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Towards a better protection of children worldwide

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Ensuring the harmonious development of the child worldwide – right to be heard and the best interests of the child

Margaret Tuite, European Commission coordinator for the rights of the child

As I could not be there due to other meetings, this short note seeks to provide some information on what we have been doing on rights of the child and some useful links, with an invitation to you to contact us where useful and to let us know what you are working on so we can all help each other make progress.

Child's right to be heard

The Commission carried out an extensive study on children's involvement in civil, administrative and criminal judicial proceedings in EU28. The resulting policy brief is a good starting point, highlighting some current restrictions on the child's right to be heard, for example when Member States have adopted a selective and inconsistent approach with regard to age limitations ranging from 10 in Romania (all areas of law) to 12 in the Netherlands for most family cases, 14 in Portugal for family cases and 15 in Finland for all areas of law. The authors recommend that the right to be heard be implemented in all proceedings affecting and involving children; that the widespread use of age limits should be reviewed and guidance should be issued to support professionals and court staff in their respect for children's right to be heard.

1 Policy brief - Children's involvement in administrative judicial proceedings (June 2015) EU Summary and 29 country reports - Children's involvement in civil judicial proceedings (June 2015) EU Summary and 29 country reports - Children's involvement in criminal judicial proceedings (June 2014) EU Summary and 29 country reports
The best interests of the child

The best interests principle is not currently widely applicable beyond child protection and family law and needs to be more widely implemented. The determination of the child's best interests needs to be undertaken by means of a multidisciplinary process. General Comment No 14 (2013) of the UN Committee on the rights of the child, on the right of the child to have his or her best interests taken as a primary consideration, lists some very useful procedural safeguards in Section V.B: \(^2\) (a) the right of the child to express his or her own views; (b) establishment of facts; (c) time perception; (d) qualified professionals; (e) legal representation; (f) legal reasoning; (g) mechanisms to review or revise decisions and (h) child-rights impact assessment. These procedural safeguards constitute sound standards given the impact of a best interests assessment on the life of a child and her/his family.

Ten principles for integrated child protection systems

Under rights of the child policy, in the context of Article 19 UNCRC, we have paid particular attention since 2012 to the importance of integrated child protection systems and this has been the topic of discussion at the 2012, 2013 and 2015 European Fora on the rights of the child. We carried out a public consultation, the Fundamental Rights Agency mapped national child protection systems and we documented good practice, challenges and standards. \(^3\) While there is consensus on the need to increase work on prevention and early intervention, when we talk about violence against children, much of our discussion centres on responses. Longer term prevention is more difficult. When the UN Guidelines for the alternative care of children were being drafted, states parties insisted on a focus on prevention, but still today this is the area facing some of the biggest challenges. In a reflection paper for the June 2015 Forum, we proposed 10 principles for integrated child protection systems. \(^4\) These principles are grounded in international standards, especially in General Comment No 13 of the UN Committee on the rights of the child, on the child's right to freedom from all forms of violence, and also the UN Guidelines for the alternative care of children. These principles can help to promote shared understanding, both within EU institutions and beyond. Their implementation will help further the realisation of the rights of the child. Funding priorities will take account of them. In the EU’s external actions, the newly adopted

\(^2\) http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf


EU action plan on human rights and democracy includes a focus on strengthening integrated child protection systems to protect children from violence.\(^5\)

In short form, the ten principles are:

1. **Every child is recognised, respected and protected as a rights holder, with non-negotiable rights to protection.**
2. **No child is discriminated against.**
3. **Child protection systems include prevention measures.**
4. **Families are supported in their role as primary caregiver.**
5. **Societies are aware and supportive of the child’s right to freedom from all forms of violence.**
6. **Child protection systems ensure adequate care.**
7. **Child protection systems have transnational and cross-border mechanisms in place.**
8. **The child has support and protection.**
9. **Training on identification of risks is delivered to a wide range of people working for and with children (including all teachers, health sector professionals, social workers, etc).**
10. **There are safe, well-publicised, confidential and accessible reporting mechanisms in place.**

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**The value of ensuring a child rights based approach**

A child rights approach is one which furthers the realisation of the rights of all children as set out in the UN Convention on the rights of the child by developing the capacity of duty-bearers and the capacity of children to claim their rights. See the useful definition as set out in para 59 General comment No 13 of the Committee on the rights of the child.\(^6\)

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\(^6\) [http://www2.ohchr.org/english/bodies/crc/docs/CRC_C.GC.13_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC_C.GC.13_en.pdf)
rights in the Convention (and its Optional Protocols). It requires a paradigm shift away from child protection approaches in which children are perceived and treated as “objects” in need of assistance rather than as rights holders entitled to non-negotiable rights to protection. A child rights approach is one which furthers the realization of the rights of all children as set out in the Convention by developing the capacity of duty bearers to meet their obligations to respect, protect and fulfil rights (art. 4) and the capacity of rights holders to claim their rights, guided at all times by the rights to non-discrimination (art. 2), consideration of the best interests of the child (art. 3, para. 1), life, survival and development (art. 6), and respect for the views of the child (art. 12). Children also have the right to be directed and guided in the exercise of their rights by caregivers, parents and community members, in line with children’s evolving capacities (art. 5). This child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.

Children in mediation/ADR

The children's involvement in justice study referred to above reveals that there are very few child-sensitive or child-friendly processes and procedures or even space for children to be part of mediation procedures for matters that concern them. In this respect, the challenges for mediators in hearing the child are similar to those faced by judicial and other practitioners and it is therefore useful to draw attention to this.

Children in migration

It may be useful to highlight some resources with regard to children in migration, to help ensure that they are treated as children first and foremost. The Connect Project gave a useful and accessible overview of EU legislation and policy with regard to unaccompanied children, see summary tables starting page 48: www.connectproject.eu and the reference document developed in this project http://www.connectproject.eu/PDF/CONNECT-EU_Reference.pdf.

The Return Handbook issued as part of the migration package in September 2015 includes some good provisions re unaccompanied children, e.g. clear references to General Comment No 14 on assessment of the child's best interests, and to the UN Guidelines for the alternative care of children.

The European Migration Network published a study in June 2015 on policies, practices and data on unaccompanied children/minors in the EU Member States and Norway, gives a good comparative analysis of States' policies and practices to safeguard unaccompanied minors in the EU, from the moment they arrive at the border or are intercepted on the EU territory until a durable solution may be found. To the extent possible, the Study distinguishes between (i) unaccompanied minors applying for asylum and/ or those who have been granted international protection, and (ii) unaccompanied minors not applying for asylum, including those who entered irregularly and/ or child victims of trafficking. The Study also has a special focus on the issue of unaccompanied minors who abscond or go missing from reception and care facilities across the EU, as well as on the arrangements in place to support the transition to adulthood of those unaccompanied minors turning 18 years of age. The Study highlights a number of good practices showing that (Member) States’ childcare policies take priority over migration law in respect of unaccompanied minors, along with some gaps and challenges that still need to be addressed to ensure that all unaccompanied minors – regardless whether they are seeking- or not seeking asylum in the EU – benefit from the same level of (legally ensured) protection. The Synthesis Report for the Study, along with the accompanying Annexes is available on the EMN
website. For detailed information on a specific (Member) State’s policies and practices, you may further consult the National Reports for the Study. Key findings and messages from the Study are also available in a short EMN Inform.


EU Funding

For several years we have been funding capacity-building on rights of the child and on child protection. See compendium of EU funding programmes relevant to child protection: http://ec.europa.eu/justice/fundamental-rights/files/roc_funding_mechanisms_2014.pdf

We are currently funding projects on child-friendly justice, capacity-building in child protection (e.g. to extend the use of Barnahus/children's houses), projects to broaden the use of family-based care such as foster care for unaccompanied children, projects to train care professionals in residential care on the rights of the child, etc.

Mailing list on rights of the child for EU updates, funding alerts, etc.

We regularly dispatch information. Should anyone wish to be included on the mailing list, please write to JUST-CHILDREN-RIGHTS@ec.europa.eu, asking for your name to be added.

Good and promising practices

If you have good and/or promising practices that further the realisation of the rights of the child to share with others, we would welcome a short introductory and relevant links, to send around to stakeholders.

I wish you a very fruitful and successful Conference and look forward to reading the outputs and papers.

Contact information:

Margaret Tuite

European Commission Coordinator for the rights of the child

margaret.tuite@ec.europa.eu

Tel: 32.2.2953567

DG Justice and Consumers