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"THE BEST INTEREST PRINCIPLE"

A qualitative study on the interpretation of "the child's best interest" by the European Court of Human Rights and national states

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Abstract

The purpose of this thesis is to analyse *Article* 3, commonly known as "the best interest principle", from the Convention on the rights of the child (CRC) in European courts. The European Court of Human Right (ECtHR) is the main court of human rights in Europe and the CRC is one of many conventions that falls under their jurisdiction. The European states are all sovereign and has implemented and interpreted the principle in their own ways, despite having the ECtHR as the guiding court. It is therefore interesting to analyse the potential differences between the interpretation of the principle in the ECtHR and the national courts.

Children are the future, hence it is vital to safeguard their rights to give them the best possible chance to a healthy and happy development into society. This analysis used three different cases that were brought in front of the ECtHR. Furthermore, the study was done through an inductive content analysis, in line with the threefold concept and the theory of deliberation. The result of the study shows that there is a difference in how the principle is interpretated in European courts. Not only between the states and the ECtHR, but also between the different states and within the ECtHR itself. Finally, the study could also observe, like many others, that the CRC and "the best interest principle" remains somewhat unclear and is an instrument that is up for individual interpretation by both national courts, authorities and the ECtHR.

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Contents

Glossary terms

CJEU- The European Court of Justice.

CRC- Convention on the Rights of the Child.

CRF- Charter of Fundamental Rights, *Article 24* is specifically amid at the rights of the child and the CRC.

ECtHR- The European Court of Human Rights. Also known as "the Court".

EHCR- European Convention on Human Rights. *Article 8* concerns family life and private life.

National courts- The system of court in the national states justice systems.

Plaintiff- The part who initiates the lawsuit. The plaintiff is there for the part who is seeking legal remedy in front of a court.

1. Introduction

"There can be no keener revelation of a society's soul than the way in which it treats its children."

– *Nelson Mandela*

The youth of today, children, are our most precious resource. This group has been neglected for a long time but as time goes on more focus is directed at this important group (Doek, 2003:235; Fegert et al., 2021:991). As a society we must strive to be ahead. Family policy and family law must always be thinking forward. Today's children are the next generation of Europe and the world.

The term "in the best interest of the child" originates from the convention on the rights of the child (CRC). The United Nations (UN) convention on the rights of the child was formally introduced and opened for signature on the 20th of November 1989 with entry into force in the beginning of September the following year. The CRC is the first international treaty directed to clarify children's rights on their own, apart from the rights of an adult. The convention was signed at ratified by 194 states, including all the EU member states at the time (Dir. 1989/44/25). The convention was introduced to protect the child and guarantee a fair and safe representation in the eyes of the law. In Europe the convention has been adopted and is largely implemented or used as the backbone to understand children's rights (Dane, 2015:195).

The European Court of Human Rights, also known as the Court, is an international court with the main task to ensure and rule over human rights. The ECtHR is a very complex institution entrusted with the responsibility to protect the human rights of the citizens in Europe (Spano, 2015:2). The court is at disposal to all the member states of the European council and focuses on cases where a member state is accused of restricting or have breach more than one of the articles protected by the ECHR (Council of Europe, 2021).

The ECtHR is faced with a fine balance between ruling as the main court and not overruling the national states understandings. “The best interest principle” is a concrete example of this struggle (Kilkelly, 2010:246). There is no doubt that the principle should be safeguarded and reassured in a court of law, but rather how this should be done (Dane, 2015:193). The principle has been the same since it was accepted in the early 1990s, all European states are bound to the principle and so is the European Court of Human Rights. In spite of this there is a lack of consensus among many scholars within the field on how the court should rule when it comes to “the best interest principle”.

Aim and Research question

The aim of this study is to examine how national courts interpretations of "the best interest principle" compares to the interpretations on a European level, more specifically by the European Court of Human Rights. "The best interest principle" is arguably known to be a broad unclear instrument, up for interpretation. Because of its nature it is therefore relevant to examine how the European Court of Human Rights differs from national courts interpretation and implementation of the principle. The ECtHR is the guiding court of human rights in Europe. It is hence interesting to examine how the ECtHR views national courts interpretation and implementation of the principle.

"The best interest principle" is a principle within *Article 3* of the convention by the United Nations and the UN has explicitly presented how they wish for the convention to be used and interpretated. It should be done through the threefold concept. But despite this there still seems to be an overlying uncertainty on whether this is the correct way to understand the convention. This study will use cases from the ECtHR that also relays the national court process for the analytical process of the study. An underlying aim of the study will also be to examine if there are differences between the cases, both in the national court's understandings but also if the ECtHRs understanding differs in the different cases. Based on the above one research question can be presented.

How does the interpretation of Article 3 in the Convention on the Rights of the Child differ in European states in relation to the interpretation of the European Court of Human Rights?

2. Theory and previous research

2. 1. What is the principle of the child´s best interest?

In the following section a short historical background will be presented to understand the context of the birth of the convention. It will be followed by a presentation of three models on how the courts may implement the principle. The section will end with an extended overview on how the ECtHR and the national courts can interpreate the principle in their own way.

The convention on the rights of the child (CRC) is made up by 54 individual articles that are intended to define the rights of the child. The CRC is meant to act as an extension on the Universal declaration of Human Rights. By doing so it is supposed to rightfully recognise the child as its own individual and reassure his or her rights to the best possible development into life. The principle is a term up for interpretation whereas the remaining articles shall be used as a framework to help decide on the best for the child. The following is a direct citation from the commonly used *Article 3* from the UNs Convention on the rights of the child (1989). The article consists of three separate paragraphs.

> (1). In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
>
> (2). States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
>
> (3). States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

The principle is, as noted, understood as important in a court of law and in society as a whole. When assessing a child's best interest, it should be done with underlying support in previous

research and knowledge, but the most central aspect is understanding that the assessment must be done on an individual basis (Dane, 2015:193).

2.1.1 *The convention on the rights of the child and Europe*

The Convention on the Rights of the Child was put on the table in the late 1980s but the process of getting the convention on said table was a long one (Alston, 1984:1). The current principle as an instrument can be dated back to the late 1970, in a time of war, the focus on children were central (Alston, 1984:6). Poland was the country to hand the first draft of the convention to the UNs committee on human rights. By the mid 80s it was clear that the convention would be supported by majority of the world states upon presentation (Alston, 1984:7). Three years before the convention was formally presented and up for signature the United Nations Children's Fund (UNICEF), at the time United Nations International Children Emergency Fund, started actively participating in the process (Alston, 1984:8-9). UNICEFs roll in the convention was mainly aimed at encouraging developing countries to take a more active part in the developments process of the convention (Alston, 1984:9).

In Europe the CRC is used as a common base for how children's rights should be evaluated. The ECtHR commonly uses the CRC as an instrument to give clarification on how the rights of the child should be interpretated (Kanska, 2004: 296). Apart from the CRC and the ECHR there are other conventions that have been implemented on an EU level that can be relevant for the states and the Court. Like the European union´s human rights conventions the EU Charter of Fundamental Rights (CFR). The CFR was introduced with an aim to bring the people of Europe even closer together through common values (Dir. 2012/ C326/ 02) The rights of the child shall be respected through *Article 24* of the CFR, the article is a brief summary of the rights stated in the CRC (Dir. 2012/ C326/ 02). It should be noted that the ECtHR is not a part of the European Union. Hence it does not rule over internal cases within the EU or by the EUs conventions only. The ECtHR rather rules on a European level, the EU conventions remain relevant but not primary for the ECtHR.

2.2 Different models of understanding

The different understandings on the principle can be found in three main models. The following section will present the three main perspectives on how “the child's best interest” can be used and implemented.

2.2.1 *The threefold concept*

The main approach to understand the principle is *the threefold concept.* The United Nations committee on the rights of the child (OHCHR) underlines this concept in majority of their official documents, the latest being in the general comment No. 14 (Dir.1989/44/25). The committee states that the concept consists of three parts: *a substantive right, a fundamental interpretative legal principle and a fundamental procedure*. These three parts are all vital when applying law that involves a child.

The *substantive right* refers to the child's right to have its best interested assessed throughout the process and have it taken as a primary consideration when it comes to the verdict. This specific part is commonly known under *Article 3(1)* in the CRC. As a *fundamental, interpretative legal principle* the concept refers to the fact that the interpretation which is most effective for the child's should be used. This is only if there are more than one good legal interpretation. The last part, *a rule of procedure*, refers to the fact that the decisions making process must include an evaluation of the possible consequences that the given decision might have on the child in any way. To justify the final verdict, it must show that this right has been considered and executed (Dir. 1989/44/25).

Since this is the UNs understanding of the term in the CRC both the ECtHR and European national states try to understand and implement the term in the same way. This is to live up to the CRC. Despite the recognition of the UNs understanding the nature of “the child's best interest” remains uncertain within the European national courts (McKaskel, 2005: 56). The UN has made it clear on how they wish for the best interest principle to be interpreted but despite this the actual function remains somewhat unclear (Sormunen, 2020:752). As a substantive

right “the child's best interest” can be understood as any right in the human rights area, which means that it can be argued to be weighed equally with other human rights (Sormunen, 2021:753). It has been argued as a “trump card”, some scholars mean that the principle should not exist in the conventions as it is today since the principle does not ensure any right, rather it acts as a tool to potentially ensure the rights (Cantwell, 2011:69). So, to keep the principle as a right up for interpretation, like it is today, does not make sense. Even though it is recognised that the principle can be helpful in certain circumstances (Cantwell, 2011:70). Apart from the threefold concept there are two other main models that are used, *the Checklist approach* and *the BIC-Q Scale.*

The checklist approach is a framework to ensure that the national courts have certain factors in their verdict, exactly what the checklist consists of depends on the cases (Archard & Skivenes, 2009: 3; Sormunen, 2020:761). Depending on the context of the case and in which state the checklist approach is used the outcome tends to differ. This approach is used in court and by administrative authorities, but it remains very unclear and undeveloped due to its nature (Sormunen, 2020: 764). The checklist approach is aware that a child's view is not authoritative, but rather consultative. This makes the task and the importance of affirming the child's capability to express themself central (Archard & Skivenes, 2009:1). When deciding on what's considered “the child's best interest” some cases require the consideration of specific elements, a checklist (Sormunen, 2020:760).

The BIC-Q Scale is based on the BIC-model and is a common instrument for both legislative and administrative authorities to use in east Europe when deciding what is in the best interest for a child (Zevulun et al., 2019:331; Zijlstra et al., 2013:129). The model consists of fourteen pedagogical environmental conditions, all related to the CRC, and all formed from a westernised point of view (Zijlstra et al., 2013:130-131). The first seven conditions are directed at the family situation of the child, whiles the remaining seven are concerned with conditions on a society level. The key understanding is that if these fourteen conditions are fulfilled the child will be in a good place and have the ultimate opportunity to develop (Zijlstra et al., 2013:131).

2.3 “The child's best interest” and the European Court of Human Rights

The main framework for the European Court of Human rights is the European convention on Human Rights (ECHR). This is not a convention focused on the rights of the child, but rather on human rights in general. However, it is considered in the convention but not extensively (Kilkelly, 2010:245). The ECHR is quite different from the CRC, hence why the Court choose to use complimenting instruments when deciding a child's best interest (Kilkelly, 2010:246). The aim of the ECHR when first introduced in the 1950s was not to protect specific vulnerable groups, like children, or specify their rights (Kilkelly, 2010:247). Despite this the ECtHR has shown understanding that children are not to be taken advantage of or suffer in any way, no matter the circumstances surrounding the child (Kilkelly, 2010:249). The ECtHR are known to use a couple of different approaches, none of the following approaches is exclusive to children's cases but it has strengthened the ECHR as a framework to protect children's rights (Kilkelly, 2015:195). The two most common approaches are *the procedural approach* and *the positive-obligations approach*.

The procedural approach emphasises the safeguard that states are required to implement to support the protection of the substantive rights. This has played a central role in regard to the protection of the child (Kilkelly, 2015:195). This approach is still under development and the ECtHR is yet to develop procedural rights for children. It should be noted that the court has addressed the weight of a child's view and opinion even though a separate procedural right for children is not yet in motion (Kilkelly, 2015:195). This approach does allow the court the leeway it needs to balance the role of national authorities whiles remaining its position as the guarding court (Huijbers, 2017:179). The procedural approach is highly relevant today as the court is said to be in an age of subsidiarity. This refers to the fact that the ECtHR wants the states “to bring it home”. The term “bring it home” can lightly be describes as a wish for the national court to be able to do a lot of the ECtHRs work in the national courts (Huijbers, 2017:181). The general point is for the national systems to be able to sort most cases out on their own when given the same tools as the ECtHR is given. The court is backed up by the convention and can therefore reason those certain decisions are better judged by national authorities (Huijbers, 2017:181). The ECtHR is not a part of the society as the national

authorities are, hence, why some cases are better of being assessed on national level (Huijbers, 2017:182).

The positive- obligations approach has insured the ECHRs relevance to children's rights, it also allows the court to make its own specific contribution through a new set of legal requirements (Kilkelly, 2015:196). In general, the obligations refer to a set of commitments that every state is expected to take to ensure that it is possible for the state to use the conventions and the principle as it is intended (Kilkelly, 2015:196). These obligations do not target the juridical aspects only, it also includes other social and administrative commitments. The ECtHR does not have a clear definition on positive obligation but has underlined that the characteristics of it requires national authorities to adopt the necessary requirements to protect the rights of the individual (Akandju-Kombe, 2007:7). The positive obligations normally demand more of the national states. And because of this the general principle of attribution is that the ECtHR does not have the right or competence to protect any rights that do not have a stable bas in Article 11 of the convention (Akandju-Kombe, 2007:7). The ECtHR always strives after a link between every positive obligation to a clause in the ECHR (Akandju-Kombe, 2007:8). It should be noted that both approaches, though commonly used, are both tools of interpretation so the outcome of the use of these tools are hard to predict (Kilkelly, 2015 :196; Leluop, 2019:50).

2.3.1 *Critique against the European Court of Human Rights as an institution*

The European Court of Human Rights is a respected and influenceable institution (Huijbers, 2017:177). Despite that many scholars and lawyers have, during later years, addressed the court critically (Spano, 2014:1). Most of the modern critique stems from the court dismissing and not engaging in active constructive conversations with their national counterparts. The dialogue between the institution and national court has rather become disrespectful and unpleasant. There is talk about the ECtHR as a venue for "juridical imperialism" (Spano, 2014:2).

As an international court, a major bloc of criticism focuses on the issue of national sovereignty. Within this line of criticism, it is also conveyed that the court has failed to grant the national

authorities and courts enough margin to do their own assessments (Spano, 2014:2). A second bloc of criticism is based on what happens in the interpretational strategies, the focus is the *living instrument doctrine.* The doctrine is a commonly used example to show the faults of the European court and claims that the court interpretates the convention without the respect of the intended meaning of the text (Spano, 2014:2 & Mowbray, 2005: 57).

2.4 "The child's best interest" and national courts in Europe

The national courts are arguably decentralized courts of the ECtHR when judging cases involving human rights, like "the best interest principle". Therefore, it has been called upon for the principle to be specified and validated in the national courts (Hübner, 2018:1818). Despite the somewhat unclear nature of this, decentralizing power to the national states is a form of integration (Hüber, 2018:1819). The balance between the national courts and the ECtHR might be hard to judge at times, but on paper the relationships is built on several different policy documents to protect the nations sovereignty (Leczykiewicz, 2010:18). Despite this it is commonplace, today, to assess all national courts in Europe as "European courts" under the convention or the "European mandate". This refers to the national courts as an extension of the ECtHR in some ways (Elgard, 2016:105). The national courts are central and play a pivotal role in upholding the European order, the European judicial system is dependent on the national courts cooperation (Elgard, 2016:110).

The national court, no matter the supernational nature of the Court or any other institution, first and for most remains to function as organs on a national level. The national courts therefore have an obligation to their community mandate as well as to the European mandate. This makes the entire system vulnerable (Elgard, 2016:106). In general, the responsibility of the national courts is accepted as a "matter of principle", but this acceptance does not necessarily ensure the rightful protection of EU laws on a national level (Elgard, 2016:106). When implementing the EUs or UNs directives in the national laws different types of wording might be used. And the different choices on wording might have a substantial effect on the legal assessment done on the national level (Dane, 2015:194).

In regard to the above, this has raised the question on how international governance should be executed by national states for it to be fair and effective (Kumm, 2003:20). A common model for this is the *Internationalis model* or the internationalist approach. A central term in this model is "the international rule of law" (Kumm, 2003:21). This requires the national courts to enforce the international law that explains why the international law exerts a strong moral and relevant pull without further justification (Kumm, 2003:21-22). The term on its own does not hold a general meaning, it rather refers to features of the international legal order. All relationships between nations are to be ruled by law. The point is to make international law a "good" law (Kumm, 2003:22). The "rule of law" within Europe mainly refers to the integration aspect. The European integration is no longer restricted to the intermarket paradigm, for a long time this integration now seeks to establish itself in other areas (Lenaerts, 2020:32). European integration can only take place when the institutions on both national at supernational level share the understanding that courts have the final say, as acting independent umpires (Lenaerts, 2020:30). For the European Union and more importantly, for the juridical system on a European level to work all parties must respect the "rules of the game" (Lenaerts, 2020:29).

All European countries are sovereign and have therefore decided how the "best interest principle" shall be reassured and the CRC fulfilled in the national courts (Leczykiewicz, 2010:19). As noted above it can be hard for national courts to balance the convention with the court's individual interpretation, a concrete example on how this relationship can work is the case of Norway (Archard & Skivenens, 2009:6). In Norway, when assessing a case with the CRC as an instrument all the articles under the CRC must be interpreted in terms of "the best interest principle". In general, the Norwegian juridical system has tried to reassure that the national courts have enough instruments to comfortably decide on what the child's best is (Archar & Skivenes, 2009:6-8). The legislative system in Norway emphasizes three considerations when deciding on the child's best interest, stability in the day-to-day care of the child, the biological principle and the child's own opinion and voice on the matter (Skivenes, 2010:341).

2.5 Research gap

The principle on “the child's best interest” is not unknown for research. In previous research scholars have mainly used medical cases (Westeason, 2013; Veshi, 2016; Oja & Ely- Yamin, 2016) and migration cases (Da Lomba, 2014; Bhabha, Kancis & Senovilla- Hernandez, 2018) to try to define and give clarity on “the best interest principle”. Despite that there is still a lacking consensus on why the interpretation of the principle differs within Europe. Scholars have called for the need for future research to try to understand the principle as one, both on a European and a national level.

Regarding the above there is an urge for more research to broaden the understanding for different interpretations in Europe. With respect to the current and ongoing studied about the principle it is still relevant to pursue research within the subject. The debate on how and why the principle should be used in line with *Article 3* remains active. The term “in the child's best interest” and *Article 3* of the conventions is commonly used and is arguably a part of an important framework to protect the children. Despite this the principle remains large, unclear and undefined to many scholars hence it remains relevant to peruse further research on the principle.

So, even though there has been, and is currently ongoing research on the subject it is of interest for further and deeper understandings to replicate comparative studies on the different approaches to understand the principle within Europe by the ECtHR and the national states.

3. Method and Material

In the previous section the background of the research field along with some main models and approaches were presented. In the following section the implementation of the study will be presented. A discussion on the selection process of the method and material used for the study will also be brough to attention, as well as a short summary of the respective court cases. The section will end with an ethical discussion that will point out ethical dilemmas that have been relevant for the study.

3.1 Method

This study is a qualitative comparative study. The qualitative method tends to present a more analytical and interpretative result than the quantitative methods (Lindgren, 2014:34). The focus in the qualitative method is the analytical aspect of words rather than numbers. In qualitative research the subject for the study are humans in their natural habitat and the social behaviours that are created within these natural habitats (Tracy, 2010:840). In reference to the quantitative method where the focus rather is on data consisting of actual numbers and the analytical part is executed in a more structured way. Within the qualitative research there are different methods and approaches depending on what the unit of analysis is (Graneheim & Lundman, 2004:107). The relevant method for this study is a content analysis, moreover a content analysis by the inductive approach.

Hsiesh and Shannon (2005) presents three strategies for qualitative content analysis. The conventional approach (inductive), a controlled (deductive) approach and a summary approach. The chosen approach for this study is as previously mentioned, the conventional (inductive) approach. When using this approach there is no pre decided scheme for the analysis or coding (Hsiesh & Shannon, 2005:1279). Instead of using a theoretical pre decided schedule you use the overall questions that you aim to answer as guidelines in the process (Hsiesh & Shannon, 2005:1280). The main aim with a qualitative content analysis is to systematically analyse the content of text or verbal expressions. The primary focus is not the quantity of a given word but rather the deeper meaning of the word (Graneheim & Lundman, 2004:110).

The choice on the inductive approach for this study was made in regard to the nature of the material. The aim of the study was not to apply theory or pre- decided codes on the material, but rather to try and answer the research question with an open mind. The material, court cases, are not necessarily well suited for the deductive approach. Though it might be possible to use and apply hypotheses on the outcome it would not, in my understanding, result in a fulfilling result for the study. The focus in the material is not a phenomenon of something but rather the interpretation of something. Therefore, the reasonable choice is to let the analytical process of the material guide the content unit rather than decide on it before the analytical process has started. The material does touch on the same subject, children and the CRC, but the main subject or area for the cases are different. So, it is natural that some parts might not fit into the categories or codes. In the inductive approach you have the possibility to analyse those part separately. So, despite that they do not fit into the mainstream codes or units they will not go to waste and can be used for the results.

3.1.1 *The analytical process*

In this study the analytical process started with a read though of all the material to get an overview of the cases. This was followed by a detailed read through of the individual cases. This refers to a detailed process to identify the different parts of the material that expresses thoughts in the shape of ideas, arguments or general thoughts that are interesting for the study. In the material I found a couple of different arguments revolving around “the best interest principle”.

After identifying relevant parts of the material for the aim of the study, using the theory, the material was sorted into different categories where a common them could be found, example “positive obligations”, “parents understanding” etc. This sorting process was primarily done to make it easier to understand the presentation of the results. The categories and themes were then abstracted with the help of some of the models presented in the previous section. Since the chosen approach for the study is the inductive approach no analytical schedule or scheme will be presented but rather, I used the research question as my guidepost.

3.2 Material

The material used for the study consists of court documents collected from the European Court of Human Rights. The search for material was quite straight forwards since the HUDOC, ECtHRs website, is well organised and lets you limit your search to find material that is relevant for you immediately. The choses cases are all from different countries within Europe and from quite different parts of the continent too. Working with material from the Court was also a strategic choice since the Court relays the national courts judgements along with the backstory of the case. Since the Court describes the event that unfolded on national level, I had the opportunity to analyse the national decision from the Courts documents.

When deciding on the material for this study I had a few different aspects in mind. Going into the selection process of the cases it was clear that I needed to use a process and criteria to find relevant cases. The cases vairy a bit in time but due to the nature of the convention the time aspect is not a central aspect in this study. To be clear the CRC has not been modified since it was ratified in the early 1990s. This makes all cases brough in front of the Court after the ratification of the convention relevant for the study. It should be noted that cases that were brought in front of the Court at a later point in time might have an advantage. This in the sense that the Court might be more familiar with the CRC as an instrument. *Article 3* is quite wide which makes it relevant to even more cases. Since the article consists of three separate parts it made the process a little bigger and more time consuming. However, it was not an option to only select one of these paragraphs because all paragraphs remained equality relevant for the aim of the study.

The cases all touch on different areas and the selection of cases was made to relay the fact that the principle on “the child's best interest” remains relevant to a lot of subjects. Previous studies have focused a lot on medical and or migration cases involving children. Naturally I decided to try and focus on another area but realised that a lot of cases from the ECtHR are focused on said areas. Hence why a medical case was chosen for the study. All cases are based on different European countries and this to show different interpretations within European national states. The chosen countries have been selected due to their characteristics as member states of the

European council. The cases originate from three national states, the Czech Republic, Croatia and Sweden. However, the choice on the countries were not a priority when the search for material was ongoing. Rather, it was more important that the cases represented different areas of Europe and that *Article 3* and the CRC in general was invoked.

The final choice on these three cases was done because the ECtHR invoked the CRC as a central international law. The cases also name the principle by name during the process. Among all the cases I came across these stood out in the sense that they touch on specific subjects that might not be seen as obviously relevant subjects to the CRC and the principle. Despite that the aspect of time is not the most central aspect it was an active choice to select cases from the last few years, early 2000 and forward. This follows the argument in a previous section. It is my understanding that cases that were brought in front of any court at a later stage mighty have advantaged in the sense that the courts and the states might be more comfortable with the CRC as an instrument. Furthermore, I am aware of the fact that the selected cases remain only a small number of all the cases that could have been used but I stand by that these cases remain relevant for the aim of the study.

THE CASE OF VAVŘIČKA AND OTHERS v. THE CZECH REPUBLIC (2021)

The conflict revolves around vaccination compulsion for children in order for them to be allowed to attend preschool. There a more than one plaintiff in this case and majority of the accusation are made with the support of *Article* 8, ECHR and *Article* 3, CRC. Both parents and the affected children are seeking justice for the vaccination compulsion. The question on "the child's best interest" is relevant in the sense that state compulsion overrules the parents understanding of their child's best interest. But at the same time, it is argued that the compulsion is in the best interest for all children in the state. It is a complex case when a state decides to overrule the parents understanding of "the best interest principle". The ECtHR does not find that there has been a violation of Article 8 nor has the state failed to safeguard the children's best interest in the case.

THE CASE S.L AND J.L v. CROATIA (2015)

The case revolves round a real estate conflict where two sisters accuse the state of Croatia of breaking article 8, ECHR. There are three main parties in this case, the sister, their parents and the social centre. In Croatia it is legal for parents to sell, buy and swap real estate in their children's names. In this case the plaintiffs share the same mother, different fathers, and the property is written in the children's names. The children own the house but since they are under the legal age it is the parents that are liable for the swap. The social centre is also liable for safeguarding the principle since the mother needed a third party to make the swap go through. Regarding the CRC, *Article* 3, it is the centre and the parents that are examined by the Court regarding "the child's best interest". Did the parties consider the children's best interest when agreeing to a real estate swap on behalf on the children? The Courts verdict it's that there has been a breach in convention by the state of Croatia, more over the Court finds that that national authority has failed to safeguard the child's best interest in the real estate agreement. So, in other words the states have failed its obligations against the CRC *Article 3.*

THE CASE OF SÖDERMAN v. SWEDEN (2013)

E. S accuses Sweden to have violated *Article* 8, ECHR, in other words the state has failed to fulfil its positive obligations to E.S and to the ECHR. The main conflict is about a sexual exploitation by the stepfather of E. S. It is a complex case; the stepfather is also accused to have exposed E. S cousin for similar acts. The stepfather has allegedly film E. S in their shared bathroom in a vulnerable situation. The actual film was erased by E. S and her mother upon finding it. The case was not brought to authorities until two years after the event. The CRC is invoked as a relevant international law and is used to examine the national verdict by the Court. "The child's best interest", in this case, mainly focused on if the domestic process considered the best interest principle since there are underage girls involved in the case. The Court determines that the state has broken Article 8, ECHR and the Court is not pleased with the domestic law in regard to the state's obligations against the convention. The Court does however agree with the fact that the state has taken E.S best interest into consideration.

3.3 Ethical aspects

Conducting ethically correct research should be at the heart of all researchers and projects. The aim with ethical guidelines is to reassure that the relationship between the researcher and the object or person of the study is fair and clear in case and to prevent conflict or misunderstandings (Vetenskapsrådet, 2002:6). In this section I will touch on the ethical aspect of this study since it revolves around children, a vulnerable group. Performing qualitative research on children and subjects relating to children is highly relevant and is an opportunity to understand children through their own eyes. Despite that research on children normally taps into very specific ethical issues since children aren't capable to consent or understand in the same way as an adult is expected to do (Mishna, Antle & Regehr, 2004:450).

This study is based on court cases as the main material for the analyse, and more so court cases involving children. I am aware of the sensitivity that needs to be taken into consideration for this study to be argued as ethical. Working with court cases might seem unethical since it involves people's private life and openly shares their stories which makes them vulnerable. But court cases are public records and are therefore available to the public for use. The cases blurred out certain information and is careful with integrity, the same goes for this study.

It is my own personal understanding that once personality and values might affect the decisions made in a court or during the legal process. I do not suggest that this is made consciously but rather sub consciously. Exposing yourself to cases involving children can be rough and it should be noted that judges and authorities are humans too and it should be an underlying understanding that emotions might rise. The same goes for me as a researcher during this study. It is not something that will be central to the study, but the essays might have been affected by my own personal view and emotions.

4. Results

The following section will present the results of the analysis. The presentation will be done individually for each case and will furthermore be divided into in different section. The first section till summaries the individual cases in relation to *Article 3* and the principle. This will be followed by a section on the national court's interpretation of the Article in the domestic process and end with a presentation of the ECtHRs interpretation of principle on the individual cases. The results will be presented in line with the threefold concept.

4.1 THE CASE OF VAVŘIČKA AND OTHERS v. THE CZECH REPUBLIC (2021)

4.1.1 *Circumstance in relation to Article 3*

Article 3 is invoked by both the national juridical system and the Court since all the applicants were children at the time of the event. It is a question on how, or if the children's best were considered by the state as well as the respective parents to the children. A parent's understanding on their child's best interest can be argued to rightfully overrule the states obligation. Even if the state is protecting the best interest of all the children in their territory a parent is understood to know their child's best over the state. Parents how refuses to comply with the law might argue that they still had their child's best interest at heart. Despite that this act results in punishment and consequences for the child and the parent.

> The applicants further referred to a right of a parent to care for their children in accordance with their opinions, convictions, and conscience and in keeping with the child's best interests. In that regard, they submitted that the best interest principle of a child was to be primary assessed and protected by his or her parents, any state intervention being permitted as a last resort in the most extreme circumstances (ECtHR, 2021: 40).

In line with the citation above the applicants invoked *Article 3* since they believe it is in line with the CRC. The government on the other hand also believe that they acted accordingly with the article.

> Regarding the issue of the best interest of the child… the government considered that it was reflected in the right of the child to the enjoyment of the highest attainable standard of health within the meaning of the convention of the rights of the child (ECtHR, 2021: 40).

4.1.2 *The national courts*

The relationship between the domestic process and *Article* 3 revolves around the conflict of parents knowing their child's best and the state trying to safeguard the principle. Overall, the case centers around the question on if a state's medical interventions can be argued to safeguard "the best interest principle".

> The constitutional court… it was obviously a measure necessary in a democratic society for the protection of public safety… the public´s subjective right to the protection of health took priority (ECtHR, 2021: 43).

The constitutional court, along with the other courts on the national level, does agree with the statements above and does reason in similar terms. It its quite clear that the national court understands the principle mainly by last part of the threefold concept, a fundamental legal principle. This shows that "the best interest principle" has been consider and since there are different views on what should be considered the best interest of the children in this case. Furthermore, these options have been ranked in relation to the overall outcome. The general understanding is that "the best interest" for the child is to be vaccinated at a young age. Further, the national courts do question the parent's intentions and respect to "the best interest principle" in relation to the understanding above.

> The constitutional court… the applicant argued that there had been a violation of his right to education… no account had been taken of his parent´s convictions in pursuing his best interests, or the principle of proportionality (ECtHR, 2021:53).

In line with the threefold concept the questioning on whether the parents had their child's best interest in mind when making the decisions that they did are reasonable. This sort of deliberative process on the children's parents is a reoccurring theme in all the cases and is a clear reflection on how and why the national courts took the decision that they did.

In the entire domestic process, there is an underlying understanding that a lot of the responsibility lies on the parents of the children. The parents made an active choice not to comply with the law and that has consequence. The laws are there to protect the society and children as a group. The national process did take the child's best interest to heart, but it is a difficult line to judge when fundamental rights stand in conflict with the public interest. "The best interest principle" as a substantive right were very central in the domestic process, but the fundamental part of the principle showed that there was more than one reasonable way to safeguard the children's best interest. As a fundamental right it was understandable that the regional court (Krajské soudy) did argue for that the best interest of all children must overrule the best interest of individual children. The rule of procedure relates to the fundamental right in this case, it is assumed that protecting children as a group is a way of protecting the individual child´s best interest.

4.1.3 *The European Court of Human Rights*

The ECtHR understands that there is a lack of consensus on how "the best interest principle" should be protected. The Court does however agree with the fact that the state was protecting the public health as one and that the vaccination compulsion is in line with the laws. The Court follows that there is an obligation on the state, in line with *Article* 3 and the threefold concept, to place the best interest of children as a group first when it comes to decision that will affect their health.

> … in the Czech Republic the vaccination duty represents the answer of the domestic authorities to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trend in the rate off vaccination among children (ECtHR, 2021/ 47621/ 13: 64).

> The government submitted that, in the context of health care, the best interest of the child was served by enjoying the highest attainable standard of health (ECtHR, 2021/ 47621/13: 64).

This is reasonable and, in the documents, both the state and the ECtHR elaborate on why this is the right way to interpretate the principle. The main consensus from the ECtHR is on the fact that, in this instance, the best interest of children overall must be allowed priority over the individual child's best. In other words, when ranking the different outcomes of the principle the interpretation of the principle on children as a group is the more reasonable choice.

The ECtHRs interpretation of the principle does make sense. It is clear that a deliberative process has taken place. It is a question on how to weigh the opinion of experts and making sure that the children have been given the best possible chance to a fulfilling life. It is understood that attending preschool provides the child with new opportunities to develop, so ethically it might be argued that impeding on that right is wrong. But from a pragmatic understanding it is important to point out that it was the parent's decision that effected the principle. By not complying with a national strategi that was assessed from the principle for the best of the children as a group, the parents directly put their child's best at harm. Since it could be expected that the parent knew about the direct consequences from not vaccinating their children the Court understands the choice of actively decline the vaccination duty as an active choice from the parents. Furthermore, children are not declined form all possibility of personal development but rather denied the direct access to children in their own age on a daily basis. This limitation ceases to be when the children reach the mandatory school age, this process of deliberation can relate to the second paragraph of *Article 3.*

> The Court understands the health policy of the respondent state to be based on such consideration, in the light of which it can be said to be consistent with the best interest of the children how are its focus… the Court therefore accepts the choice of the Czech legislature to apply mandatory approach to vaccination is supported by relevant and sufficient reasons… (ECtHR, 2021/ 57621/ 13: 65).

This deliberative process can further easily be connected to the Courts use of the threefold concept. As a substantive right, a fundamental right and as a rule of procedure "the best interest principle" is constantly present. *Article* 3 is underlying the entire verdict of the Court. On more than one occasion a discussion emerges on if and how "the best interest principle" should be safeguarded in line with the CRC. There are different interpretations on the principle that the Court evaluates along with the consequence and effects that these different alternatives might have.

4.2 THE CASE OF S.L AND J.L v. CROATIA (2015)

4.2.1 *Circumstance in relation to Article 3*

Article 3 is highly relevant in this case and is referred to multiple times, both by the parties, by the national courts and by the ECtHR. It is a question on whether the state did take the child's best interest into consideration with the same amount of weight that the CRC specifically implies. The ECtHR means that children are, legitimately, supposed to be able to trust that the state and its authorities always has their best interest at heart.

> ... the center had negligently allowed the swap agreement to be concluded without taking into account the value of the properties and the nature of their family circumstances… more over it did not appear to the supreme court that the center had failed in its protection of the best interest of the applicants (ECtHR, 2015: 8).

4.2.2 *The national courts*

The civil proceeding by the Municipal Court (county court) were asked, by the applicants, to declare the swap agreement void. This on the arguments that the center had failed its duty to the children's best interest. The municipal court declined the arguments made by the applicants, that the swap should be annulled.

> The municipal court had failed to examine any of the relevant evidence… and had failed to take into account that the Center had negligently allowed the swap agreement to take place… moreover

> it did not appear to the supreme court that the center had failed in its protection of the best interest of the applicants (ECtHR, 2015:7).

The national courts concluded that it was not possible to re-examine the actions in the name of the principle. The principle was clearly used on national level, but it was not necessarily used in the sense that the UN intended for it to be used. Here it becomes obvious that the understanding of what should be considered "the child's best interest" can vairy between the ECtHR and the state. The ECtHR, like the state, does hold the parents somewhat responsible, but the ECtHR also argues for that the best interest would have included that the center would have stopped the swap agreement.

> The government pointed out that the applicants, guardians, namely their parents, had failed to challenge on behalf of their children the Center´s decision authorizing the swap agreement.. (ECtHR, 2015:15).

As mentioned in previously, the UN intends for the principle to be used as a threefold concept, a substantive right, a fundamental interpretative legal principle and a fundamental procedure. As neither, the municipal or the supreme court of Croatia, acknowledged "the best interest principle" as a primary aspect, as it should have been acknowledged the substantive right of the threefold concept was not clearly fulfilled. As a fundamental right the domestic process should have used the interpretation that would be the most effective on the child. This process might have been done but it is not something that appears in the court documents. So, it can only be assumed that this was not of relevance for the domestic process even though it is relevant for the interpretation of the principle. The rule of procedure in the case of Croatia cannot be said to have been fulfilled by the national courts either. The process might have taken the consequences on the children of the verdict into consideration, but it cannot clearly be argued that it was done so in a rightful way, in line with the threefold concept. This indicates that "the best interest principle" has not been fulfilled.

4.2.3 *The European Court of Human Rights*

The Court, in line with the threefold concept, is clear on the fact that the child's best interest must be assessed thoroughly in this case even though the principle alone cannot be decisive it must certainly be afforded significant weight. The social center plays a central role in this case and the Court takes that into account.

> … the Center which was involved in the case due to the fact that at the relevant time the first applicant was fourteen years old, and the second applicant was nine years old, which meant that their parents could dispose of their property only with the consent of the Center (ECtHR, 2015/13712/11: 18).

The center was the third party of the swap agreement and had the same amount of responsibility as the parents to safeguard the children. That means that the center had a say in the final swap agreement including the clause in the final swap agreement whereas the parties agreed that the value of the properties were estimated around the same value. The Court also implied that the children had no reason to doubt that the authorities had anything but their best interest in mind throughout the entire swap process. This reflects both *Article 3* and the positive obligations well.

> … as children, could legitimately have excepted the domestic authorities to take measure to safeguard their rights… the principle that the best interest of the child must be taken a primary consideration (ECtHR, 2015/13712/11: 21).

It becomes obvious that the ECtHR uses the threefold concept well to assess "the best interest principle". The principle is constantly present in the Courts judgements and reasoning. The Court also evaluated other possible turnouts that might be better for the children involved. Since the domestic law allowed the parents to take control over their children's property the Court also took notice on the importance of assessing the specific family situation. It was central to this case to take the family situation into account to assure whether their proprietary interest was adequately protected against malevolent action from the applicant's parents. The Court

understands the principle different from the domestic process and argues that the center failed its obligations to the children. In this case it seems like the principle was very central to the Court, in comparison to how much the principle was considered in the domestic process. The Court uses the principle very well according to the threefold concept. In this specific case the differences between how the Court interprets the principle from the state becomes quite apparent.

4.3 THE CASE OF SÖDERMAN v. SWEDEN (2013)

4.3.1 *Circumstance in relation to Article 3*

In this case *Article 3* is seen as relevant but not as central as in the two other cases. The CRC and the article are more underlying the case than an actual part of the case. In this case the question on how much a child's own opinion on its own best interest should way came up to the surface. Like the other cases the question on how the Court should understand "the best interest principle" from the parent's perspective also remains relevant.

> In respect of children, who are particularly vulnerable, the measures applied by the state to protect them against act of violence… such measures must be aimed at ensuring respect for human dignity and protect the best interest of the child (ECtHR, 2013: 25).

This was a groundbreaking case, and it is more a question on if the state safeguarded the child's rights with the legal system at the time. As noted above the article is not the most central one in this case but it remains relevant thought it is a good example on how the CRC can be used as ground for the rest of the verdict.

4.3.2 *The national courts*

The civil proceeding on state level did use the CRC *Article 3* as a foundation for the case. This case was very complex in the sense that the actual action by the applicant's stepfather, at the time, was not against the law even though it was a highly violating act against the child.

> The supreme court noted that it was not prohibited under Swedish law to film another person without his or her consent… even in situation where the deed in question seriously violated the personal integrity of the person concerned (ECtHR, 2013:9).

The supreme court, nor any of the lower court, makes the fact that the person in question in this case is a child very central. Of course, it does not go by unnoticed but it is not made the most central aspect which is interesting in relation to the principle. Since there are no prohibitions against such an act, as the case describes, in the domestic law it makes the situation for the court rather difficult. The CRC clearly states that all states shall undertake measures to protect the children from all forms of sexual exploitation. Furthermore, underlying, in *Article 3* it is stated that a child is rightfully supposed to be able to trust the national authorities to protect their best interest.

In relation to the threefold concept, it cannot with certainty be said that the state did consider the three parts of the term. The substantive right in the domestic process is fulfilled according to the threefold concept. "The best interest principle" is present throughout the entire process and is considered for the final verdict by the juridical systems different levels. The legal process on national level did not however, or at least not to the knowledge of the official court documents, provide more than one interpretation of the possible outcome of the principle. The domestic process does understand the importance of "the best interest principle" but it is not clear if it weighs as much as it is supposed to according to *Article* 3.

In this case the question on whether the state had enough legislative and administrative measures to protect the child from harm and thereby safeguard the child's best interest central. By using the *internationalist model*, as mentions in a previous section, it can be argued that the state of Sweden indeed did understand and fulfilled its obligations to the CRC and *Article* 3 with the given measures and instruments in the domestic law at the time.

4.3.3 *The European Court of Human Rights*

The principle was harder for the Court to judge and use in this case. According to *Article 3,* all states should adopt and take measures to be able to protect the rights of the child in the best possible way. So, in this case the Court focused a lot on evaluating if such measure to protect "the best interest principle" were in place at the time of the offense.

> … obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves… in respect of children how are particularly vulnerable, these measure applied by the state must protect them against violence... (ECtHR, 2013/ 5786/08: 22).

Regarding the threefold concepts the Court makes a constant evaluation of "the best interest principle" throughout the different aspects of the case that are relevant to the principle. But due to the nature of the case and the domestic process it is hard to assess the threefold concept from the Courts aspect.

> The Court observes that the Court of Appeal found that the applicant's stepfather´s acts constituted a violation of her personal integrity. The Court indorses this finding and considers, on the one hand, that the circumstances were aggravated by the fact that the applicant was a minor, that the incident took place in her home, where she was supposed to feel safe, and that the offender was her stepfather, a person whom she was entitled to expected to trust (ECtHR, 2013/ 5786/08: 24).

When looking at the direct citation above the Court did acknowledge the applicants age and the vulnerability that her age put her in, contra the stepfather. But on the other hand, the Court also points out the fact that the act "did not involve any physical violence, abuse or contact". The Court therefore understands the offence as less serious. This reasoning is somewhat understandable, but it is also a question on "the child's best interest". The act might not have involved psychical violence or abuse but that doesn't necessarily imply that it is in the child's best interest to allow the offender to walk free or keep in touch with the applicant. The potential mental harm from the offense is not something that the Court considers, or account for in the

documents. This is worth noting, since the Court does take notice of the child's social development and wellbeing in the case of the Czech Republic. The cases are of very different nature but in line with *Article 3* the child's best interest should be considered and taken into account in all aspects, not just the physical once.

Respectively all the cases seem to follow the CRC and *Article 3* in the domestic process. "The best interest principle" is not as central in all the cases but appears to be underlying. From this there a couple of different interpretations that can be located. All national states did understand the principle for the most part, from the threefold concept like the UN strives for. It is however clear, after applying the threefold concept that different states have different amounts of wiggle room when it comes to safeguard the principle on a national level. The domestic laws and behavior seem to play a central part in how the court uses "the best interest principle" in the chosen cases.

4.4 Positive obligations

As noted earlier, the ECtHR mainly uses one of two approaches, the procedural approach or the positive obligations approach. Depending on which off these the Court uses the deliberative process might differ. In all the choose cases for this study the Court argued for the use of the positive obligations approach. In some of the cases the state relied on the positive obligations as the main argument and it other cases the circumstances of the case made the choose on the positive obligations approach the most logical one for the Court.

> … the Court considers that, in the circumstances, it is more appropriate to analyze the case from the perspective of the states positive obligations…"(ECtHR, 2015/13712/11).
>
> In relation to… the government relied on their positive obligations under the convention… the states were under a positive obligation to put in place effective public health policies for combating serious and contagious diseases…(ECtHR, 2021/ 47621/ 13 :44).

The Court is quite set on using the positive obligations approach due to the nature of the given cases, but the domestic courts are not always as clear on what approach they use. This approach works very well with the threefold concept. The threefold concept is quite easy to apply and since positive obligations are a normal thing for both the states and the ECtHR it makes the two easy to combine as instruments to evaluate "the best interest principle". It is quite clear that the states and the national courts are highly aware of the positive obligations and what they might imply. In the case of Sweden, the actual judgments by the Court were on if the state lived up to its positive obligation. The Court did therefore mainly focus on how and what positive obligations should be concerned with, in the given case.

Since the respective cases are very different the interpretation and use of the approach applied to the cases different. It is also apparent that the Court itself might not be sure of how the approach is best used to safeguard the rights of the child in the best possible way. The use of the positive obligations approach in the three cases above have different outcomes. In the case of Sweden, the Court finds a breach in the positive obligation, in the case of Croatia the Court does not specify any breaching in the positive obligations but rather a breach in the CRC and *Article 3.* Finally, the case of the Czech Republic is a mixture of the other two cases in relation to the positive obligations and the Court does not find a breach concerning the positive obligations.

5. Discussion

The convention on the rights of the child, *Article 3,* clearly states that the rights of the child should always be present, always come first and be thoroughly evaluated in every aspect. Apart from that the child is right to expect the above from national and international authorities in all circumstances. Despite that it becomes apparent that this is not always the case. The practical understanding of how and when the principle should be used to protect the child in a rightful way can be understood differently.

An overall assessment of the national courts in this study shows that a difference in how the principle was interpreted did occurred. It should be noted that the cases touch on very different subject and it is not clear on whether the difference depends on the national states only or if the nature of the case also acts as a contributing factor. It is however reasonable to assume that if the study would have selected cases of the same nature the interpretation might have been more similar in both the national states and the ECtHR. The main difference among the national states that can be observed is that "the best interest principle" was not considered the same amount or way in the states.

In the case of the Czech Republic the principle was the most central international law, the national courts used *Article 3* to support the final verdict in favor of the state. The principle was constantly evaluated against different outcomes and understandings to create a deliberative fair process for the children. The ECtHR did overall agree with the state in this case. It was clear that the national process did have the principle in mind. Furthermore, this was well documented in the case when it was presented to the Court. In comparison to the case of Croatia, where the process in the regional and supreme court failed to take the principle into account in the way that it is specified in *Article 3.* The ECtHR did not agree with the state when it came to the interpretation of the principle.

In the cases where the national processes clearly made room for "the best interest principle" and argued for a clear foundation of the principle, the Court agreed with the national judgment.

In the cases where the national process did not clearly show the use of the principle the ECtHR were displeased and did not agree with the state. This indicated that the process in the national court might influence the ECtHR.

The ECtHR appears quite constant in their interpretation of the principle, despite the different nature of the cases the ECtHR seems to be consistent. The priority of the threefold concept comes across clear in the ECtHR verdict in relation to the national courts. In all the cases the ECtHR clearly states that when a child is involved it is vital that "the best interest" of that child is evaluated and respected in the process and in the verdict. It is however interesting to discuss the ECtHR interpretation of a child's social development in relation to *Article 3*.

In the case of Sweden, the ECtHR uses the CRC but very vague in comparison to the other cases. It might be due to the nature of the case but in *Article 3(2)* it clearly conveyed that the state shall protect the right of the child even if it is from a legal guardian or a parent. The ECtHR does take notice of the fact that the offender is a stepparent, but it is not used as a main point by the Court. Therefore, it is not wrong to argue that the Court in some aspect interpreted "the best interest principle" without the full effect intended by the UN. This can be compared to the Courts verdict on the case of the Czech Republic whereas the Court clearly argued for the child's social development in their judgement. This indicated a difference within the ECtHR itself.

A big difference between the national courts and the ECtHR when using the CRC as an instrument is the use of the positive obligations approach. The ECtHR used the approach to evaluate the state and the states used the positive obligations as guidelines for the implementation. Since the states all understands the positive obligations differently the direct outcome also differs. As the obligations are up for interpretation by each state it can somewhat be hard to understand why the ECtHR decides to use them. It is not clear whether the Court understands the obligations from the concerned states understanding or from its own understanding. But it can be assumed that the Court does use its own understanding of how the positive obligations approach should be used.

6. Conclusions

The aim of the study was to try to understand how the interpretation of *Article 3* in the Convention on the rights of the child differs in European states in relation to the interpretation in the European Court of Human Rights. From the analysed data I can conclude that the interpretation of "the best interest principle" remains large and somewhat unclear for courts in Europe. The European Court of Human Rights appears to be quite consistent in their interpretation and relays heavily on the threefold concept and the positive obligations. While the national courts appear to use the national implementation of the positive obligations as their main argument. The CRC and the principle do despite this seem to remain as a relevant instrument. It is also clear that the UNs threefold concept of "the best interest principle" is relatively strong and well used both in the national states and in the ECtHR. This study has only touched on a small part of the term "the child's best interest". It is apparent that there is a need for further research on the principle to fully be able to understand why the interpretation differs within European courts.

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