



HOUSE OF LORDS

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UNACCOMPANIED MINORS IN THE EU

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Witness: Margaret Tuite

Members present

Baroness Prashar (Chairman)

Lord Condon

Lord Soley

Examination of Witness

Margaret Tuite, Co-ordinator for the Rights of the Child, European Commission

Q131 The Chairman: First, I welcome you and thank you for your time this morning. We will start by introducing ourselves and then perhaps you can say a bit about yourself and the work that you do. For the record, this is a public session. It is being recorded, and there will be a transcript available for general reading. It will be sent to you, and if you wish to correct anything or supplement the transcript with further information, that would be helpful. Let me start by saying that I am Usha Prashar. I chair the EU Sub-Committee on Home Affairs, and I sit on the European Union Select Committee.

Lord Condon: I am Paul Condon. I am a Member of the House of Lords and a member of this Committee.

Lord Soley: I am Clive Soley, Member of the House of Lords and of the Committee.

The Chairman: Can you introduce yourself and say a bit about your job and what you do at the Commission, please?

Margaret Tuite: Thank you for having me here. My name is Margaret Tuite. I am the European Commission Co-ordinator for the Rights of the Child. I have held that post since November 2011. My job, as in the title, is to co-ordinate the work in the Commission on the rights of the child across the various policy areas, including by way of mainstreaming, looking at proposals for legislation and making sure that the rights of the child are adequately respected. We also have some networks with stakeholders in order to do that work. We have, for example, an inter-service group that brings all the different departments together and meets regularly, an informal member-state expert group on the rights of the child, many contacts with civil society and international organisations, and an annual European Forum on the Rights of the Child.

Q132 The Chairman: Thank you very much indeed. Maybe we can begin by looking at the challenges faced by unaccompanied minors in the EU, how they differ among member states and whether a common European approach is feasible.

Margaret Tuite: There are many challenges that unaccompanied children face. I have a long list, but it is worth noting them: the dangers that they face when irregularly crossing EU external borders; the lack of protection when they follow EU migration routes undetected, because they are just not visible and nobody is looking after them; the gaps in registration and identification of unaccompanied children, which has the domino effect of there being no referral to child protection services; the lack of safe reception; the lack of reception capacity; poor reception conditions; and a lack of inspection and monitoring of reception; the frequent tension between their chosen country of destination and the EU laws and procedures that are put in place to prevent secondary movements; the procedural and other obstacles to family reunification; family tracing challenges, including underdeveloped mechanisms, the lack of information and sometimes the unavailability or unwillingness of family members who are in the EU to take care of the child; the risk of administrative detention, including the risk of detention in inappropriate conditions—for example, the lack of separation from adults; the risk of sexual violence, sexual exploitation and trafficking, especially if they choose to abscond or travel alone; the gaps in the guardianship systems, with a lack of guardians, overstretched guardians and no immediate allocation of a guardian when they arrive; the lack of reliable information and advice; delivery of a good counternarrative to what they may be told by traffickers; the lack of legal advice and support; the use of invasive methods of age assessment, with variable degrees of results and reliability; the lack of respect for the child's right to the primary consideration of his or her best interests.

Finally, some unaccompanied children have pointed out that on their journey they have been focused entirely on survival, the journey and arrival, and when they get to their destination country they are entirely depleted, but then of course they have to face a whole new set of challenges, so we have to be mindful of all they have gone through.

Q133 The Chairman: As you say, these differ among member states. Against that background, is a common European approach feasible?

Margaret Tuite: The challenges differ depending, as we see, on geographical location and the numbers of unaccompanied children. In the EU last year, there was a range of asylum applications: from zero to 35,000. That is a huge difference. Then we have to factor in member states' responses in terms of the range of services and resources, which vary enormously and have an impact. However, several challenges are common to many member states.

With regard to whether a common European asylum system is feasible, it is not only feasible but necessary. The whole point of the common European asylum system is based on

subsidiarity, solidarity and mutual trust to ensure that an application, irrespective of the member state that deals with it, is processed in a similar fashion and results in a similar outcome. The aim of the EU, including the agencies, is to promote transnational co-operation among member states so that they can fulfil their international and European obligations with regard to giving international protection to those in need. We do that through legislation, policy, guidance, funding, and the tools, training and research that the various agencies deliver.

Q134 The Chairman: Talking about research, what data sources, both qualitative and quantitative, do you rely on to formulate your law and policy? Are there gaps in the data, and can this be improved by the cross-border sharing of information?

Margaret Tuite: We use many sources of data—for example, those that were listed in the written evidence. We have Eurostat data, EASO data. We use UNHCR data, IOM. We have the European Migration Network reports. We have different studies that the European Commission has funded. We have various NGO reports. We have the results of studies, often in the area of action research, that we have funded, and there are plans to adapt some of those.

Yes, there are gaps. The data is still rather fragmented, particularly with regard to unaccompanied children who do not apply for asylum. They may be nowhere in the system. They may not have been registered or identified, and we have then no traceability on from that. There are differences in how data is gathered. The collection of agreed datasets—for example, always disaggregating for unaccompanied children because that is not the case—and more sharing of information at European level would be useful, possibly by imposing legal obligations for member states to provide some statistics and to make better use of the tools we have, such as Europol, the Schengen Information System, missing children alerts.

The Chairman: Are there ways other than legal obligations to improve cross-border sharing?

Margaret Tuite: Yes. By engaging with people and looking at the gaps together, even without legal obligations, we can make improvements. There is a lot of data, but it does not always add up in a coherent manner, and certainly more can be done to improve that.

The Chairman: Do you see a significant role for the Commission to do that co-ordination work?

Margaret Tuite: Yes. We are looking at that now in the context of the comprehensive approach.

Q135 The Chairman: Moving on, how do you engage with other interested parties in fulfilling your role? How do you ensure that the views of unaccompanied minors and those represented are taken into account when you are making decisions?

Margaret Tuite: For my particular role, as I said we have various formal networks, including the annual European Forum on the Rights of the Child and the member-state expert group. I have a lot of bilateral contact with NGOs, international organisations and ombudspersons for the rights of the child. DG HOME in particular—given that we are talking about unaccompanied children—also has contact committees on asylum migration law, bringing together the member state experts. There was one earlier in April on unaccompanied children. Given that they are not here, it is useful to say that the agencies—the Fundamental Rights Agency and EASO—hold a lot of expert consultations¹. FRA convenes expert consultations on children, such as when it was working on the handbook for the guardianship of unaccompanied children.

The views of unaccompanied children, of course, have to be taken into account. That is a reality check, so we really need to listen to them. We have no formal consultation mechanism in the Commission to hear unaccompanied children, but we regularly meet unaccompanied or former unaccompanied children at various conferences and through the projects we fund. When we fund organisations that work directly with them, we can hear.

We also rely on research carried out elsewhere—for example, the UNHCR report on why children take the unaccompanied journey. We are very mindful when we hear children. A former unaccompanied child gave testimony at the 2015 migration forum. We have no formal mechanisms, but it is very important that we hear them.

Q136 Lord Soley: There are a number of EU measures that refer to the primacy of the rights of the child. Do you think they are clear enough and detailed enough to protect unaccompanied minors? Perhaps in responding to that you can also say whether you think the measures are effectively followed by the various members of the European Union.

Margaret Tuite: The child's best interests are explicitly referred to in EU legislation. In the common European asylum system instruments, for example, we talk about the obligation to provide tailored assistance, a legal representative, guardianship, family tracing, placement arrangements and training of staff dealing with unaccompanied children. There are then criteria for determining the best interests of the child on family unity, the child's well-being and development, safety and security considerations, as well as the views of the child.

¹ Margaret Tuite later told the Committee: "EASO holds an annual conference on children and has an expert network on activities for children."

As is the case in other areas beyond asylum migration—it is a common problem—there is always room for improvement in the procedural safeguards on respect for the best interests of the child. I am thinking in particular of procedural safeguards set out in General Comment No. 14 of the UN committee; there is a very good set of safeguards in Section V.B. More can be done to ensure that they are promoted and respected, and to ensure that decisions are individual for each child and are interagency and multidisciplinary.

It is fair that we do not overdefine in legal texts how it should be done, because there should be an individual assessment. EASO is now working on developing tailored guidance to specific situations, the first set being on the best interests of the child in the context of relocation procedures and decisions.

Lord Soley: Clearly some member states will be doing better than others, but if you are aware of a state that is failing, and may be failing quite badly, what do you do?

Margaret Tuite: When the European Commission is aware of violations of EU law, that triggers a pilot letter to get more details and possibly infringement proceedings.

Lord Soley: Do you do that?

Margaret Tuite: No.

Lord Soley: Might you trigger it, though, because presumably you would be aware of the problem within a particular country?

Margaret Tuite: If I became aware of a situation or what looked like a violation, I would forward it to the owner of the piece of legislation.

Lord Soley: When you say “the owner”, do you mean somebody in the nation state?

Margaret Tuite: If we are talking about asylum and migration law, it would be colleagues in DG Home Affairs.

Lord Soley: We are talking about a failure, but it might be just inadequate procedures because they need support in some way. That must be true of Greece, for example.

Margaret Tuite: Yes, of course we see that there are gaps. Given the numbers over the last year—when the Action Plan on Unaccompanied Minors was adopted, there were 11,700 unaccompanied children; last year, 90,000 applied for asylum and however many more who did not—it is fair to say that many systems have been overstretched in terms of resources, guidance and doing things in a timely manner.

Lord Soley: “Overstretched” is a rather mild word for what many people would say is a crisis, would you agree?

Margaret Tuite: Yes.

Lord Soley: It is not easy; I am not suggesting that you can click your fingers and solve it. The Commission's power is obviously limited to what it can get nation states to do, but it is in a key position both to help and to put pressure on states that are failing. Is that right?

Margaret Tuite: Yes, and various things are being done to support implementation of EU legislation and more generally. For example, EASO delivers training to member states on interviewing children, on the asylum procedures, on identifying vulnerable persons. There is training, there are tools—and when we talk about the best interests of the child, of course, we are taking a very broad look that leads to many other things, such as family tracing. A range of things is being done. There was guidance on the return directive, in which again we reiterated the importance of the procedure and safeguards in General Comment No. 14. Maybe things are not happening fast enough in this crisis situation.

Lord Soley: Do you regard it as a pretty desperate situation where you really ought to do more but you may be constrained in some way?

Margaret Tuite: We all have a duty to protect children and it is clear that we need to find responses. The situation is bad, but I would not say “desperate”, in that it is possible to get to a better situation.

Lord Soley: What is missing: political will or finance? I appreciate the difficulties, but there are obvious financial problems and there are obvious compliance problems on the part of nation states. I am aware that the whole idea of the primacy of the rights of the child will be trumped by national interests at times. I am still trying to work out from your answers just where you think the emphasis should be put, because everybody, including the Commission, accepts that this is a crisis and that more needs to be done. That is not in dispute by anyone.

Margaret Tuite: More needs to be done across a whole range of areas and it's also about drawing the various strands together so that they form a coherent whole. Going back to the challenges I mentioned, in the end they are tied together, so we have to look at all of them, which is why we have been trying to develop a comprehensive approach. It is not only about money; it is also about human resources. You may not have the guardians in the first place, or they may not be there in the numbers required. Just one city in Germany that I visited last week, which has a population of half a million, has 2,600 unaccompanied children. Even if we allocate funding, the people may be not there or they may not be trained, and these things take time. Many member states are aware of the difficulties, but they say that it takes time to have trained guardians in place, so the issue is not only funding but being able to allocate resources and possibly finding workaround solutions until we have the system in place that we want.

Q137 Lord Soley: Let me turn to the human rights of unaccompanied minors. How much are they affected by member states' failure to fully implement the asylum acquis?

Margaret Tuite: All the challenges I mentioned earlier reflect the (possible) violations of their human rights.

Lord Soley: Therefore, again, we would be looking to nation states to do more.

Margaret Tuite: It is a collective responsibility: member states, the EU, international organisations, NGOs. It can only work if everybody is facing the challenge together.

Lord Soley: Let me turn to the European Union Action Plan on Unaccompanied Minors. You are planning to renew the plan. Is that right? If so, will you make any changes to it, or not?

Margaret Tuite: The report on the Action Plan on Unaccompanied Minors is being finalised now and will be published before the summer. The intention is not that we will have a new plan on unaccompanied minors; it is to have a comprehensive approach for all children in migration. After all, some children may have been with their families and become separated at some stage, so it is also relevant to look at the protection needs of children within families. Our aim was to take a broader approach but also obviously to include unaccompanied children. The Commission communication on 10 February announced the employment of a comprehensive approach, so that is what we are working on now.

Q138 Lord Condon: You have answered some of the issues that I was going to raise in this question, but would you like to say anything more about the role that you play and your office plays in formulating the Commission's response to the refugee crisis? Are you advocating anything in particular that should be done at either EU or member state level, beyond what you have already described in the challenges and the comprehensive approach, and what can be said about the needs of all children? Would you like to elaborate on any of those points?

Margaret Tuite: The unique point about my role as Co-ordinator for the Rights of the Child, located within DG Justice, is the focus on children, across various policy areas. After all, we have so many people focusing on different aspects of asylum migration that they would not necessarily have the same focus. We are looking at everything from a child rights perspective, so that is valuable in the first place. We had done a fair amount of work previously on child protection systems. We see the value in strengthening systems in order to be able to cope with different situations, and we will continue in that vein. We would like to see more links between the child protection system and asylum and migration systems, so that child protection actors are very naturally part of the response.

Implementation differs also because of organisation at national level, where provision of services be centralised or decentralised at regional or local level, so we have to take all these

things into account. In our approach, we would like to ensure that we are looking not only at short-term answers but at more mid-term to long-term responses, because we would like systems that are better able to cope in the long term.

In terms of what we are doing practically in developing this comprehensive approach we are working with all the different services—for example, asylum and migration, justice, development cooperation, enlargement and neighbourhood, health, social and regional policies (including funding) and the agencies, asylum migration funds; there are all these different funds—we have been speaking a lot with people to map the actions that are planned and are under way and to better identify the gaps.² We have also been speaking with international organisations, civil society and the member states.³ I do not know whether I have answered all your questions.

Q139 Lord Condon: During the flow of the whole conversation, you have probably given us what we need on that issue. My question was really just whether there was anything more that you wanted to add, so thank you for that.

I will perhaps invite you to say something more about a very specific issue. How is the Commission able to monitor the treatment of unaccompanied minors in relation to the hot spots and the relocation schemes? Can you tell us anything more about the monitoring and analysis of that?

Margaret Tuite: Yes. First, relocation at present is not really working for unaccompanied children. So far, only 12 children have been relocated from Greece to Finland. There is an absence of member state pledges, which is an issue.

In terms of the hot spots, there are Commission staff on the ground in Rome and Athens. They have been trained on the rights of the child and child protection, so they are looking to strengthen these aspects. The EU agencies are present in the hot spots, so EASO and FRONTEX are both playing quite a big role, but the hot spots are primarily the remit of the Greek and Italian authorities. Also in relation to the hot spots, we also want to ensure, which I do not think is the case yet, that at disembarkation children are identified and registered and that potential victims of trafficking are identified. I have had comments from my colleagues that we need to ensure that when children are in transit from the hot spots, there are dedicated staff there, transfer is rapid and they go to dedicated facilities. The plan is that unaccompanied

² Ms Tuite later added that the aim is to “draw up a coherent response, focusing very much on practical things that make a difference on the ground.”

³ Ms Tuite: “Areas of focus will include safe reception and quality of care, access to information, legal advice and guardianship, children going missing, trafficking. The comprehensive approach will consolidate work done and make the necessary links between all the mechanisms and tools available. We will also assess whether there are any remaining gaps.”

children will no longer be hosted in the hot spots in Greece but will be moved to facilities on the mainland.

Q140 Lord Condon: The Commission has carried out visits to hot spots. In its written evidence, it stated that on the most recent visits particular attention was paid to whether specific reception areas and dedicated assistance were in place and whether dedicated assistance could be further developed. Were you involved in any way in those visits or that process? Were you able to attend, or can you provide checklists for the people who are going?

Margaret Tuite: No. I will go to Greece at the end of May or the beginning of June and visit areas and facilities where there are children. I know my colleagues have been monitoring closely and, as I said, the plan is to move children to the mainland. I understand that there are still issues, and when we are informed of them they are brought to the attention of those who are working on them. The Fundamental Rights Agency has also, over the last three weeks or so, been deploying teams that are focusing on child protection and fundamental rights and looking at safeguards for children. There are various people looking at the situation. It is clear that it is not optimal yet.

Q141 Lord Condon: Can I take you back to the relocation scheme? You mentioned that it is not working and that only 12 youngsters have been relocated. Is that just accepted with resignation as a fact of political life, or who is on the case to get us from where we are to a better position?

Margaret Tuite: I do not think it can be accepted, because these are children in very vulnerable situations. If they cannot be relocated and they have expressed an interest, they are going to languish, possibly, in reception in Greece for who knows how long. There have been no relocations from Italy either. So, no, it is not accepted. We are raising it in various fora. At the contact committee on unaccompanied children on 7 April, we raised it again with the member states. We have also asked that in the updates on relocation—there are tables that are updated and published every so often—unaccompanied children are made more visible in the tables, because now we just have overall numbers. We raise it wherever we can.

Lord Condon: What is going to make it improve? Do you see any prospect of improvement?

Margaret Tuite: I, and others, have been asking why we are facing this difficulty, which we might not have expected. You would imagine that in many instances it would be easier to relocate a child, who can quickly integrate in school and learn the language. Some member states have said that they do not have capacity for unaccompanied children right now. It is unclear why this is persisting. Perhaps, as is sometimes the case, member states are waiting for others to do it.

Q142 Lord Condon: Finally, from me, we welcome anything more you can tell us about how you or the Commission support efforts to address the increasing number of unaccompanied minors who go missing at all stages of the process. In particular, can you tell us anything about the EU missing children's hotline, how you monitor the data and whether that is working at all?

Margaret Tuite: The issue of missing unaccompanied children is a serious one that is linked to many other aspects, starting with identification and registration. If we think of this number of 10,000, we have some of the elements from that, but we do not always know where they went missing, who they are, where they have gone to, if and when they were identified and registered, if there is double and triple counting as they move from one country to another. Another aspect is the provision to children of reliable and accessible information, including to counter whatever they might have been told by traffickers. The impact of the quality of reception and care on the prevention of children going missing is not new. It is provided for in EU legislation, and in the European Migration Network study of 2015 it was already raised as a factor in children absconding. The better the quality of care, the less the risk of them going missing; we are aware of that.

We would like to see greater use of foster care for unaccompanied children. We have funded a couple of projects on that, and in 2016 we will prioritise it in our funding. That is part of the picture. On guardianship and the lack of guardians, we will also target capacity-building and we have a few other things under way to deal with guardianship.

The missing children hotlines are operational in 27 member states—in all except Finland. Last year, only 1% of their calls related to unaccompanied missing children. Now I understand it is up to 2%, but that makes sense: if a child does not have a guardian, has not been registered or is moving undetected, who would have reported the child to the hotline? We would like to see all the hotlines being used, because they have expertise; they are used to dealing with missing children cases, they have the contacts, they work cross-border.

Lord Condon: What would help to promote better use of them?

Margaret Tuite: We are talking about children, and if a child is known to have gone missing, even if they do not have a guardian, we need more clarity on roles and responsibilities, so that if a child goes missing the disappearance will always be reported and followed up on; it just has to happen. We would also like to see better use being made of the Schengen Information System missing child alerts. The plan is to have a new subcategory in the Schengen Information System for missing unaccompanied children, but we know, for example, that Italy always puts missing unaccompanied children in the system.

Lord Condon: Excuse me for interrupting, but is that new subcategory a done deal that will happen, or is that an aspiration?

Margaret Tuite: It is in planned legislative changes for the Schengen Information System. There has been awareness that it is not really enough just to have a category for missing children, because there are so many different situations—you have runaways and so on and so forth—and we need to be able to see what type of disappearance it concerns. We want to get to a stage where children are reported in the first place, but for that they need to be identified and registered somewhere as well.

The Chairman: In other words, nobody has overall responsibility for tracing unaccompanied minors.

Margaret Tuite: If a child is in a particular country, that country is responsible, but if children are moving undetected that really adds to the complexity. When we did a study on missing children in 2013, we saw that member states sometimes treat missing unaccompanied children differently to national children who go missing. They might not report them or they might wait two extra days and things like that, and that should not be happening.

Q143 The Chairman: I have two brief questions. First, was the interest of the unaccompanied minors taken into account when a deal was struck with Turkey?

Margaret Tuite: I do not know. I know that in the European Agenda on Migration and the European Agenda on Security you will find reflections on unaccompanied children. For example, the security agenda spoke about different categories in the Schengen Information System. For the Turkey deal, I do not know.

The Chairman: My other question is this. You referred to EASO and other EU agencies, and obviously implementation is quite important for what you are trying to do. Do they have the capacity and capability to do what is required? If not, who has responsibility for ensuring that they have that capability and capacity?

Margaret Tuite: I know that they are ramping up capacity and they have been given new tasks. I do not think anyone will ever tell you that they have too much capacity. We would all say that we are underresourced, but I know that there are plans to improve capacity and I know that all the agencies are very well focused on fundamental rights and improving the coverage on children. Coming back to the EU-Turkey deal, I know that unaccompanied children are not to be returned to Turkey. That is the bit of clarity that I can add there: they are not to be returned. That makes relocation, and quality reception for those who cannot be relocated, even more important.

The Chairman: Indeed. Thank you very much for your time this morning. After you have seen the transcript, if there is anything you want to send us to supplement what you have said today, we would be very grateful to receive it. Thank you very much indeed for your time.

Margaret Tuite: Thank you. The agencies regret that they could not be here. If you need any more information, I have more material from the agencies, but it would have been too heavy to go through it all orally.

The Chairman: You can send it to us. If there is more material on agencies, it would be very gratefully received.

Margaret Tuite: Thank you, and thank you for doing this inquiry.