3990854>.

²⁷⁸ Mützelburg and Krawatzek, ‘Education and Displacement: Ukrainian Families in Germany’.

by the Ministry of School and Education of NRW after the massive arrival of Ukrainians is also crucial.

For the reasons explained above, this chapter is going to analyse the implementation of Articles 22 and 28 of the CRC in Germany, especially in NRW, towards the analysis of the latest State report of Germany to the CRC Committee and its Concluding Observations, the report of Centre for East European and International Studies and the description of the Ministry of School and Education of NRW in the ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers with special regard to the war in Ukraine and its consequences for schools in North Rhine-Westphalia’²⁷⁹.

4.1. Committee on the Rights of the Child

The States’ reports have the purpose of reinforcing human rights’ respect by States Parties to human rights treaties. This obligation brought by Article 44 of the CRC is part of a broader commitment of States under the UDHR to promote and respect human rights nationally and internationally. Besides being an international obligation to States, it is also an opportunity to analyse the implementation of children’s rights nationally.²⁸⁰

The Committee on the Rights of the Child was established in the CRC with the purpose of examining the States Parties’ progress on the implementation of the CRC provisions.²⁸¹ States who ratified the Convention are compelled to send an initial report on their progression in meeting the obligations under the CRC within two years of the date the Convention entered into force. After that, periodic reports are also mandatory every five years.²⁸² However, because of the amount of analysis the Committee should do, sometimes one report is due in the same year of appreciation by the Committee of the past reports. Another issue the reporting procedure faces is the late or non-submission by States. Therefore, to encourage States to comply with their obligation of submitting periodic reports and to make the process

²⁷⁹ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’ (Ministry of School and Education of the State of North Rhine-Westphalia, July 2022), https://www.schulministerium.nrw/system/files/media/document/file/rahmenkonzept_beschulung_neuzuwanderung_version_2_0_englisch_07_2022.pdf.

²⁸⁰ Un UN Secretariat, ‘Harmonized Guidelines on Reporting under the International Human Rights Treaties, Including Guidelines on a Common Core Document and Treaty-Specific Targeted Documents’ (UN, 1 June 2005), paras 8–9, <https://digitallibrary.un.org/record/550499>.

²⁸¹ General Assembly, UN Convention on the Rights of the Child, art. 43.

²⁸² General Assembly, art. 44; Aoife Nolan, ‘Children’s Rights’, in *International Human Rights Law*, 4th ed. (Oxford University Press, 2022), 339, <https://www.oxfordlawtrove.com/display/10.1093/he/9780198860112.001.0001/he-9780198860112-chapter-17>.

simpler and more effective, the Committee allows to combine overdue and current reports in the same document.²⁸³ Even if the delay in the analysis of the procedures by the Committee is understandable due to the large number of countries that must be analysed, this constitutes a flaw in the reporting system because the combination of two reports represents, instead of five years, a period of ten years to evaluate the implementation of the CRC. The ones who are the most affected in this situation are the children who depend on the implementation of the CRC to have their human rights guaranteed.

Before publishing its Concluding Observations, the Committee preliminary analyses the report submitted by States to check if any additional information is necessary to address the CRC implementation in the country. For this purpose, the Committee, before the session on which it will analyse the State's report deeply, adopts a list of issues to be answered by States before the session.²⁸⁴

This topic presents the latest State report of Germany to the CRC, the list of issues adopted by the Committee and the German's answer to it, and finally, the Concluding Observations of the Committee regarding the German State report. This analysis is necessary to observe the implementation of Articles 22 and 28 of the CRC in Germany, especially regarding Ukrainian children. Even though the report does not cover the period of the arrival of Ukrainians, in its Concluding Observations, the Committee addresses the situation of migrant children in general in Germany and is also sensitive to the reality of Ukrainians and their challenges in accessing education.

4.1.1. Combined Fifth and Sixth Report of Germany

The combined fifth and sixth periodic reports were the latest submitted by Germany on 5 April 2019. Since it was presented before the Russian invasion of Ukraine, for obvious reasons, it just contains the general implementation of Articles 22 and 28 of the CRC in Germany, not considering specifically the Ukrainian children who arrived in Germany. The report showed that although the German Basic Law has not made any progress in adding children's rights into its scope, the German federal states have included them in their Constitutions.²⁸⁵ Furthermore, some measures were taken by the government to improve the protection of children with a migrant background, for example, the improvement of their

²⁸³ OHCHR, 'Reporting to the United Nations Human Rights Treaty Bodies: Part 1 - Manual', 34.

²⁸⁴ OHCHR, 51.

²⁸⁵ Germany, 'Combined 5th and 6th Periodic Reports Submitted by Germany under Article 44 of the Convention, Due in 2019', paras 11, 15.

reading skills and improvement of the legislation to fight against children in poverty (Gute-Kita-Gesetz and Starke-Familien-Gesetz) and implementation of projects such as ‘Support for Children and Juveniles with a migration background’ (Förmig) and ‘Education through Language and Writing’ (BISS).²⁸⁶

Regarding non-discrimination, Germany sustains that the federal states have been reinforcing training for teachers and expanding language support. Furthermore, they have also implemented an approach to the individual needs of children with migration background.²⁸⁷ Since 2017, supported by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, all locations in Germany were provided with youth migration services to guide refugees who are legal residents in Germany from 12 to 27 years old.²⁸⁸ Furthermore, the Federal Ministry for Family Affairs also launched the federal program ‘Welcome among Friends’ to support municipalities in welcoming refugees at schools and help them in the transitions to other levels of working life.²⁸⁹

Regarding psychological issues faced by migrant children and their negative influence on education, Germany recognises the importance of having a professional at school to identify those problems and provide advice to the families.²⁹⁰

Specifically, about the right to education of Article 28 of the CRC, Germany showed that every child from three years old until the age to engage at school have the right to frequent child daycare centre, and those right can also be extended to those until one year old depending on the parents’ situation.²⁹¹

Since the educational system in Germany varies according to its federal states, the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) works towards harmonization of the standards, especially the recognition of diplomas. This is important because some families move their residency, and children face difficulties integrating into a new school system. Due to this factor, students can avail assistance in bridging the gap

²⁸⁶ Boutiuc-Kaiser, ‘30 Years of United Nations Convention on the Rights of the Child in Germany’, 68–69.

²⁸⁷ Germany, ‘Combined 5th and 6th Periodic Reports Submitted by Germany under Article 44 of the Convention, Due in 2019’, para. 57.

²⁸⁸ Germany, ‘Annex 1 to the Fifth and Sixth Periodic Reports of the Federal Republic of Germany on the United Nations Convention on the Rights of the Child’ (Geneva: Committee on the Rights of the Child, 13 November 2020), para. 34, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FADR%2FDEU%2F34623&Lang=en.

²⁸⁹ Germany, para. 203.

²⁹⁰ Germany, ‘Combined 5th and 6th Periodic Reports Submitted by Germany under Article 44 of the Convention, Due in 2019’, para. 164.

²⁹¹ Germany, para. 188.

between certain subjects, especially when the curriculum of their previous and current schools varies. In addition, recognizing those difficulties, Germany affirmed in the report that the federal states are adopting measures to make this transfer between two different school systems less harmful to children.²⁹²

Another general action Germany took that benefits mainly migrant children is the human rights education at schools as a primary goal in all federal states. ‘The aim of human rights education in schools is the development of esteem, tolerance, and respect for other cultures, as well as a fundamental responsibility vis-à-vis society’²⁹³. The responsibility to promote integration of children with migration background lies with the schools. According to the report’s section about the implementation of Article 22 of the CRC, all the German federal states are putting efforts, including financial resources, to provide additional support to migrant children. The focus on integration is language support, stimulated by the projects ‘Support for Children and Juveniles with a migration background’ (Förmig) and ‘Education through Language and Writing’ (BISS), as mentioned above, which aims the enhancement of language proficiency through a wide array of skill development and ongoing training programs.²⁹⁴

4.1.2. List of Issues Related to the Report Submitted by Germany

After submitting the combined fifth and sixth periodic reports, the Committee developed a list of issues to be answered by Germany. Despite trying to focus on the most critical implementation points, the list of issues makes the reporting procedure even more time-consuming, further delaying the Concluding Observations, on which the Committee indicates the areas in which States should act.

As a recurrent question, the Committee asked for an explanation of the measures that have been taken to add children’s rights to the German Constitution explicitly and to develop a comprehensive framework addressing the rights of the child.²⁹⁵ Replying to those issues, Germany explained that during the 19th legislative period, a project to amend the German Basic Law was proposed but did not reach the required number of votes in the parliament to be adopted. In the 20th legislative period, a new attempt is about to be proposed. Furthermore,

²⁹² Germany, paras 194–196.

²⁹³ Germany, para. 200.

²⁹⁴ Germany, paras 207–208.

²⁹⁵ UN Committee on the Rights of the Child, ‘List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of Germany’ (Geneva (88th sess.): UN, 4 March 2021), para. 2 (b), (c), <https://digitallibrary.un.org/record/3990854>.

the Federal Ministry for Family Affairs believes that the actions put into practice to develop a comprehensive policy on the rights of the child are effective, offering as an example the project ‘Child-friendly municipalities’ spread by the federal government to work together with the municipalities in promoting awareness of children’s rights and, therefore, child participation.²⁹⁶

Additionally, the Committee asked about measures taken to address discrimination and the assessment of the impact of those measures on combating discrimination against vulnerable children, including migrants.²⁹⁷ However, the reply of Germany on this concern just covered the actions against gender-based discrimination, sexual orientation, and disabilities, not mentioning any example of addressing discrimination related to the origin of the children or migration background.²⁹⁸

Other concerns of the Committee in the list of issues were regarding the resources to provide qualified teachers to all German schools, the incorporation of human rights education in the school curriculums, and the measures taken by Germany to address the student’s stress related to school.²⁹⁹ On its behalf, Germany argued that hiring teachers is a competence of every federal state. However, there are guidelines to fulfil the demand for teachers from the KMK for capacity building of teachers aiming to cover the demand of the educational system. Nonetheless, to meet the lack of teachers, in 2013, the KMK launched a resolution to attract new teachers.³⁰⁰ Regarding human rights being added to the curriculum, Germany reinforced that each federal state has the freedom to develop its educational goals and curriculum.³⁰¹ And about students’ stress, Germany just mentioned support for children who experienced bullying at schools, not recognizing the intensive educational system and possible related stress.³⁰²

As it is possible to see, the answers of Germany to the Committee are always related to the competence of each federal state, whether in legislating on education, hiring teachers, or

²⁹⁶ Germany, ‘Replies of Germany to the List of Issues in Relation to Its Combined Fifth and Sixth Reports’ (Geneva: UN Committee on the Rights of the Child, 30 May 2022), paras 19–21, <https://digitallibrary.un.org/record/3978346>.

²⁹⁷ UN Committee on the Rights of the Child, ‘List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of Germany’, para. 4 (a), (b).

²⁹⁸ Germany, ‘Replies of Germany to the List of Issues in Relation to Its Combined Fifth and Sixth Reports’, paras 37–48.

²⁹⁹ UN Committee on the Rights of the Child, ‘List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of Germany’, para. 12 (a), (c), (d).

³⁰⁰ Germany, ‘Replies of Germany to the List of Issues in Relation to Its Combined Fifth and Sixth Reports’, para. 101.

³⁰¹ Germany, para. 107.

³⁰² Germany, paras 112–113.

school curriculum. So, the Committee does not have access to the actual situation of the right to education in Germany.

4.1.3. *Concluding Observations of the Committee*

After analysing the German report on the implementation of the CRC and its replies to the list of issues, besides reinforcing the need to add children's rights explicitly into the German Basic Law, the Committee indicates education and asylum-seeking, refugee and migrant children as the main areas of concern in Germany.³⁰³

The first recommendation on these concerns is to have a federal comprehensive children's rights policy and strategy focused on vulnerable children, including migrants, to be the standard to be followed by all federal states and municipalities.³⁰⁴ Moreover, the Committee is concerned about the *de facto* discrimination faced by migrant children, which leads to adverse impacts accessing education.³⁰⁵ For this reason, it recommends that the Federal State of Germany strengthen policies against the *de facto* discrimination faced by children in disadvantaged situations (including those with migration background) and evaluate the current measures adopted against discrimination with the participation of children to address their impacts and deficiencies.³⁰⁶

Specifically, about Article 28 of the CRC, the Committee named the lack of equal access to education for vulnerable children, lack of teachers, and high level of stress among students who experienced bullying or felt pressured by the studies.³⁰⁷ As it is possible to notice, before the arrival of Ukrainians, the German educational system was already at its limits.³⁰⁸ The lack of teachers and the deficiencies in providing equal access to education to migrant children in Germany were just enhanced by the massive arrival of Ukrainian children.³⁰⁹ The recommendations of the Committee in this respect include taking actions to reinforce that children with a migration background have equal access to education, to incentive the

³⁰³ UN Committee on the Rights of the Child, 'List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of Germany', paras 4, 6.

³⁰⁴ UN Committee on the Rights of the Child, para. 7(b).

³⁰⁵ UN Committee on the Rights of the Child, para. 15.

³⁰⁶ UN Committee on the Rights of the Child, para. 15.

³⁰⁷ UN Committee on the Rights of the Child, para. 35.

³⁰⁸ Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 3.

³⁰⁹ Mützelburg and Krawatzek, 12.

profession of teaching and develop measures capable of tackling the lack of teachers, and to identify and combat the fundamental causes of stress among students.³¹⁰

Although Germany has affirmed in its report that human rights education is a primary goal in all federal states, the Committee states that this topic is present only in three of the sixteen German federal states' school laws. For this reason, the Committee encourages the remaining federal states to incorporate it into the school laws to promote respect for diversity in the school environment.³¹¹

Even though the report submitted by Germany does not cover the period when Ukrainian children started to arrive in Germany, the Concluding Observations of the Committee were issued on 23 September 2022, seven months after the invasion of Ukraine. The committee showed sensibility from the situation and, in its comments based on Article 22 of the CRC, flattered Germany for welcoming many children and its efforts to provide access to education. However, it also showed concerns regarding those children, categorically the limited access to education of children staying in reception centres.³¹²

Because of the intensive educational program that children are submitted to and the complexity of the German school system, the Committee is apprehensive about the out-of-class time available for children.³¹³ This concern is far from being solved because the arrival of school-age Ukrainian children has accentuated the problem. That is because Ukrainian children are under two obligations: on one side, Ukraine expects them to follow the national education, which has been kept online; on the other side, in Germany is mandatory for all children, regardless of citizens or migrants, to attend German school.³¹⁴ This situation leads to cases in which children frequent German schools during the day and catch up the Ukrainian education online in their extra-class time because many expect to return to Ukraine when the living situation in the country improves.³¹⁵

This sensitivity of the Committee in addressing the situation of Ukrainians, even if the report's period was not covered, is a positive move. However, since the current situation of Ukrainians in Germany was not reported yet, the knowledge of the Committee at that time was shallow, so it could not address all the real problems faced by Ukrainian children.

³¹⁰ UN Committee on the Rights of the Child, 'List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of Germany', para. 36.

³¹¹ UN Committee on the Rights of the Child, para. 37.

³¹² UN Committee on the Rights of the Child, para. 39.

³¹³ UN Committee on the Rights of the Child, para. 38.

³¹⁴ Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 4.

³¹⁵ Mützelburg and Krawatzek, 7–8.

4.2. Report of the Centre for East European and International Studies (ZOiS)

ZOiS is an international research institute sponsored by public funds. However, it is an independent institute with its own research agenda. The researches are focused on issues of social interest, and when finalized, they are shared with policymakers and the general audience.³¹⁶

Considering that education is the milestone for the integration of children and families with migration background, to understand better the actual situation faced by school-age Ukrainian Children and their families in Germany, the Centre for East European and International Studies developed a report focusing on education in the context of displacement. The report was written after the spread of an online survey in 2022 via Telegram groups and Facebook. A total of 2,152 answers were collected from parents of school-age Ukrainian children living in Germany, mainly located in NRW, Bavaria, or Baden Württemberg, the most populated regions in Germany. After the survey, interviews also took place with some families and with staff from German schools.³¹⁷ This subtopic aims to show this research's findings and address the implementation of Articles 22 and 28 of the CRC in Germany.

Germany faced a challenge in receiving a considerable number of Ukrainians suddenly. The country has built some experience with the arrival of circa 260,000 Syrian children in 2016. For this reason, even though the school system was about to collapse before (lacking space, equipment, and personnel), more resources are allocated during a crisis. Hence, Germany, acting with flexibility, was able to enrol all the migrant children in schools.³¹⁸ As explained in the topic 2.1.1, even though Ukrainian children in Germany are not considered refugees, following the interpretation of the Vienna Convention and considering the purpose of the provision, Article 22 of the CRC is also applied to Ukrainian children.³¹⁹ Considering this interpretation, the efforts made by Germany to enrol the migrants at school show the recognition of Ukrainian Children as right holders, especially on the right to education, meeting the obligations under Article 22 of the CRC.

The lack of space and qualified teachers is still present. An idea that came up from the government as a possible solution to this issue, which would meet the adaptability component

³¹⁶ Centre for East European and International Studies, 'ZOiS About Us', ZOiS, accessed 21 June 2023, <https://www.zois-berlin.de/en/about-us/zois>.

³¹⁷ Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 5–7.

³¹⁸ Mützelburg and Krawatzek, 3, 5.

³¹⁹ United Nations General Assembly, Vienna Convention on the Law of Treaties, art. 31.1.

of the right to education, mentioned by the first Special Rapporteur³²⁰, was hiring Ukrainian teachers. However, until late last year, just three thousand were employed, and most of them as assistants and not as recognized teachers.³²¹

As explained in topic 2.1.1, Ukrainians have a different status in the EU compared to other migrants. This difference of status does not have any impact on accessing the school system in Germany because the country guarantees the right to primary school compulsory and free for every migrant child regardless their nationality. However, in practice, the situation of Ukrainian in Germany differs from any other migrant children in the country. That is because they are probably the first group of migrants who faced a double obligation to attend two different school systems: Ukrainian and German. In Germany, it is mandatory for every child to attend school. On the other hand, Ukraine offers synchronous or asynchronous classes where children can attend the Ukrainian curriculum autonomously and submit homework and tests through the online platform. Those efforts were made by the government willing the return of the young generation to Ukraine, which represents, first, the future of the country and, second, the possible link in the future to the EU.³²² Besides that, the efforts do not come just from the government but also from the parents because some are willing to return as soon as the living conditions get better, and attending the Ukrainian curriculum means keeping the Ukrainian culture and identity, not to mention that education in Ukrainian or Russian language are easier to the pupils.³²³ Hence, Ukrainian policymakers tried negotiating with EU countries to discharge Ukrainian children to compulsory education in the host countries. However, besides Poland, no other country agreed.³²⁴

Germany, making education compulsory and free for nationals and migrants, is meeting its obligations under Articles 22 and 28.1 of the CRC.³²⁵ On the other hand, to improve the implementation of other children's rights, such as the right to have time for free activities, established in Article 31 of the CRC, and to reach international cooperation in matters related to education, established by Article 28.3, Germany could have achieved an agreement with Ukraine to not expose children to the double obligation of attending two different school systems.

³²⁰ UN Commission on Human Rights, 'Preliminary Report', paras 70–72.

³²¹ Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 12, 14.

³²² Mützelburg and Krawatzek, 2–5, 7, 22.

³²³ Mützelburg and Krawatzek, 3, 8.

³²⁴ Mützelburg and Krawatzek, 22.

³²⁵ United Nations General Assembly, Convention on the Rights of the Child, arts. 22, 28.1.

Younger children attending primary school present fewer problems with integration than those of age to secondary school, which face a language barrier and lack of recognition of Ukrainian certificates. Primary school in Germany is free and compulsory to all, in consonance with the minimum core obligation on the right to education of Article 28 of the CRC.³²⁶ In primary school, usually, children go directly to regular classes and sometimes have an extra language class because, at this age, language does not tend to be a high barrier to the students.³²⁷ The measures on education taken by States must be based on equal opportunities and guided by the principle of non-discrimination. Both are seen in the German procedure of including migrant children directly in primary school.³²⁸

The secondary school has a higher level of complexity. Usually, children with an A2 or B1 level of German attend regular classes directly. Those with lower levels of German language sometimes attend first integration classes, focused on the language rather than other subjects, or are sent directly to regular classes. In both cases, the degree of educational achievement is shallow.³²⁹ Another problem in the transition of teenagers to secondary education is that some parents would opt for the Gymnasium as the best option for their children. However, this type of education has a lot of requirements, such as language proficiency and academic performance, that Ukrainians could fit in but cannot prove.³³⁰ Analysing the implementation of Article 28, the procedures applied to migrant children on the enrolment in secondary education do not meet the State obligations as it does regarding primary education. Equal opportunities are not seen in this situation, nor the component accessibility, because the excessive demands do not make secondary education accessible to all.³³¹ Furthermore, compliance with the best interest of the child is also not seen in this situation because it requires that, when different interests are being considered, the children's must be primarily considered. However, Germany is just considering its own interest in keeping its educational system's standards and bureaucracy instead of being flexible to meet the child's best interest. Finally, this analysis shows that, although Germany has met its obligations in implementing the minimum core obligation of the right to education for migrants, challenges still take place. The report showed a real example of a student, Anna, to prove the difficulties Ukrainians face in accessing education in Germany. She is 16 years old and lives in NRW. She finished

³²⁶ United Nations General Assembly, art. 28.1 (a).

³²⁷ Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 3, 16.

³²⁸ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 411.

³²⁹ Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 3, 16.

³³⁰ Mützelburg and Krawatzek, 15.

³³¹ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, 411.

Ukrainian secondary school focused on languages and was preparing to enter the university when she moved to Germany. She speaks English fluently and has German Level B1. She tried to enrol in the Gymnasium but was rejected as not fluent in German and over 15. She was then reallocated to evening classes focused on the German language with other Ukrainians, so she did not have contact with German native speakers and had no improvement in the language. Furthermore, her certificates from the Ukrainian educational system were not recognised, so she could not go directly to university as she was about to do in Ukraine. In the end, her two options to enter a German university were: first, to improve her German to be able to enrol at Oberstufe and then take two or three years studying to get the Abitur; or second, to study the German language for at least two years to reach the level C1 and try to enrol again to a German university. However, both options would require much time, and she is unsure if she wants to stay in Germany when the Ukraine situation improves.³³²

The complexity and bureaucracy of the German educational system negatively affect not only Germans but even more foreigners. From the example above, it is possible to tell that the challenges are present in the everyday life of a Ukrainian child. The lack of accessibility to higher education is evident with the non-recognition of Ukrainian certificates and the requirement for German language proficiency.

4.3. Conceptual Framework for the Schooling of Newly Arrived Immigrant Children in NRW

NRW is the German most populated federal state, with more than 18 million inhabitants, and migration has always been present in the state's history.³³³ According to the current Minister of Education of NRW, Dorothee Feller, the goal of the educational system in the state is to improve educational opportunities for migrant children through five main actions, named: helping the arrival in NRW; making schools a safe environment; starting school integration since the arrival of migrants; support transitions inside the educational system; and prepare students for the graduation.³³⁴

³³² Mützelburg and Krawatzek, 'Education and Displacement: Ukrainian Families in Germany', 10–11.

³³³ Statista Research Department, 'Bevölkerung - Anzahl Der Einwohner in Den Bundesländern in Deutschland Am 31. Dezember 2022', Statista, 20/06/2023, <https://de.statista.com/statistik/daten/studie/71085/umfrage/verteilung-der-einwohnerzahl-nach-bundeslaendern/#:~:text=Am%20Ende%20des%20Jahres%202022,somit%20das%20bev%C3%B6lkerungsreichste%20deutsche%20Bundesland.>

³³⁴ Ministry of School and Education of the State of North Rhine-Westphalia, 'Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia', 4.

The Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers with Special Regard to the War in Ukraine and its Consequences for Schools in North Rhine-Westphalia was created as a response to the challenges faced by schools due to the massive arrival of Ukrainians in Germany, especially in NRW, in 2022, and shows an overview of the policies adopted in this regard in NRW.³³⁵

One topic which is necessary to highlight is the fact that, not only in NRW but in the whole Germany, the focus is language learning to integrate migrant children better. Keeping it in mind, this topic aims to show the policies adopted in NRW and analyse if the situation faced by Ukrainian children meets the standards of the right to education ensured by the CRC.

One of the concerns of the CRC Committee was the access to education of children located in reception centres.³³⁶ On this issue, before the arrival of Ukrainians, a project was launched in NRW to promote access to education in those facilities for refugees. It was focused on language classes, mainly core vocabulary, before compulsory school attendance. After the Russian invasion of the Ukrainian territory, some of these facilities became buffers just for newly arrived Ukrainians. Even though, the project was kept, and Ukrainian children could benefit from this project.³³⁷ However, the classes provided are just focused on German language, not providing proper access to regular school for the ones who already have knowledge of the German language, contrary to the accessibility component of the right to education.³³⁸

The Conceptual Framework published by the Ministry of School and Education of NRW enumerated two special procedures applied to migrants to enter the school system. The first one is the mandatory medical examination before attending school. However, due to the high demand of health offices, the examination sometimes takes months to happen. For this reason, some exceptions are made to not deny access to education, which children can attend classes before the medical examination happens.³³⁹ The second procedure is the introductory assistance to children entering German schools for the first time, regardless of the type of

³³⁵ Ministry of School and Education of the State of North Rhine-Westphalia, 4–5.

³³⁶ UN Committee on the Rights of the Child, ‘List of Issues in Relation to the Combined Fifth and Sixth Periodic Reports of Germany’, para. 39.

³³⁷ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’, 7.

³³⁸ UN Commission on Human Rights, ‘Preliminary Report’, para. 57.

³³⁹ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’, 9.

school they attend, who possess insufficient proficiency in the German language, and for those who are already attending classes but change levels without German proficiency.³⁴⁰

4.3.1. Primary Education and Secondary Education Level I

In primary and lower secondary education, German classes are offered depending on the choice of each school, which have the freedom to decide how the language courses take place in their schedule.³⁴¹ The first possibility is improving the German language by participating directly in regular classes. The second one is partial participation in regular classes plus an extra language-learning group. The third consists in just language-learning groups before attending regular classes. The last two options include 10 to 12 hours of German classes a week. However, in those models, children are not assigned to a specific type of regular school (Hauptschule, Realschule, Gymnasium, Gesamtschule, or Sekundarschule).³⁴²

When the students present enough knowledge of the German language, they are assigned to a type of school depending on their individual development and performance. This transition must occur in a maximum of two years.³⁴³ There are two main implications of this temporary schooling. The first one is that the students' performance is reported by their teacher with the objective of defining the educational path to be followed by the students. However, it does not have the same value as a transcript of records and cannot be used to issue certificates. The second implication is that the examination regulation is not applied in those situations; that is to say, the transition to the next education level is not based on merits/performance, the migration students just 'move' to the next level.³⁴⁴

As developed in topic 4.2, primary education in Germany follows Articles 28.1 (a) and 22 of the CRC.

The transition from primary to secondary education level I represents a challenge to migrant children because it is not 100% accessible, as it shall be according to Article 28.1 (b) of the CRC.³⁴⁵ The teachers of temporary schooling have the competence to decide when children are ready to attend regular classes and which type of school they are following. This decision tends to be definitive. However, it is possible, after one semester of classes in the new educational path, a review of the performance of the student to improve the success of

³⁴⁰ Ministry of School and Education of the State of North Rhine-Westphalia, 11.

³⁴¹ Ministry of School and Education of the State of North Rhine-Westphalia, 11.

³⁴² Ministry of School and Education of the State of North Rhine-Westphalia, 11.

³⁴³ Ministry of School and Education of the State of North Rhine-Westphalia, 12.

³⁴⁴ Ministry of School and Education of the State of North Rhine-Westphalia, 12.

³⁴⁵ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (b).

integration.³⁴⁶ NRW encourages schools to offer extra classes in the German language, even for the students who already attend regular classes, representing extra support in daily communication.³⁴⁷ Once attending regular classes, the regulation applied to migrant children is the same as the one applied to German nationals.³⁴⁸

4.3.2. *Secondary Education Level II*

The most significant challenge in integrating Ukrainian children into the German school system is regarding the ones of age to attend secondary education level II (also called upper secondary school). To integrate foreigners directly into the upper secondary school, there are two preconditions: the first one is, clearly, German language skills, and the second is proof of qualification from the home country corresponding to the ‘intermediate-level school-leaving certificate’³⁴⁹, which is required for nationals.³⁵⁰

The recognition of the Ukrainian certificates is made by the Certificate Recognition Office of the Cologne District Government; however, the office is not responsible for approving the entrance at a specific educational level. This admission is the responsibility of the heads of the *Gymnasiale Oberstufe*.³⁵¹ For the recognition of certificates to enter a German University, the responsibility is of the Certificate Recognition Office of the Düsseldorf District Government, and ‘the receiving universities decide on the admission of foreign citizens to higher education’^{352, 353}

The problem noted in the transitions from lower to upper secondary school and from upper secondary school to high school is accessibility, which is explicitly in Article 28.1 (c) and enhanced by the first Special Rapporteur on the Right to Education.³⁵⁴ The excessively demanding prerequisites imposed on migrant students by NRW to provide the transition of the levels are not in light with Article 28, not providing accessible secondary and high school access nor equal opportunities to migrant children compared to nationals.³⁵⁵ The problem

³⁴⁶ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’, 12–13.

³⁴⁷ Ministry of School and Education of the State of North Rhine-Westphalia, 13.

³⁴⁸ Ministry of School and Education of the State of North Rhine-Westphalia, 13.

³⁴⁹ Ministry of School and Education of the State of North Rhine-Westphalia, 19.

³⁵⁰ Ministry of School and Education of the State of North Rhine-Westphalia, 19.

³⁵¹ Ministry of School and Education of the State of North Rhine-Westphalia, 19.

³⁵² Ministry of School and Education of the State of North Rhine-Westphalia, 21.

³⁵³ Ministry of School and Education of the State of North Rhine-Westphalia, 19–21.

³⁵⁴ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1 (c); UN Commission on Human Rights, ‘Preliminary Report’, para. 57.

³⁵⁵ United Nations General Assembly, Convention on the Rights of the Child, art. 28.1.

persists because Ukrainians are usually not assigned to upper secondary school due to the lack of knowledge of the German language.³⁵⁶ According to the Ministry of School and Education of NRW, ‘the individual learning level can only be determined at a later point’³⁵⁷. Consequently, children who are, in theory, at the secondary education level II are assigned to International Support Classes focused on social and linguistic integration.³⁵⁸ This practice is also contrary to the principle of the best interest of the child because it does not take into account the child’s interest, the accessibility to upper secondary school, as a primary consideration.³⁵⁹ Still, Germany puts first its own interest in keeping the excessive requirements.

4.3.3. *Extra Projects Implemented in NRW*

Since NRW is the federal state who receives the largest number of migrants in Germany, some projects were developed focusing on children’s integration, not only oriented towards learning the German language but also towards including native languages in the education system. NRW, by developing projects to integrate Ukrainian children better, recognizes them as right holders, especially regarding their right to education, as directed by Article 22 of the CRC, interpreted according to Vienna Convention.³⁶⁰

The Language of Origin Instruction (HSU) is one of the policies of NRW. It consists of an offer to students with migration background to add their mother tongue to regular classes. It can take place when more than 15 children of the same parent language are enrolled in primary school, or 18 for secondary school, and be settled as an inter-school and inter-grades group. Currently, NRW is putting efforts into attracting Ukrainian teachers to establish those classes also in the Ukrainian language.³⁶¹

A programme launched based on this policy is the ‘Strengthening primary education through HSU – multilingualism supports children’s educational success’³⁶². It aims the integration of

³⁵⁶ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’, 16.

³⁵⁷ Ministry of School and Education of the State of North Rhine-Westphalia, 16.

³⁵⁸ Ministry of School and Education of the State of North Rhine-Westphalia, 17.

³⁵⁹ UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para.1)’, para. 37.

³⁶⁰ United Nations General Assembly, Convention on the Rights of the Child, art. 22; United Nations General Assembly, Vienna Convention on the Law of Treaties, art. 31.1.

³⁶¹ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’, 23–24.

³⁶² Ministry of School and Education of the State of North Rhine-Westphalia, 24.

the multiple mother languages of students into education. Besides German, some specific subjects are taught in other languages. Sixty-eight primary schools have already started this programme in NRW, and it showed itself as a tool to strengthen not only the language of the country of origin but also German.³⁶³

One more project onward in NRW is the ‘Intensive Holiday Training’, which offers voluntary and free activities during children’s holidays to improve the everyday language.³⁶⁴ Furthermore, NRW also focuses on protection against discrimination in the programme ‘School without racism, School with Courage NRW’. The main goal of this project is to encourage students to take measures against discrimination at school and in other environments.³⁶⁵

4.3.4. *Lack of School Spaces and Personnel*

School spaces and personnel were two issues that existed even before the arrival of Ukrainians in the whole Germany. Even though Article 28 does not explicitly mention the need to provide adequate school spaces and enough teachers, the subjective component availability, listed by the first Special Rapporteur on the Right to Education, requires that States provide a sufficient human budget for education. Furthermore, under the obligation of fulfilling the right to education, States must provide an effective enjoyment of the right to education, which is impossible to achieve without enough teachers and adequate space.

Regarding the lack of space, NRW recognises that the available resources are insufficient to provide the necessary educational spaces immediately.³⁶⁶ As an act of last resource, in consonance with availability³⁶⁷ and adaptability³⁶⁸ on the right to education, the solution found to this issue is applying the budget to teach migrants outside school facilities. This measure can be approved temporarily for a maximum period of one year.³⁶⁹

Additional teachers and staff are also necessary to provide integration of Ukrainian children. Temporary employment is an available option in NRW to cover this lack of personnel.³⁷⁰ In

³⁶³ Ministry of School and Education of the State of North Rhine-Westphalia, 24.

³⁶⁴ Ministry of School and Education of the State of North Rhine-Westphalia, 24–25.

³⁶⁵ Ministry of School and Education of the State of North Rhine-Westphalia, 27.

³⁶⁶ Ministry of School and Education of the State of North Rhine-Westphalia, 29–30.

³⁶⁷ UN Commission on Human Rights, ‘Preliminary Report’, paras 51–52.

³⁶⁸ UN Commission on Human Rights, paras 70–72; Courtis and Tobin, ‘Article 28. The Right to Education’, 1070.

³⁶⁹ Ministry of School and Education of the State of North Rhine-Westphalia, ‘Conceptual Framework for the Schooling of Newly Arrived Immigrant Children and Teenagers: With Special Regard to the War in Ukraine and Its Consequences for Schools in North Rhine-Westphalia’, 29–30.

³⁷⁰ Ministry of School and Education of the State of North Rhine-Westphalia, 33.

this regard, Ukrainian teachers play an essential role in the success of integration, helping children individually in the first contact with German schools. Besides teaching, they perform other crucial activities, such as providing participation in German language courses, supervision, and assistance, and promoting working groups for integration not just at school but in society in general.³⁷¹ To execute those activities, the Goethe Institute offers a program to promote the German language, as the language of instruction, to teachers and pedagogical staff from Ukraine.³⁷²

³⁷¹ Ministry of School and Education of the State of North Rhine-Westphalia, 38.

³⁷² Ministry of School and Education of the State of North Rhine-Westphalia, 39.

5. CONCLUSION AND RECOMMENDATIONS

The war in Ukraine impacted all the continents of the world. Considering the negative impacts that would occur in the asylum procedures and aiming for immediate protection of Ukrainians, the EU activated the Temporary Protection Directive. The directive allowed the Ukrainians to enter the EU and change places freely until 90 days after their arrival. Once established in a place, the Ukrainians need to apply for a resident permit, which the EU States will issue for the duration of the temporary protection. The adoption of the Directive can be considered discriminatory because it was not adopted before for migrants of other nationalities. However, the positive side of adopting such a directive is that it represents an opening door to new responses to migration crises and shows that the EU can adopt a new human-centric and non-discriminatory law for asylum.

NRW is the German federal state who receives the highest number of migrants from Ukraine. Until July, more than 40 thousand children were assigned to schools in NRW. Schools play the most crucial role in integrating migrant children into the new society. Even before the arrival of Ukrainians in Germany, the German educational system was experiencing significant challenges. The problems just became more acute after the war started. What worsens the problem is that education in Germany is not federally centralized. Each federal state has the competence to legislate and adopt different educational policies, including educational systems. In NRW, after primary education, which is composed of four years, students are designated to one of the five types of secondary education level I. Besides that, secondary education level II comprises general education or vocational training. This educational system is considered complex for German nationals, even more for migrant students. That is why, before enrolling in one type of school, since Germany does not have an inclusive educational system, an analysis of the personal aspects of each migrant child is made by the CIC to improve the success of integration.

Regarding the international protection of those students who fled Ukraine and arrived in Germany, two articles of the CRC were analysed, Article 22 (the protection of refugee children/children seeking refugee status) and Article 28 (the right to education).

Article 22 of the CRC stipulates the obligation of States to ensure protection and humanitarian assistance for refugee children and children seeking refugee status in the enjoyment of their rights. Although the term refugees from Ukraine is broadly used internationally, also to refer to those in the EU territory, the correct legal term to indicate migrants from Ukraine in the EU

is not refugees, if they have not been formally acknowledged by a given State as such, but as beneficiaries of temporary protection. However, according to Vienna Convention, the treaties must be interpreted in the light of their objective and purposes. Then Article 22 is also applied to Ukrainian children in the EU.

Article 28 of the CRC provides that all State Parties recognise the human right to education and its progressive realization, and, for providing equal opportunities for the access to education, it enumerated some measures to be adopted by States, such as free and compulsory primary education, the development of different types of secondary education, accessibility to higher education, and encouraging school attendance. On the scope of the right to education, beyond what is explicitly in the provision, the first Special Rapporteur on the Right to Education suggested four subjective components to the right to education: availability, accessibility, acceptability, and adaptability.

The implementation of those articles was analysed in Germany, especially in NRW, concerning the relationship between Ukrainian children and the German school system. The situation of Ukrainian children in Germany differs from that of children from other nationalities for two reasons. The first one is that the massive arrival of Ukrainians after the war overloaded the German school system, which was already in its limits. The second is that the children are subordinated to two different compulsory education systems, the German and the Ukrainian.

Germany recognises migrant children from Ukraine as right holders and puts its efforts into providing them additional support, in consonance with Article 22 of the CRC. Regarding the right to education, the CRC Committee indicated education and migrant children as the main concerns in Germany. The reports of Germany regarding the implementation of Article 28 of the CRC in the country are superficial because, when addressing an issue related to the school system, Germany replies that the competence of education legislation and policies rely on each federal state. The main issues on education reported in Germany are the lack of equal access, limited access to education in reception centres, insufficient extra-class time, and absence of space and personnel. Those issues recur in NRW.

In respect of the concern of the CRC Committee on access to education in the reception centres, NRW developed a project to provide, at these sites, language classes before compulsory attendance at schools. However, it is focused on language learning, not on access to regular school. The matter of non-discrimination and equal access to education is even more profound when discussing the transitions from primary school to secondary level I and

from secondary school level I to level II. That is because many prerequisites are required for migrants, mainly German proficiency and equivalent diplomas or certificates. Those requirements do not make education accessible to all nor provide equal opportunities to migrant children compared to nationals. Furthermore, because of the excessive requirements, contrary to the accessibility component developed by the first Special Rapporteur on the Right to Education, normally Ukrainian children are not enrolled in upper secondary school in NRW. This practice is also contrary to the principle of the best interest of the child because it does not take into account the child's interest as a primary consideration.

Although the complexity of the school system, NRW presents some good practices for integrating migrant children. More than one project has been developed to use students' native languages to teach some subjects in their mother tongue. Besides that, regarding the lack of space and personnel, NRW recognises the importance of hiring Ukrainian teachers and allowed, as a measure of last resource, teaching migrant children in places outside schools' facilities to not deny access to education even when the school space is not enough to accommodate the large number of students.

Despite the many flaws in the application of the right to education for Ukrainian children in Germany, the country is not in violation of Articles 22 and 28 of the CRC because it recognizes the rights of migrant children and meets the minimum core obligation under the right to education, providing primary education free and accessible to all, based on equal opportunities and non-discrimination. However, regarding the progressive implementation, on which States have the duty to implement the right to education step by step, according to the available resources, there is much room for improvement, especially in the transitions between secondary schools that are not presented equally for migrant students. In addition, increasing the number of professionals working in schools and increasing school space are urgent measures that must be taken to improve the quality and capacity of education not only in NRW but in Germany as a whole. For this improvement to take place, after analysing the implementation of Articles 22 and 28 of the CRC in Germany and NRW for Ukrainian children, some recommendations are proposed:

1. Federal centralise specific educational standards. Sometimes standardized procedures are not a positive move because it does not consider each region's particularities. However, some cardinal rules must be applied to all regions in a country to facilitate the transition

of inhabitants between federal states. The division of secondary school level is an example of a rule that could be standardized without harming the federal states.

2. Provide psychological assistance from the beginning of the procedure to assign children at school until the end of their educational pathway. In NRW, there is a health evaluation before starting to attend classes. However, the system is overloaded, and health exams usually do not take place. Psychological assistance before any other health procedure must be a priority.
3. Increase of personal. Teachers are the most lacking professionals in German schools. Hiring more teachers is the key to improving German education, but also attracting more young people to graduate in this profession. Besides teachers, other professionals are necessary, such as psychologists and monitors. Just increasing personnel enables the possibility of opening more school places, necessary in Germany.
4. Hire Ukrainian teachers to support and improve the integration of Ukrainian children into the German School system. Since the integration of migrant children into school in Germany is focused on German language learning, some schools opt for first providing language classes for migrant children before enrolling them in regular classes. However, when enrolled in regular classes, those children submitted to full-time language classes present a lack of knowledge in school subjects. For this reason, lowering the German requirements of hiring teachers as a measure of crises response and employing Ukrainian teachers would improve this transition because, in addition to German language classes, the children could take classes in curriculum subjects taught in their native language so that when they join the regular classes, they will have a similar level of knowledge as their classmates.
5. Elaborate a project to facilitate the access of Ukrainian students to the upper secondary education. A simplified and fast-track recognition process for diplomas and certificates and reducing the level of German required, so that integration at this level of education occurs more rapidly, would be necessary to provide equal opportunities.

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