

**The Right to Life under
Article 2 of the
European Convention on Human Rights**

**Twenty Years of Legal Developments since
*McCann v. the United Kingdom***

In honour of Michael O'Boyle



The Right to Life under Article 2 of the European Convention on Human Rights, *Twenty Years of Legal Developments since McCann v. the United Kingdom*
In honour of Michael O'Boyle

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*Michael O'Boyle
Former Deputy Registrar,
European Court of Human Rights*

On 13 February 2015 a Seminar took place in the European Court of Human Rights in Strasbourg entitled “The Right to Life: Twenty Years of Legal Developments since *McCann v. the United Kingdom*”.

The Seminar was to celebrate the work and achievements of the Court’s Deputy Registrar, Michael O’Boyle, on the occasion of his retirement. This volume contains the submissions made during and after the Seminar, and the order of inclusion of the submissions is based on the three working sessions of the Seminar.

As one would expect in a book compiling contributions concerning twenty years of legal developments as regards the right to life, a wide variety of views has been expressed by our contributors, for which they alone are responsible. They should not be read or interpreted as reflecting in any respect the views of the Court, the International Institute of Human Rights, the Board of Editors or of any other body or person.

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Opening words

PRELUDE

Sir Nicolas Bratza

On Friday, 13 February 2015 a special Seminar took place in the Strasbourg Court. It was to celebrate the work and achievements of Michael O’Boyle and to mark his retirement after 25 years as a member of the Registry of the Court, old and new, and 13 years as a member of the Secretariat of the former Commission. The seminar, the fruits of which are contained in this volume, was a remarkable event, drawing together leading figures from the judiciary, academia and the legal profession to pay tribute to the work and career of a person who had played a key role in the development of the Convention. The theme chosen for the Seminar – The Right to Life – was one which had engaged Michael’s interest throughout that career and on which he had been a frequent and highly respected commentator. The measure of the Seminar’s success was expressed in the words of one of the participants – “it had everything – a fascinating topic, intellectual content, wisdom, brilliance, wit, humour and a wonderful feeling of warmth”. It was a fitting tribute to a remarkable personality and an exceptional career.

A graduate of Queen’s University, Belfast where he was an Open Scholar, Michael O’Boyle qualified as a Barrister of the Northern Irish Bar in 1973. The same year marked his first direct involvement with the Convention system when he obtained a Diploma in International and Comparative Law of Human Rights at the International Institute in Strasbourg. He had a distinguished early academic career as a lecturer in public law at Queen’s, introducing the Convention system to students of the law school at a turbulent time in the history of that Province. He furthered his own academic education in the United States, obtaining an LL.M degree in public international law at Harvard Law School, where he was a Kennedy Scholar.

In 1977 Michael O’Boyle began his Strasbourg career, becoming a member of a 10-person secretariat of the European Commission of Human Rights of which, in 1988, he became a Senior Legal Officer. These were the dynamic formative years of the Convention when, at the hands of an

exceptional group of members of the Commission and former Court, major strides were taken in the development of the case-law and the Convention was fashioned into the “living instrument” that was to become its hallmark. With his knowledge of the Convention and considerable drafting skills, Michael O’Boyle was to play a central role in that development. A former member of the Commission particularly recalled the invaluable assistance he gave to newer members of the Commission at what were described as “demanding times”, as the Commission’s case-load grew with every year. His role at the Commission included participation in the early individual fact-finding missions, which were to become a major feature of the Commission’s work in Turkey in the 1990s. Throughout his period on the Commission, he also maintained his academic interests by lecturing and participating in seminars on the Convention not only in Europe but in South Africa and the United States.

In 1990 Michael left the Commission to join the Registry of the Court, first as Head of Section and, in 1995, as Head of Division. While there he was responsible for handling many of the landmark cases of the time including the *McCann* case, which inspired the seminar in his honour some 20 years later. With the rapid increase in size of the Council of Europe and the growing importance of the Convention throughout the Continent, he applied his skills to writing on the Convention system, in particular in co-authoring with Professors David Harris and Colin Warbrick in 1995 *The Law of the European Convention on Human Rights*, a work which, now in its third edition, has become the Convention bible for students and practitioners alike.

In 1998 the new permanent and full-time Court was established, combining in a single body the roles performed by the two former part-time bodies. The transition was not always an easy one. With a merged Secretariat and Registry of the former bodies, the Court was initially composed of some 10 judges of the former Court, 10 judges from the former Commission and 20 judges with no previous experience of Strasbourg. Michael O’Boyle was unique in having worked in both bodies and played an important role in building trust and confidence and in fostering harmony within the new institution. He was a key figure in the Court’s Registry, serving as a Section Registrar for some 8 years before

being elected, in 2006, as Deputy Registrar of the Court, a post he held until his retirement.

The pairing of Michael O'Boyle and Erik Fribergh, as Registrar of the Court, was a formidable one. With a Court of 47 judges, 650 members of the Registry and a case-load which had since the Court's inception grown at an alarming rate, their partnership helped the Court not only to weather the storm but to find calmer waters which saw a dramatic reduction in the backlog of cases.

As the Registrar of both Chambers and Grand Chambers of the Court, Michael O'Boyle was an immensely reassuring presence. With a fine legal intelligence, encyclopaedic knowledge of the case-law and wisdom born of his long experience of the Convention system, he was able to overcome procedural difficulties and to help in steering the substantive deliberations. In drafting committees, especially in the Grand Chamber, Michael's input to the discussions was invaluable: he could be relied on to offer a legal solution whenever there appeared to be an impasse and, with his drafting skills, to turn an over-complex paragraph, sentence or phrase in a text into something simple and elegant. Intolerant of inefficiency or of what he regarded as empty verbosity, he was also generous and unstinting in his praise of work that had been well done, especially by newer members of the Registry, for whom working with Michael was a pleasure.

But, his legal and managerial qualities aside, it is for the warmth of his friendship that Michael, and Maggie his wife, will most fondly be remembered by those who have been privileged to know them over many years. Michael was wonderful company with an infectious, and sometimes wicked, sense of humour. A brilliant mimic, he was able to imitate both voice and gesture of his subject to perfection. With a phenomenal memory, he would regale his friends with anecdotes from the past or with Irish tales told in the broadest of brogues, carrying his listeners along before often dissolving into helpless laughter. He would occasionally break into Spanish or even into fluent Latin, leaving his audience to guess whether he was endeavouring to convey some deep philosophical truth or merely engaging in a flight of nonsensical fantasy. He was, and will always

remain, an exceptional friend and colleague and had a legion of admirers both inside and outside the Court.

Shortly after leaving the Court, an honorary Doctorate was bestowed on Michael by the University where he had begun his life. In his speech accepting the degree Michael offered the new graduates of Queen's some "rules" to guide them in their future careers: be courageous and listen to and cultivate your own inner voice; and find something that makes you passionate. Michael O'Boyle was true to his own words: a strong dedication to the service of the Strasbourg Court and a passion for the cause of human rights. There could be no better champion of either.

SIR NICOLAS BRATZA

CHAIR, COUNCIL OF EUROPE INTERNATIONAL ADVISORY PANEL ON UKRAINE;
JUDGE OF THE EUROPEAN COURT OF HUMAN RIGHTS (THE UNITED KINGDOM) FROM
1998 TO 2011;
PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS FROM 2011 TO 2012.