

The Assumption of Jurisdiction by the Irish Courts in Cases Involving the Registrar of the International Registry

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Abstract

This article examines the bases on which the Irish courts assume jurisdiction in cases involving challenges to registrations on the International Registry established under the Aircraft Protocol to the Cape Town Convention. Such challenges arise either because (i) a registrant has made a unilateral registration of a registrable non-consensual right or interest or (ii) the holder of the right to discharge with regard to a registration has either ceased to exist or cannot be found. The Registrar is established and has its centre of administration in Ireland and, consequently, the courts of Ireland have exclusive jurisdiction to award damages or make orders against the Registrar pursuant to the Convention, and there is now a growing body of jurisprudence. The cases where the holder of the right to discharge registration cannot be found usually involve the Registrar as sole respondent but, in cases where the challenge is to a registrable non-consensual right or interest, the registrant and the Registrar are both included as respondents. The question of how the Irish courts are satisfied to assume jurisdiction over the registrant in such cases is important because it is a necessary condition for the making of the orders ultimately sought. This article examines, including by reference to the cases to date, the grounds available to an applicant before the Irish courts to satisfy the court that it has jurisdiction to make orders directing the discharge of challenged registrations.

I. Introduction

The International Registry is maintained in Ireland by Aviareto Limited, as Registrar, pursuant to the 2001 Convention on International Interests in Mobile Equipment (the 'Convention') and the 2001 Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the 'Protocol'). Under Article 44(1) of the Convention, the courts where the Registrar has its centre of administration are to have exclusive jurisdiction for cases involving reliefs sought against the Registrar. As a consequence, numerous cases have proceeded before the Irish courts where the applicant has sought orders against the Registrar requiring discharges of registrations.

* Matheson, Solicitors, Dublin. Matheson has acted for the Registrar in all cases to date before the Irish Courts where an applicant has sought to discharge registrations on the International Registry. This article has been prepared with the approval of the Registrar with the objective of facilitating an understanding, for potential applicants in particular, as to the bases on which the Irish courts will be persuaded to assume jurisdiction over cases where registrations on the International Registry are sought to be discharged.

However, those cases frequently involve as a co-respondent the party which effected the impugned registration. The question as to how the Irish courts are satisfied to assume jurisdiction over such parties is one with which an intending applicant must grapple prior to commencing their proceedings in Ireland. This article is intended to summarise and provide a high-level overview of Irish law and procedure so that intending or potential applicants might understand the jurisdictional criteria that need to be satisfied in order to commence proceedings in Ireland seeking the discharge of a registration on the International Registry.

II. The Convention and jurisdiction over the Registrar

The Convention itself sets out the relevant provisions with regard to jurisdiction over the Registrar. Those provisions, set out below, are clear with regard to where proceedings against the Registrar are to be brought and how the relevant courts of that country assume jurisdiction. Specifically, Article 44(1) provides that:

The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.¹

The Convention also expressly covers the scenario where the holder of a right to discharge the registration has ceased to exist or cannot be found:

Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar to discharge the registration.²

In such circumstances, therefore, the courts of the jurisdiction where the Registrar has its centre of administration may make an order directed to the Registrar to discharge the relevant registration.

The Convention also envisages the Registrar taking steps at the direction of that court by way of a secondary or default obligation where any other person fails to comply with a direction of that court, or another court of competent jurisdiction in the case of a national interest:

Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction, requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.³

Finally, at Article 44(4), the Convention copperfastens the jurisdiction over the Registrar of the court where the Registrar has its centre of administration by excluding the possibility of any other court making orders that purport to bind the Registrar:

¹ Article 44(1) of the Convention.

² Article 44(2) of the Convention.

³ Article 44(3) of the Convention.

Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.⁴

III. The Convention and Ireland

Ireland is a contracting state to the Convention, having ratified the treaty in July 2005 and with it entering into force from 1 March 2006. Further, the Irish legislature enacted the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (the 'Act'), which provides that the Convention and Protocol shall have the force of law in Ireland in relation to matters to which they apply⁵ (and both instruments are scheduled to that Act). The Act designated the Irish High Court as the relevant court for the purpose of the Convention and Protocol,⁶ and specified that judicial notice was to be taken of the provisions of those instruments.⁷

In addition, and in view of the fact that the Registrar was to have its centre of administration in Ireland (as a consequence of which the Irish courts would have exclusive jurisdiction over it pursuant to the Convention), the Irish court rules were amended to facilitate expedited determination of such proceedings. Order 81A of the Rules of the Superior Courts provides *inter alia* that any proceedings involving the Registrar, or under the Convention or Protocol, shall be commenced by an originating notice of motion,⁸ which allows this type of case to progress faster than those which require an originating summons to be issued. Further, the Commercial List of the Irish High Court (which deals with cases on an expedited and case managed basis), had its rules regarding cases admissible to that list revised such that cases by or against the Registrar relating to its functions under the Convention or the Protocol constituted admissible cases.⁹

Order 81A further provides that where any relief is sought affecting any registration on the International Registry, the Registrar shall be a respondent, if it is not the applicant.¹⁰ Accordingly, the Registrar is always a party to cases where the applicant seeks the discharge of a registration.

Whilst there is limited judicial commentary on applications relating to the Convention (mainly due to the fact that most cases are not fully contested), the Irish courts have been explicitly supportive of the Convention and its operation. Indeed, in the leading authority of *Belair Holdings Limited v Etole Holdings Limited*¹¹ O'Malley J, in observing that the court would not condone a misleading representation, went on to state that 'the Court must be conscious of the purpose and principles of the Convention and importance of maintaining the integrity of the Registry'.¹²

IV. Types of case and jurisdiction

The types of case which have been brought before the Irish courts seeking discharge of registrations on the International Registry broadly fall into two categories, which we summarise below. Each broad class involves different jurisdictional considerations. The rationale for applications to discharge such registrations arises from the fact that the Registrar has no adjudicative function and

⁴ Article 44(4) of the Convention.

⁵ International Interests in Mobile Equipment (Cape Town Convention) Act 2005, s 4.

⁶ *ibid*, s 7.

⁷ *ibid*, s 8.

⁸ Rules of the Superior Courts, Order 81A, r 1(2) and r 1(3).

⁹ Rules of the Superior Courts, Order 63A, r 1(h).

¹⁰ Rules of the Superior Courts, Order 81A, r 1(5).

¹¹ [2015] IEHC 569.

¹² *ibid* 8.

is not empowered to reach a determination as to the validity or appropriateness of any registration. Rather, it is for the court with jurisdiction over the Registrar to reach such conclusion and to make appropriate directions and orders.

A. Registrar as sole respondent

The first, and least frequent, class of case involving applications seeking to discharge registrations are those where, for whatever reason, holder of the right to discharge the registration cannot be located. In such cases, the only respondent to the proceedings is the Registrar, as the applicant seeks an order directly against the Registrar to effect the discharge of the impugned registration. These cases arise in circumstances where the holder of the right to discharge the registration – typically in respect of an international interest – is a corporate entity which has been either liquidated or dissolved from its national register and thereby ceases to exist.

In those cases, it is only necessary to include the Registrar as the sole respondent and the jurisdiction of the Irish courts for any orders the applicant may seek against the Registrar is clearly premised on the Convention. The default basis for jurisdiction over the Registrar arises by virtue of Article 44(1). A secondary or alternative basis arises under Article 44(2). In the absence of other respondents to the proceedings in such cases, there are no additional jurisdictional considerations to be borne in mind. It should also be noted that, since the Registrar is established and incorporated as an Irish limited company, the Irish courts have *in personam* jurisdiction over it.

In circumstances where the Registrar has never disputed the jurisdiction of the Irish courts over it, the Irish courts have never taken issue with the proposition that they have jurisdiction under Article 44 of the Convention. Indeed, it would be surprising if they did in the light of the status of the Convention and Protocol in Irish law.

B. Registrar as co-respondent

The other broad class of case typically involves a scenario where there is a registrable non-consensual right or interest ('RNCRI') under Article 40 of the Convention. In such cases, the party which has effected the impugned registration and the Registrar are both respondents to the proceedings. Usually, the primary relief sought with regard to the discharge of the registration is directed against the registrant with a secondary provision that, in the event of that party's failure to discharge the registration in question within a specified period, the obligation falls upon the Registrar.

The Convention bases for the jurisdiction of the Irish courts over the Registrar in such proceedings are as set out in section IV(A) above. In addition, depending on the circumstances, Article 44(3) may also establish such jurisdiction, as was determined to be the case in *UniCredit Global Leasing GmbH v Business Aviation Limited*.¹³ However, the question of the jurisdiction of the Irish courts over the registrant is not answered by the Convention and instead is determined by Irish law regarding jurisdiction. We examine the relevant principles separately below.

V. Jurisdiction over the registrant

The basis on which the Irish courts can assert jurisdiction depends firstly on the location of the other respondent, the registrant. Different jurisdictional rules apply under Irish law depending on the residence or domicile of the party involved. To date, all registrants in cases involving disputed Article 40

¹³ [2019] IEHC 139 [102]. In making the relevant order, the court also acknowledged that it had exclusive jurisdiction to make orders against the Registrar pursuant to Article 44(1) of the Convention.

registrations have been from countries outside the EU and EFTA, as a consequence of which specific rules apply to respondents located in such countries.¹⁴ However, for the sake of completeness, we address the bases of jurisdiction for each class of potential registrant below.

A. Irish registrants

None of the cases to date seeking the discharge of Article 40 RNCRI registrations involve Irish domiciled registrants. However, should that ever arise, the Irish courts would necessarily have *in personam* jurisdiction over an Irish domiciled party, including a company incorporated and registered under the laws of Ireland. In such cases, the relevant proceedings could be issued without seeking the leave of the court.

B. EU and certain EFTA registrants

Again, none of the cases to date seeking the discharge of Article 40 RNCRI registrations have involved EU or EFTA member state domiciled registrants. However, should such a situation ever arise, regard would be had to the relevant instruments. For the purpose of EU member state domiciled registrants, the relevant instrument is the Brussels Recast Regulation,¹⁵ whereas for Norway, Switzerland and Iceland (being EFTA member states), the relevant instrument is the Lugano Convention.¹⁶ Both instruments provide, in Articles 24(3) and 22(3) respectively, that exclusive jurisdiction in proceedings which have as their object the validity of entries in public registers shall lie with the courts of a member state where the register is kept. Accordingly, for registrants from an EU member state or the EFTA member states identified above, those provisions may be relied upon to confer jurisdiction on the Irish courts in circumstances where the International Registry is maintained in Ireland. Under Irish procedural rules, relevant proceedings can be issued in such cases without leave of the court.

C. Registrants from the rest of the world

In the cases to date involving a respondent in addition to the Registrar, that other respondent has typically been domiciled outside both the EU and the EFTA member states identified above at section V(B). In order to bring Irish proceedings against such a party, leave of the court must first be obtained for liberty to issue and serve such proceedings out of the jurisdiction.¹⁷ Applications seeking such leave of the court are issued under Order 11 of the Rules of the Superior Courts and are made *ex parte*. As part of the application, the applicant must set out which jurisdictional grounds under Order 11 it believes apply so that the Irish High Court can be satisfied it may permit the commencement of proceedings. If the court is satisfied that one or more of the Order 11 grounds are made out, the proceedings may be commenced.

To date, the orders made by the Irish High Court in applications for leave to issue and serve proceedings out of the jurisdiction under Order 11 consistently rely upon particular rules to establish the jurisdiction of the Irish courts over such respondents. Specifically, Order 11, rule 1 (f), (g) and

¹⁴ One case not involving an application under Article 40 did include an EU based co-respondent as the holder of the right to discharge the registration, which entity was in fact dissolved.

¹⁵ Regulation (EU) 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [2012] OJ L351/1.

¹⁶ Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [2007] OJ L339/3. Whilst Liechtenstein is an EFTA member state, it is not a party to the Lugano Convention.

¹⁷ Rules of the Superior Courts, Order 11.

(h) are routinely cited by applicants as justification for the Irish courts to confirm the exorbitant jurisdiction over such parties (albeit that does not mean others may not apply). We outline and explain the relevance of each below.

D. Specific Order 11 grounds

Order 11, rule 1(f) permits the issuing of proceedings against a party domiciled outside the EU and the EFTA member states identified at section V(B) above if '[t]he action is founded on a tort committed within the jurisdiction'.¹⁸ In most of the Article 40 cases, where there is a block on title arising from the unilateral act of the party which has made the impugned registration, the applicant has usually also claimed substantive reliefs against that party for, most frequently, slander of title, defamation and, less frequently, misrepresentation and malicious falsehood. Essentially, these are all tort claims which arise from the fact that the party which made the impugned registration has communicated incorrect information and that information is now maintained and remains accessible on the International Registry. These claims are therefore often successfully relied upon as a jurisdictional rationale to justify bringing of proceedings in Ireland against the registrant.

Order 11, rule 1(g) allows proceedings to be issued against a party domiciled outside the EU and the EFTA member states identified above at section V(B) if '[a]ny injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof'.¹⁹ The applicant may, as part of the substantive proceedings against the registrant, seek relief in the nature of an injunction arising from the disputed RNCRI registration. In such circumstances, the Irish courts are likely to be satisfied to permit the proceedings to be issued against the registrant on that ground.

Order 11, rule 1(h) also affords the Irish courts the opportunity to grant leave to issue and serve proceedings out of the jurisdiction if '[a]ny person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction'.²⁰ In circumstances where the relief with regard to the discharge of the disputed RNCRI registration is also sought against the Registrar, over which entity the Irish courts have exclusive jurisdiction under the Convention, this ground is generally rather straightforward for the applicant to make out.

In the most recent decision, *UniCredit Global Leasing GmbH v Business Aviation Limited*²¹ McDonald J found he had jurisdiction over the registrant / co-respondent, a UAE company, pursuant to Order 11, rules 1(f) and (g).²² In addition, he also relied on section 5.4(f) of the International Registry Regulations,²³ which expressly requires, as a condition to the registration of an RNCRI, that the registrant agrees to submit to the jurisdiction of the courts where the Registrar has its centre of administration (ie Ireland).²⁴

In general, any finding as to jurisdiction over the registrant is initially made at an *ex parte* hearing prior to the commencement of proceedings. Such applications are typically made to the ordinary Irish High Court, which has a specific sitting on a Monday to deal with (non-urgent) *ex parte* appli-

¹⁸ *ibid*, r 1(f).

¹⁹ *ibid*, r 1(g).

²⁰ *ibid*, r 1(h).

²¹ [2019] IEHC 139.

²² *ibid* [103].

²³ International Civil Aviation Organization, Regulations and Procedures for the International Registry (Seventh Edition) 2016. See Aviareto, 'Regulatory Information' <www.aviareto.aero/information-centre/regulatory-information/> accessed 25 March 2019.

²⁴ [2019] IEHC 139 [103].

cations. At that hearing, the applicant would seek leave to issue and serve the proceedings outside of the jurisdiction relying on one or more of the grounds summarised and explained above. Assuming the court is satisfied that the Order 11 grounds are established, the relevant order is made and the proceedings are commenced and served. However, since most applicants have asserted substantive reliefs in their intended proceedings which facilitate reliance on one or more of the Order 11 grounds cited above, the Irish High Court is usually satisfied it has jurisdiction over such party and the proceedings are commenced.

VI. Conclusion

For any reliefs sought against the Registrar, which is typically the discharge of a disputed registration, the Irish courts will need to be satisfied that they have jurisdiction to make the relevant orders against the Registrar. In making such orders to date, the Irish courts have been satisfied as to their express jurisdiction under Article 44 of the Convention. This is so both in respect of cases where the Registrar is the sole respondent, where the holder of the right to discharge the registration no longer exists or cannot be found, and where the Registrar is a co-respondent along with the registrant of an RNCRI under Article 40 of the Convention. For the latter class of cases, the jurisdiction of the Irish courts over the registrant will depend on the domicile of that party. However, in the cases to date, the available Order 11 grounds have been relied upon successfully by the applicants in order to satisfy the Irish courts to assume jurisdiction over such registrants.

