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Committee on Petitions

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DRAFT MISSION REPORT AND RECOMMENDATIONS

Following the fact-finding visit to London of 5-6 November 2015 concerning adoption without parental consent

Committee on Petitions

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Introduction

The Petitions Committee has received in total approximately 20 petitions related to cases of children being taken into public care in England and Wales and subsequently being placed for adoption without the consent of the biological parents, so called **non-consensual adoptions** or forced adoptions. The English law states that *"The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that [...] b) the welfare of the child requires the consent to be dispensed with".* [1] According to the British authorities, the consent has been dispensed with "in the best interest of the child" but it should also be noted that an adoption order of this kind is extremely difficult to reverse (almost never in practice) and the completed adoption process officially and irrevocably terminates the parents' legal relationship to the child. It might create very harmful situations for both the children and the parents.

In the past few years, there has been an **increase in the number of cases involving non-UK parents**, mainly families from Eastern Europe (Slovakia, Latvia and Bulgaria). This trans-border aspect makes the Petitions Committee competent to further examine 13 of these petitions.

Some of the petitioners were invited to present their petition to the Members of the PETI Committee in February 2014. The European Commission services and the British authorities both replied. To learn more about the situation a report on "*Adoption without consent"* was commissioned by the Policy Department and was presented to the Committee by its author, **Dr Claire Fenton-Glynn** from Cambridge University in July 2015.[2] Additionally a report of the Parliamentary Assembly of the Council of Europe published in March 2015 also raised some concerns about the situation in the UK.[3]

- *Brief overview of the process of the removal of a child from the parent(s):*

The first stage where a child's welfare is considered to be in question involves the visit and support provided by social workers from the local authority (LA). Where that support seems insufficient, or when a sudden development threatening the welfare of the child arises, the child may be taken into care. Local authorities have powers to apply to the courts for emergency protection orders and the police have powers to remove children so that they can act immediately to protect a child. Local authorities cannot remove children from their parents' care (unless this is with the parents' consent) without first referring the matter to a court and submit a request for a "care order" to be issued. Once a care order has been made, the child's care plan will be carried out. If the local authority believes adoption is the best option for a child, the court can make a placement order. This allows a child to be placed with prospective adopters who may be chosen by the authority prior to an adoption order. The birth parent has the right to apply, through the courts, for the revocation of a placement order before the adoption has formally come into effect, but would only be granted where the court is convinced of a significant change of circumstances. After the placement order, the child goes to live with prospective adopters. It is only after living with these prospective adopters for a period of time that an application may be made, again to the courts, for a final adoption

[1] Adoption and Children Act 2002, s52 (1) (b).

[2] http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU(2015)519236_EN.pdf

[3] http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21567&lang=en

order. The birth parent can only oppose this by applying for the permission to do so from the courts.

Petitions

- Petition n° 1707/2013 on behalf of Association of McKenzie Friends, on Abolition of Adoptions without Parental Consent (forced adoption) over 2500 supporters (campaign).
- Petitions alleging discrimination on the grounds of nationality and religious beliefs (placed children losing the use of their mother tongue and religious practice): petition n°1847/2013, 1852/2013; 2287/2013; 1638/2014 (issue also mentioned in petitions n°2546/2013 and 0344/14)
- Petitions alleging abusive placement of children without parental consent: petitions n° 2546/2013; 2498/2013; 063/2014; 0344/2014; 1507/2014; 0195/2015.

Summary account of meetings

The visit

The fact-finding visit lasted from 10:30 on Thursday 5 November until around 13:30 on Friday 6 November. It was aimed at offering the Members of the delegation a better insight into the situation by consulting different stakeholders and practitioners.
The PETI delegation of 8 Members met a wide range of stakeholders and experts who all openly shared their experiences and positions.

Personal testimonies

They had the opportunity to hear some additional testimonies on the subject matters and meet four people supporting the views presented in the petitions.

- Florence Bellone, a Belgian freelance journalist based in the UK and working for RTBF, published several articles on the issue of non-consensual placements into foster care and adoptions. She carried out her inquiries thanks to her activities as a McKenzie friend[1] for families involved in care proceedings.
- Lucy Allan is a newly elected Conservative MP, member of the Education Committee of the House of Commons. She campaigned to highlight some of the shortcomings of UK child care proceedings and to defend family rights in cases of child protection injustice. She launched the Family First Campaign after she was personally confronted with abusive proceedings.
- John Hemming is a former Liberal Democrat MP. He founded the *Justice for Families* campaign in 2006 in response to the number of people contacting him with problems which arose from care proceedings in England. Justice for Families assists people facing problems with the care system by offering advice on taking cases though the domestic courts and to the

[1] Anyone involved in a family law case in a United Kingdom court is entitled to represent themselves in court (they do not need to employ a solicitor or barrister) and if they choose to do this they are termed a Litigant in Person (LIP). A LIP may be accompanied by someone to help them and this person is called a McKenzie Friend, named after the case which established the principles in 1970. This is not an automatic right, but a judge would only refuse to allow a LIP to have the help of a McKenzie Friend for a very good reason. See at: http://courtwithoutalawyer.co.uk/mckenzie-friends.html

European Court of Human Rights. Justice for Families currently has over three thousand cases.

• Julie Haines, director of Justice for Families. She works as a "legal adviser" for families involved in care proceedings.

Authorities and organisations involved in child protection

The work of safeguarding children is governed by "Working together to safeguard children – A guide to inter-agency working to safeguard and promote the welfare of children"[1] published in March 2015 by the Department for Education. This statutory guidance is issued by law; it must be followed unless there is a good reason not to. It should be followed, among others, by local authority Chief Executives, Directors of Children's Services, organisations providing services for children and families, including: social workers, the police, education, youth justice services and so on. The Members met representatives of charities supporting parents and children involved in care proceedings, of the Metropolitan Police and of the social services:

• Mr Anthony Douglas, Head of Cafcass (Children and Family Court Advisory and Support Service) and Sheila Pankhania-Collins, children's guardian. Cafcass is a non-departmental public body (NDPB) which represents children in family court cases in England. It works with around 120000 children per year (until the age of 18). Half of the cases relate to children under the age of 8. When a Local Authority applies for a placement order, the court appoints a Cafcass worker, known as a Children's Guardian, which will represent the interest of the child in court.

• Cathy Ashley and Bridget Lindley respectively Chief Executive and Deputy Chief Executive & Principal Legal Adviser of *the Family Rights Group* (FRG). FRG is a charity that advises families (parents and the wider family who are raising children unable to remain at home) about their rights and options when social workers or courts make decisions about their children's welfare when children are in need, at risk or are already in the care system).

• Steve Williams, Detective Superintendent in the Sexual Offences, Exploitation and Child Abuse Command, Inspector Jim Cook, Emergency Response Policing Team and Anthony McKeown Detective Inspector in charge of the Camden & Islington Child Abuse Investigation Team, Sexual Offences, Exploitation & Child Abuse Command (SOECA), Metropolitan Police Service.

• Bridget Robb, Chief Executive from the British Association of Social Workers and Susannah Daus from Islington LA Social Services.

Diplomatic services of other EU Member States

The Petitions Committee has received some petitions from Bulgarian and Latvian citizens. Additionally, the Latvian authorities have recently complained to the UK Parliament over non-consensual adoptions[2]. MEPs met representatives of the diplomatic services of Bulgaria and Latvia:

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf

[2] http://www.theguardian.com/uk-news/2015/mar/09/latvia-complains-to-uk-parliament-over-forced-adoptions

- Mrs Solveiga Silkalna Chargé d'affaires and Ms Inga Sergeiceva, Third Secretary of the Embassy of Latvia to the UK;
- Ms Maria Anguelieva-Koleva Head of the Consular Office and Todor Krastev, Head of the Labour and Social Affairs Office of the Embassy of Bulgaria to the UK.

Legal authorities

The MEPs shared also their views with those directly involved in the judicial proceedings:

- The Rt. Hon. Sir James Munby, President of the Family Division for the Court of Appeal of England and Wales.
- Naomi Angell, private practice solicitor for the Law Society; Dorothy Simon, local authority solicitor for the Law Society and Martha Cover, barrister for the Association of Lawyers for Children.

Political authorities

Unfortunately the MEPs did not have the opportunity to meet Edward Timpson, Minister of State for Children and Families and the other members of the Education Committee of the House of Commons (only Lucy Allan replied positively). None of them were available during the visit.

I. About statistics and the underlying reasons for high numbers of adoption

Regarding the non-consensual adoptions, Sir James Munby said: *"Whatever the legal arrangements, the fact is that we actually make more of these [adoption] orders than probably anywhere else in Europe, and that's a fact. […] the concern of the other Member States in Europe is that we're adopting too many children too quickly; the stance of the government in terms of domestic adoption law is we're not adopting enough children and we're taking too long about it*[1]*, so that there's a complete collision on a very fundamental level between the European perspective on this and what appears to be, on one reading, the domestic perspective."*

The high level of non-consensual adoption cases and its increase. According to the police representatives there has recently been an increase in reported child abuse and consequently, an increase in care proceedings can be expected. The delegation was told that, because of a significant increase in parents and children subject to care proceedings, the system put in place by Family Rights Group is overwhelmed and the Group faces financial difficulties to cope with every cases. The demand for their advice service has more than doubled since 2010/11 and is continuing to rise (22% rise in Apr-Sep 15 compared with Apr-Sept 14, more particularly numbers of mothers victims of domestic violence (a key factor resulting in children's services' involvement) has increased by 217% from 2010/11 to 2014/15).
The care system failure (with teenagers sent to jail or falling into sexual exploitation) was suggested by several speakers as one of the authorities' explanations in favour of adoption. The tragic case of Baby P. (a toddler who died suffering multiple injuries caused by his

[1] see for instance: http://www.theguardian.com/society/2015/nov/02/david-cameron-urges-faster-adoptions-doubling-number-of-early-placements

mother's partner, during a period where he was repeatedly seen by social and health service professionals) was covered greatly by the media and was mentioned by Florence Bellone and Bridget Robb as a key event leading to the increase of care proceedings. Social workers fear litigation in case they were to miss a situation where a child could be endangered. The government recently proposed a legislation that could see social workers prosecuted for wilful neglect of children on their caseloads. This pressure is often combined with budgetary cuts of social services: each social worker has to deal with too many cases which makes it difficult to ensure a high-quality service and in combination with this draft legislation, puts them at risk of penal repercussions.

On the basis of their experience and the number of cases brought to the attention of Justice for Families, Julie Haines and John Hemming consider that the statement of the UK authorities on care plans for adoptions being "exceptional" is wrong. "The UK authorities measure "exceptional" against the 12 million children in the population rather than the 65000 children in care" […] "it is important to look at the number of children coming into care and leaving care in comparison to the number adopted rather than look at the number in care as a static number". According to Julie Haines "for all of the children under the age of 5 entering into foster care, where there is no proposal for rehabilitation to the family, the default plan in every case is for adoption".
The underlying problem is that there is a systemic bias towards adoption, considered as "the gold standard", driven by pressure from central government in the last 15 years. According to John Hemming it is an issue which is difficult to talk about in the House of Commons.
Two explanations were given during the visit for the emergence of adoption as "the gold standard" of child protection. The first one related to financial considerations. When a child is adopted, he is no longer financially supported by the public social security system. On the other hand, foster parenthood has become an interesting source of income, especially in times of the economic crises. Financial interests are present also in the operation of private adoption agencies.
The second explanation has roots in British culture and society: adoption is seen as a fairy-tale ending for children, offering a possibility for social rise.

When asked about the number and characteristics of ***cases involving non-national parents***, Sir James Munby said: "*One of the problems is that the statistics we keep in this country are very poor*". He pointed to demographic reality, with the accession of Central and Eastern European countries to the EU and the freedom of movement, to explain the increase in the cases with trans-border aspects. This increase has been confirmed by the representatives of the Latvian and Bulgarian Embassies.

Anthony Douglas, from Cafcass, considers that there are no differences in the treatment of child protection cases when they involve non-national parents. When asked about the proportion of contested adoptions by non-national parents compared to nationals, and about the 96% of adoption being non-consensual (data provided by the background note Adoption without consent (European Parliament, 2015)), Mr Douglas communicated at a later stage by e-mail that in respect of contested adoptions in the UK, they are roughly half of all adoption-related proceedings and the percentage has remained more or less static notwithstanding rising numbers over the last few years. The data does not show whether the contestation occurred during one or more of the three potential milestones in proceedings: placement application; application for revocation of the placement order with leave of the court; opposition to an application for an adoption order with leave of the court. Nor does it

distinguish between UK nationals and EU nationals. However, as UK nationals make up the vast majority of these applications, and the relatively small number of non-nationals would not materially change the overall percentage. Mr Douglas did not find data or soft professional intelligence which would suggest any distinction in the percentage of legal challenges to an adoption proposal between UK nationals and non-nationals, and certainly not enough to suggest these might be statistically significant. He added that "[…] *we are duty bound in the UK to ensure there is no lack of fairness in our approach, policy-wise or operationally, to other EU Member States."*

The delegation was told by Sir James Munby that the local authority is obliged since recently to indicate on the front page of the application for care proceedings, whether or not the case has a foreign or non-UK element, and if it does, it has to give details. However, there is so far no requirement to identify the foreign state in question. This point has been raised recently and the form should be modified shortly.

II. About the intervention of the social services and charities

Florence Bellone, the FRG and Susannah Daus from Islington Local Authorities (LA) raised an issue which has been well described in the report of Olga Borzova from the Parliamentary Assembly of the Council of Europe[1]: "*many mothers who are **victims of domestic violence** themselves seem to be re-victimised by the child protection system, as the child witnessing such violence (or threats of it) is considered to be subject to emotional abuse and thus significant harm. This means that if the mother has nowhere to turn to her child can be taken away from her. This is a problem which should not be underestimated, as the impact of the crisis and the effect of austerity cuts on social services means that more and more mothers are now trapped in abusive relationships (with shelters closing) and are afraid to signal domestic violence lest their children be taken away from them."* The number of mothers advised by FRG, in cases where domestic violence is a key factor resulting in children's services' involvement, has increased by 217% from 2010/11 to 2014/15. According to the data given by Susannah Daus from Islington LA, 84% of mothers who had a child removed have experienced domestic violence.

Additionally, ***young parents***, their age being viewed as a risk factor, have also been identified as being more susceptible to have their children withdrawn. Young parents who have been at care themselves or who have had a child/children removed before, are prone to be viewed as 'not engaging' possibly because of their own experiences as a child. Increasingly they have to demonstrate their parenting capacity within a very short timescale (e.g. late intervention by LAs in pregnancy, 26-week care proceedings timescales, foster for adoption) often without established support and without financial or housing stability. According to the testimonies gathered by Florence Bellone, no hard evidence is needed to launch care proceedings. It seems that suspicion is enough. She denounces cases where a child has been removed from parents on the basis of a "future risk of emotional harm". It means that an adoption without parental consent can be the result of a mere prediction.

If, after an investigation by social services and Cafcass a child cannot be kept at home with the birth parents, several options can be foreseen. Care by relatives (family or friends) should

[1] see footnote 3

be considered as the first option, after that come: permanent foster care, special guardianship and, as a last resort, adoption.

About kinship foster carer. Some petitioners complain about the fact that their family was not considered as a possible foster carer. Officially, social services should give priority to family and friends as special guardians or permanent foster carers. They offer support to those taking care of the child (this can include payment of allowances). However, research by Family Rights Group found out that relatively few children live with kinship foster carers. The new statutory guidance (Court Orders and Pre-proceedings guidance) emphasises the importance of early identification of wider family for children who may not be able to remain safely with their parents (and mention the Family Rights Conferences as a good tool to do so) but it is not always followed as it is not as strong as statutory duty. Additionally, in cases where the child is placed with relatives, according to FRG, the local authority often denies responsibility to these carers and refuses to treat this child as a looked after one.. This often leads to a failure to assess the suitability of the relative as a foster carer, provide the child and their kinship carer with support, draw up a care plan for the child and appoint an Independent Reviewing Officer to oversee the child's case. In one of the petitions received by the Parliament the grandparents back in the country were disregarded by the Court as potential candidates for adoption. Florence Bellone highlighted that the representatives of the UK social services are used to travel to other Members States and assess possible family members for adopting family before informing the competent local authorities.
For cases involving a non-national family, some of the petitioners have also complained about the placement of their child in a British family without any respect for their mother tongue and their birth culture (cf. last part "About the judicial proceedings"). The Latvian representatives informed the Members that the Latvian Embassy has called upon the Latvian community in the UK to become foster families for Latvian children removed from their parents' care.

Parents in need of information and advice at an early stage. Some of the decisions made within the local authority are not immediately, or necessarily, subject to court scrutiny and they can be taken when the parents still have full parental responsibility.
For example: child protection decisions and plans where there are no pending court proceedings; some of the decisions to accommodate and make plans for a child; decisions to place an accommodated child in a foster for adoption placement i.e. with foster carers who are approved adopters, with the parents being notified after the decision has been made; plans and decisions for a looked after child (in voluntary accommodation or under a care order) once court proceedings have finished.
Parents and other persons with parental responsibility do not have a right to free legal advice about such decisions and their implications. . They only have a right to non-means and non-merits tested Legal Aid (and hence can get free advice from a lawyer) once the local authority applies for a care order or an emergency protection order.
Even though there is a legal responsibility on the social services that the parents understand the whole proceedings, Florence Bellone and the FRG denounce the lack of information of some of the parents, who do not really understand what is going on and all the consequences of the decisions taken. That is why FRG advises the families about local authority (or administrative) decision-making.

The FRG representatives raised specific concerns about the use currently made by social

services of ***Section 20 of the Children Act 1989*** and the related voluntary arrangements[1]. Section 20 states that when there is a crisis in the family home and the local authority considers the child to be at risk, they may remove the child from home and place them immediately with a relative or unrelated foster carer on the basis that the parent agrees to this plan. However it seems that the arrangement is often coerced, with the parents not being properly informed of the consequences of the arrangement for accommodation of their child . 65 % of the cases of "voluntary accommodation" end up in care proceedings. A long string of recent court cases addresses the importance of the possibility for the parents to give an informed consent for a child to be lawfully accommodated under s.20. The Court of Appeal recently gave guidelines on what constitutes valid consent. They include for instance the need for interpretation/translation (where appropriate), agreements to be made in writing, including translated agreements where the parents' first language is not English and written agreement to include the information that parents may remove the child at any time[2].
The possibility to ensure that parents have a genuinely informed consent if they have not received independent legal advice was questioned by the experts. Those on very low income may receive free advice under the means tested Legal Aid scheme (Family Help [lower]) but this covers very little legal advice. Moreover many lawyers are unable to provide it, as it is not economically viable for them. The FRG advice service provides free advice through telephone but many families cannot get through.

Another major concern is about ***the real understanding of parents*** of the implications of foster for adoption. Foster for adoption[3] arises when the local authority is considering adoption as a possible plan for a looked after child: they are under a duty to consider placing the child with foster carers who are approved adopters. This duty applies to accommodated children (where there may have been no court scrutiny) as well as those in care under a care order (where there has been court scrutiny). So, a foster for adoption decision may happen without the parents having a right to legal advice, hence they may not understand the implications of such a placement (for instance they may not realise that their child will bond with the new carers, establishing a status quo which may militate against them having a fair hearing when the case is heard later by the court). The local authority can also make the decision to place the child in a foster for adoption placement without informing the parents beforehand. However they must notify the parents of the decision before placement.

The Family Rights Group representatives and Julie Haines from Justice for Families also shared concerns about the ***separation of siblings*** in care proceedings. Family Rights Group has recently investigated the experience of siblings in the care system. It found that half (49.5%) of all sibling groups in local authority care are split up and that 37% of children in care who have at least one other sibling in care are living with none of their siblings. The research also found that although relatively few looked after children live with kinship foster carers, it appears to be particularly conducive to supporting siblings to be able to live together. FRG sets out a series of recommendations to enable more siblings in care to live together, when it is in the interests of their welfare. Since children above 5 are not considered as good candidates for adoption, they are often sent to foster care or sent back into their family and then separated from their younger siblings who have the possibility to be adopted.

[1] In Re A (A Child), Darlington Borough Council v M [2015] EWFC 11, para 100, Sir James Munby says:
"There is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated."
[2] Re N: [2015] EWCA Civ 1112
[3] s.22C(9A&9B) CA 1989

This situation has, according to Julie Haines, disastrous consequences not only for the children who are not adopted and emotionally suffer from the separation from their siblings, but also the adopted siblings when informed that they have been the only one abandoned by their biological parents.

III. About the judicial proceedings

One of the issues frequently raised by the petitioners, the speakers met by the Committee in London and the press is the ***secrecy of the proceedings.*** The views on this question are much divided. Some people even think that there is too much transparency and that it could be prejudicial for the children involved. Florence Bellone and Sir James Munby both referred to the specific injunctions granted by some judges to prevent parents from publicly mentioning their case. Sir James has tried to open up the family courts' proceedings and push forward for more transparency (as long as the child is not identified): " what I've said is that the only basis for a family judge saying the parent can't do that is if it's going to harm the child and that requires proper evidence, not mere speculation, and "if the justification for stopping this is to prevent people being criticised, that's not a matter for the family court, if it's defamatory they've got a remedy elsewhere, but we should not be protecting public officials, social workers, experts, judges, from criticism even if it's very strong and blunt". At the beginning of 2014, he put out guidance saying that many more judgements must be published (his judgment […], that he wanted to be very comprehensive, has been circulated to all the family judges and to a large number of other organisations including the local authority agencies). There is a free, open-access website called BAILII (British and Irish Legal Information Institute) which is part of an international network, where judgements are published. That is a means of communicating to the rest of the world and getting round the problem that journalists aren't in court (mostly for financial reasons: newspapers cannot afford to have a journalist watching the proceedings for each case).

However, regarding ***the difficulties in accessing documents*** alleged by some petitioners, Sir James very clearly rejected all such allegations: it simply does not happen and cannot happen because the parties are entitled to access the documents in their own cases.

Another problem highlighted by Family Rights Group: ***the timescale of the care proceedings***. Once care proceedings have started there is a new statutory requirement to complete the proceedings within ***26 weeks***. Consequently late appearing relatives may be ruled out simply because of the procedural requirement to meet the 26-week timescale, rather than their lack of suitability. The 26 weeks can be extended "where necessary to resolve the proceedings justly" and the President of the Court of Appeal has confirmed that late coming relatives can be a legitimate reason for extending the time limit, but some judges are still slow to extend it. A few days before the visit of the PETI delegation David Cameron, Prime Minister, announced that he wants to reduce delays and halve the time children spend in care waiting to move in with an adoptive family. Contrary to this view, FRG considers that some cases require more time to find the best solution for the child.

The last issue raised was about the ***proposed repeal of the Human Rights Act 1998*** and the legal grounds for adoption without parental consent. This Act refers to the ECHR and states that it is "unlawful for any public authority (including courts and local authorities making decisions about children at risk) to act in a way which is incompatible with a Convention Right". It includes, for the children, the right to a fair process and the right to respect for

family life. If this Act is repealed, these articles will no longer underpin decision-making in courts or local authorities. This will have serious implications for the human rights of children and families. For example: decisions about long term placement of looked after children – in particular whether or not family options should be considered first before looking for placement outside the family and the grounds for dispensing with consent to adoption – that "*the child's welfare requires it* "(s.52(1)B) Adoption and Children Act 2002), which, without reference to these articles, can be interpreted very subjectively.

The issue of Legal Aid has been raised by several speakers. The parents or a person with parental responsibility involved in care proceedings have a right to non-means and non-merits tested legal aid and hence can get free advice from a lawyer once the local authority applies for a care order or an emergency protection order. However, this automatic right to legal aid does not apply to an application by parents to revoke a care order. There is no right for the parents to be represented at the adoption trial. Parents need to satisfy the Legal Aid Agency with their merits. The child, however, is always represented as a separated party. Julie Haines, from Justice for Families, works as a "legal adviser" for families involved in care proceedings. She is not a trained lawyer but she can be allowed by the judge to assist families and speak in front of a court. In most of the cases she is the only legal support to the parents who do not receive legal aid for appeals, except if the court allows the appellant a full appeal (and this is the case only when they can prove that their situation has significantly changed or if they can prove the judge was wrong).
Additionally, Florence Bellone and Sir James Munby also questioned the ***quality of the Legal Aid*** received. Sir James proposed that the consulates offer to their nationals a list of good family lawyers who understand fully the ramifications in terms of the process of transnational foreign adoptions.

When tackling the issue of how to handle ***cases involving foreign families***, Sir James Munby first mentioned the importance of ***compliance with the Vienna Convention on Consular Relations (1963)***. He considers there to have been too often a failure to comply with this Convention in the UK and states that in every case with a foreign element, including but not limited to Europe, the relevant consular authorities must be informed at the outset, unless the foreign family says no. As a matter of consequences, if some foreign representatives as a consular matter want to be present in court, then they should be allowed to unless there is some very good reason not to allow it. However, the representatives of the Latvian and Bulgarian diplomatic authorities in the UK told the MEPs that they are often informed too late in the proceedings to be really efficient.

About the ***transfer of jurisdiction***, he reiterated that the fundamental principle in the Brussels IIa Regulation which gives a court jurisdiction is habitual residence, not nationality. So, the very first question which the court has got to deal with at the very beginning of care proceedings is habitual residence, to determine if the English courts have jurisdiction or not.
He emphasised that the question of a transfer of jurisdiction under ***Article 15 of Brussels IIa*** and whether the court of another Member State is better equipped to deal with a case must be considered by the English court right at the beginning of the care proceedings. This article is much more often used by English judges than in the courts of the other Member States. The practical consequence of the transfer of a case for the foreign authorities is to prevent an adoption.

Finally, considering the "*diarchy [in family law] with a lot of parallel provisions*" established

by the combination of the Brussels and the Hague systems, he would be completely in favour of the general principle of a constant review and updating of both systems.
In the cases involving a foreign family in front of an English court[1], Sir James Munby insisted on some criteria which must be more particularly taken into account by the social services and the judge. The English adoption law requires the judge to have regard to a statutory list of criteria: the child's age, the child's background and so on, called ***the welfare checklist***. That list dates back to 1988 when the current Children Act was being enacted; it was slightly changed in the Adoption Act (2002) but the basic material is quite outdated now. According to Sir James, parts of this list tie in with the case of a foreign child. On that specific point, he referred to his judgement where he said " *It cannot be emphasised too much that the court in such a case must give the most careful consideration, as must the children's guardian and all the other professional witnesses, in particular to those parts of the checklist which focus attention, explicitly or implicitly, on the child's national, cultural, linguistic, ethnic and religious background. Moreover, it must always be remembered that, in the context of such factors, the checklist demands consideration of the likely effect on the child throughout her life of having ceased to be a member of her original family. Mere lip service to such matters is not enough. The approach, both of the witnesses and of the judge, must be rigorous, analytical and properly reasoned, never forgetting that adoption is permissible only as a "last resort" and only if a comprehensive analysis of the child's circumstances in every aspect –* ***including the child's national, cultural, linguistic, ethnic and religious background*** *– leads the court to the conclusion that the overriding requirements of the child's welfare justify adoption."*[2]
MEPs were also told by the Latvian and Bulgarian representatives that it is fundamental to take into account when launching care proceedings the cultural expectations of parents towards a child (e.g.: at what age a child is considered mature enough to be left at home alone etc…). They insist on the importance of good communication and transparency in the actions planned (e.g.: it seems that the local authorities had not always been informed when UK social services were investigating the need for care proceedings in a foreign country).

Conclusions

It must be noticed as recalled by Sir James Munby that "***nobody has ever succeeded in persuading either the Strasbourg Court or the EUCJ that our domestic adoption law is not compliant with both the Convention and the Charter."*** Nevertheless the number of non-consensual adoptions in UK in comparison to the other Member states and the issues highlighted by the petitioners raised some concerns.

Even if the Members of the delegation agree that, in cases where the custody must eventually be

[1] See also §5.3 of the report "Adoption without consent ", Claire Fenton-Glynn, European Parliament, 2015, p.36

[2] § 105 of Re N: [2015] EWCA Civ 1112 Reference could also be made to another part of the same judgement: § 50. "The foster placement is with an English family. The unhappy consequence was noted by Judge Bellamy (Re J and E, para 17): " […]the placement is not a cultural match and the children 'are therefore learning and understanding only English with their current carers'. One of the most concerning consequences of this is that mother and daughters are unable to converse with each other during contact save through an interpreter." Whatever the circumstances which brought about the need for state intervention in the life of this family, and whatever the level of her engagement with the process since, it is almost unbearable trying to imagine the feelings of a mother unable to speak to her own small children in her own tongue."

removed from the biological parents for the best interest of the child, an adoption placement is a more sustainable solution than an undefined period of temporary care, they nevertheless consider that the optimal solution by default is when children can enjoy their right to family life together with their biological parents.

Julie Haines, Director of Justice for Families estimates that ***"if other European countries can make different plans for children, then so can the United Kingdom"*** and Florence Bellone considers ***that "the artificial stability that these children will get from care and adoption will never compensate, especially in the long term, the destruction of their family by a legal bomb."***
The publication, in July 2014, by the British Department for Education of guidelines for local authorities, social workers, service managers and children's services lawyers "Working with foreign authorities: child protection cases and care orders" indicates that the national authorities are acquainted with the issues related to care proceedings involving non-national families.
There is in UK a large number of judges and local authorities involved in care proceedings and some of them are more clued up on this issue than others. However Sir James Munby remains optimistic about the possibilities of a more comprehensive approach and considers that ***"the message is getting across".***

Recommendations

Taking all of the above considerations into account, and considering that the best interest of the child in the short, mid and long term must remain paramount in any kind of care proceedings, the Petitions Committee calls upon the responsible authorities and the Commission to take note of the following recommendations:
1. Relevant statistics should be collected in order to offer a better overview of the issues related not only to non-consensual adoptions and binational cases but also more generally to family law, enabling comparisons between the EU Member States;

2. National family courts should systematically implement the Vienna Convention of 1963 on Consular Relations and articles 15 and 55 of the Regulation EC n°2201/2003 (Brussels II a) at the earliest stage of the child care proceedings and make sure that embassies or consular representations are informed in a timely manner of cases involving their nationals; specific detailed guidelines should be provided for a more efficient implementation of these provisions;

3. The Committee would like to draw attention to a statement by the European Court of Human Rights in Y v United Kingdom (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134: "family ties may only be severed in very exceptional circumstances and […] everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."

4. The Committee would like to draw attention to the risk of subjective interpretation of the grounds for decisions for adoption without parental consent which could emerge from a repeal of the Human Rights Act of 1998; the ECHR (i.e. the right of children to a fair process and the right to respect for family life) will no longer underpin decision-making in courts or local authorities;

5. More attention and appropriate policies should be dedicated to the prevention of care proceedings through monitoring and early warning procedures and the provision of suitable support to families.

6. The timescale of care proceedings (currently 26 weeks max.) should be considered a minimum in order to allow for the proper handling of each case and to ensure that the parents and /or relatives of the child have been given sufficient time to make proposals (on who could be the carer of the child for instance) or any required changes before the adoption is declared definitive;

7.The authorities should ensure that the quality of the social services does not suffer from the budgetary cuts implied by austerity measures (for instance the increase of files to be handled in average by each social worker can have negative effects in the capacity of a proper assessment of individual cases) and that the decisions on proceedings involving custody should be free of any excessive legal pressure, as well as it should not be affected by any financial interest of private parties, such as adoption agencies;

8. Social workers should be given more training on the specific issue of adoption without parental consent;

9. More comprehensive free legal aid schemes should be supported and enhanced all along the care proceedings with the aim to prevent any sort of discrimination;

10. The national authorities and charities involved in care proceedings should ensure that parents are better informed from the very beginning of the proceedings with adequate support to parents with literacy disabilities, including providing all of them with explanations regarding all the legal procedures that they will face, the decisions which may be taken with regards to the future of the child and the consequences, if any, of these decisions, especially in cases relating to section 20 of the Children Act of 1989;

11. In the case of parents who do not speak English, the provision of all the necessary information on the decisions to be taken and their consequences in their own language, or in a language they understand fully, must be ensured; as a first step towards this goal, the telephone helpline service should be made available in several languages;

12. The authorities involved in care proceedings should ensure that parents who have been victims of domestic violence, either as a child or as an adult, or who were themselves taken into foster care, are in no circumstances automatically considered to be at particular risk of causing future emotional harm to their own children; any kind of re-victimisation should be avoided;

13. Social services should ensure the prior identification of potential foster families of the same cultural origin as the child to be placed in care;

14. Solutions which would enable siblings to stay together should be prioritised; if no such solution is possible, every possible measure should be put in place to avoid the complete separation of siblings;

15. The Committee would like to promote the guidelines drafted by the Commission on

"coordination and cooperation in integrated child protection systems"[1] which should be kept in mind at every stage of the care proceedings by all services involved;

[1] http://ec.europa.eu/justice/fundamental-rights/files/2015_forum_roc_background_en.pdf