

Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 30 May 2018 — Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Mbutuku Kanyeba

(Case C-349/18)

(2018/C 294/24)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen

Parties to the main proceedings

Applicant: Nationale Maatschappij der Belgische Spoorwegen (NMBS)

Defendant: Mbutuku Kanyeba

Questions referred

1. Must Article 9(4) of [Regulation (EC) No 1371/2007]⁽¹⁾ of 23 October 2007 on rail passengers' rights and obligations, read in conjunction with Article 2(a) and Article 3 of Directive 93/13,⁽²⁾ be interpreted as meaning that a contractual legal relationship is always created between the transport company and the passenger, even when the latter makes use of the services provided by the transport company without purchasing a ticket?
2. If the answer to the previous question is in the negative, does the protection offered by the doctrine of unfair terms also extend to a passenger who makes use of public transport without having acquired a ticket and who, by that action, under the general terms and conditions of the transport company, which are considered to be generally binding on the basis of their regulatory nature or, alternatively, by virtue of their publication in an official State publication, is obliged to pay a surcharge in addition to the fare?
3. Does Article 6 of Directive 93/13 on unfair terms in consumer contracts, which provides that 'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms', preclude a court in all cases from moderating the term deemed to be unfair or from applying ordinary law instead?
4. If the answer to the previous question is in the negative, what then are the circumstances in which a national court may proceed to moderate the term found to be unfair or to replace it by the ordinary law?
5. If the aforementioned questions cannot be answered *in abstracto*, the question then arises as to whether, if the national railway company, having apprehended a fare-dodger, imposes a civil penalty in the form of a surcharge, whether or not in addition to the fare, and the court were to find that the surcharge imposed is unfair within the meaning of Article 2(a), read in conjunction with Article 3, of Directive 93/13, Article 6 of Directive 93/13 precludes the court from declaring the term void and applying ordinary liability law to compensate the national railway company for the damage suffered.

⁽¹⁾ OJ 2007 L 315, p. 14.

⁽²⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Vredegerecht te Antwerpen (Belgium) lodged on 30 May 2018 — Nationale Maatschappij der Belgische Spoorwegen (NMBS) v Larissa Nijs

(Case C-350/18)

(2018/C 294/25)

Language of the case: Dutch

Referring court

Vredegerecht te Antwerpen