

Dublin Court
holds in favour
of Airline

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DUBLIN COURT HOLDS IN FAVOUR OF AIRLINE

An interesting decision in the Dublin Circuit Court on the 9th November, 2009 will help airlines and airline insurers to defend claims under the Montreal Convention. Dillon Eustace represented the airline and its insurers.

The Plaintiff, a 13 year old girl, claimed that she had suffered psychological injuries as a result of an accident on the 28th June, 2002 arising out of her alleged abandonment by an agent of the airline in the baggage hall of Charles de Gaulle Airport having travelled from Dublin to Paris. Agreement had been reached that she would travel with the airline as an unaccompanied minor but would be accompanied by an agent of the airline until she met with a specified party at Charles de Gaulle Airport.

The airline brought a preliminary issue arguing that the only remedy the Plaintiff had was under the Warsaw Convention (which was in force at the time of the accident), and in that circumstance: -

-  The Plaintiff's claim was time barred under Article 29 of the Convention. The accident occurred on the 28th June, 2002 but proceedings were not issued until 19th November, 2008 well outside the two year time period.
-  The Plaintiff could not recover under Article 17 in any event because her injuries were psychological only.

The Plaintiff had contended that the claim was not governed by the Warsaw Convention and that she was entitled to have recourse to common law remedies and that the Statute of Limitations Act, 1957 applied. This would mean that any limitation period would start from the date the Plaintiff attained her majority and, therefore the legal proceedings were issued in time. It was conceded by the Plaintiff that if the Warsaw Convention applied, the Plaintiff could not have recourse to any other remedies, the claim would be outside the time limit of two years and the Plaintiff would not be able to recover damages for psychological injuries.

The Dublin Circuit Court in dealing with the preliminary issue held that in relation to all issues concerning an air carriers' liability, it is the provisions of the Warsaw Convention (and now the Montreal Convention) which apply and that a passenger travelling with an airline did not have any access to any other remedies. The Court cited the English case of *Sidhu v. British Airways plc* in support of this proposition. On the basis that the Warsaw Convention applied,

the Court held that the Plaintiff's claim was time barred as it had not been brought within a period of two years from the date of arrival at her final destination of the aircraft and in addition the Plaintiff could not recover in any event under Article 17 because her injuries were psychological in nature – quoting *Morris v. KLM*

While accepting that the judgement is a Circuit Court judgement, and clearly carries less weight than a High Court judgement, it is significant from a number of perspectives, (particularly as the greater proportion of Convention claims tend to be in the Circuit Court).

Firstly, it confirms the primacy and uniqueness of the Montreal Convention which is something that the lower Courts in Ireland have not always been prepared to do. Secondly, it confirms an earlier Circuit Court decision (*Geraldine Howe v. Cityflyer Express*), and the well recognised case of *Morris v. KLM*, that a Plaintiff cannot recover under Article 17 where psychological injuries only are suffered. Thirdly, it confirms the correct view that there is no provision in the Montreal Convention for an extension of time due to disability/age unlike in the Statute of Limitations.

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