

Parties to the main proceedings

Applicant: Nationale Maatschappij der Belgische Spoorwegen (NMBS)

Defendant: Jean-Louis Anita Dedroog

Questions referred

1. Must Article 9(4) of [Regulation 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?
1. 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?
 2. 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 Tribunalul Bacău (Romania) lodged on 30 May 2018 —
Radu-Lucian Rusu and Oana-Maria Rusu v SC Blue Air — Airline Management Solutions SRL**

(Case C-354/18)

(2018/C 294/27)

Language of the case: Romanian

Referring court

Tribunalul Bacău

Parties to the main proceedings

Appellants, applicants at first instance: Radu-Lucian Rusu and Oana-Maria Rusu

Appellant, defendant at first instance: SC Blue Air — Airline Management Solutions SRL

Questions referred

1. Is the amount of EUR 400 provided for in Article 7(1)(b) of Regulation No 261/2004 ⁽¹⁾ intended to compensate primarily for the material damage, with the non-material damage being assessed pursuant to Article 12 thereof, or does Article 7(1)(b) of that regulation primarily cover the non-material damage, with the material damage being subject to Article 12 thereof?
2. Does an amount corresponding to a loss of salary which exceeds the amount of EUR 400 established by Article 7(1)(b) of that regulation fall within the concept of further compensation referred to in Article 12 thereof?
3. Under the second sentence of Article 12(1) of Regulation No 261/2004, 'the compensation granted under this Regulation may be deducted from such compensation'. Should that provision be interpreted as leaving it to the national court's discretion to deduct the amount awarded under Article 7(1)(b) of that regulation from the further compensation, or is that deduction compulsory?
4. In the event that the deduction of that amount is not compulsory, what are the elements on the basis of which the national court is to decide whether to deduct the amount referred to in Article 7(1)(b) from the further compensation?
5. Should the damage caused as a result of the non-payment of salary, owing to the fact that an employee was unable to be present at work by reason of his delayed arrival at his destination as a result of re-routing, be analysed from the perspective of fulfilment of the obligations provided for in Article 8 [of Regulation No 261/2004], or Article 12 [of that regulation], read in conjunction with Article 4 [thereof]?
6. Does an airline operator's fulfilment of the obligation to provide assistance under Article 4(3) and Article 8 of Regulation No 261/2004 mean presenting a passenger with comprehensive information regarding all that passenger's re-routing options as provided for in Article 8(1)(a), (b) and (c) of that regulation?
7. With whom does the burden of proving that passengers were re-routed at the earliest opportunity under Article 8 of Regulation No 261/2004 rest?
8. Does [Regulation No 261/2004] impose an obligation on passengers to make inquiries in order to identify other routes to their destination and to ask a company to find seats on those routes, or is the airline obliged to look, of its own motion, for the most advantageous option whereby a passenger may be transported to his destination?
9. Is the fact that passengers accepted an airline's proposal offering them a flight on 11 September 2016, although they could assume that they would not be paid for the period during which they were absent from work, relevant for determining the damage suffered by those passengers?

⁽¹⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 31 May 2018 — Barbara Rust-Hackner v Nürnberger Versicherung Aktiengesellschaft Österreich

(Case C-355/18)

(2018/C 294/28)

Language of the case: German

Referring court

Landesgericht Salzburg