

**INTERNATIONAL ASSOCIATION OF
REFUGEE LAW JUDGES**

Tunis Conference

23 October 2014

SUFFER THE LITTLE CHILDREN

The Honourable Mr Justice Bernard McCloskey

Supreme Court of Judicature of Northern Ireland

**President, United Kingdom Upper Tribunal,
Immigration and Asylum Chamber**

Outline of Presentation

- The Constitution of the Tunisian Republic [26/01/14].
- An independent judiciary and the rule of law.
- Children and the refugee law judge – ascertainment of the relevant legal rules and measures of protection – giving best effect to same.
- Refugee crises in the contemporary world.
- The Geneva Declaration of the Rights of the Child (1924).
- The Universal Declaration of Human Rights (1948).
- The Statute of the Council of Europe (1949).
- The European Convention on Human Rights and Fundamental Freedoms (1953).
- The Treaty of Rome (1957).
- The UN Declaration of the Rights of the Child (1959).
- The UN Convention on the Rights of the Child, 1989 (“UNCRC”) .
- Glittering cocktails of – real and effective access to justice- fact v fiction – expectation v event.
- Article 38 of UNCRC: rhetorical aspiration or what?
- Limited progress in the dualist theory states of the world.

- Dublin III (Regulation 604/2013) – operational from 01 January 2014 – designation of the responsible Member State – increased emphasis on the protection of children and respect for family life – concrete and specific measures of protection – incorporation of the best interests principle – a notable menu of procedural rights and obligations – best quality decisions – close judicial scrutiny.
- The underlying purposes of procedural rights of this *genre* .
- United Kingdom Law – compare and contrast section 55 of the Borders, Citizenship and Immigration Act 2009 – juxtaposition with the comparable/related Dublin III rights and protections.
- Stop press! - The Council of Europe – Article 8 ECHR – Jeunesse – v – The Netherlands [12738/10, 14/10/14] – the balancing of state and personal interests – essentials for a properly prepared and conducted balancing exercise – evidence and information gathering by the domestic authorities – procedural rights.
- Compare orthodox public law dogma in the United Kingdom – the **Padfield** principle – the **Tameside** principle – the duties on every public authority to take into account all material facts and factors – the need to formulate the correct questions.
- Three basic judicial duties – to discover the applicable legal rules – to interpret and apply them – and to ensure due process in every case.

BMcC
19 October 2014