



## Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

16 February 2023 \*

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Rail transport – Passengers’ rights and obligations – Regulation (EC) No 1371/2007 – Article 3(8) – Transport contract – Concept – Passenger without a ticket at the time of boarding a train – Consumer protection)

In Case C-530/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie (District Court, Warsaw-Śródmieście, Warsaw, Poland), made by decision of 20 June 2022, received at the Court on 9 August 2022, in the proceedings

**Dunaj-Finanse sp. z o.o.**

v

**KG,**

THE COURT (Sixth Chamber),

composed of P.G. Xuereb, President of the Chamber, T. von Danwitz (Rapporteur) and A. Kumin, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to rule by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

### Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(8) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers’ rights and obligations (OJ 2007 L 315, p. 14) and Article 6(1) and (2) of Appendix A in Annex I to that regulation.

\* Language of the case: Polish.

- 2 The request has been made in proceedings between Dunaj-Finanse sp. z o.o. and KG concerning additional surcharges claimed from the latter for having travelled by train without a ticket.

## Legal context

### *European Union law*

- 3 Recitals 1 to 3 of Regulation No 1371/2007 state:

- ‘(1) In the framework of the common transport policy, it is important to safeguard users’ rights for rail passengers and to improve the quality and effectiveness of rail passenger services in order to help increase the share of rail transport in relation to other modes of transport.
- (2) The Commission’s communication “Consumer Policy Strategy 2002-2006” [OJ 2002 C 137, p. 2] sets the aim of achieving a high level of consumer protection in the field of transport in accordance with Article 153(2) of the Treaty.
- (3) Since the rail passenger is the weaker party to the transport contract, passengers’ rights in this respect should be safeguarded.’

- 4 Article 1(a) of that regulation provides:

‘This Regulation establishes rules as regards the following:

- (a) the information to be provided by railway undertakings, the conclusion of transport contracts, the issuing of tickets and the implementation of a Computerised Information and Reservation System for Rail Transport’.

- 5 Article 3 of that regulation provides:

‘For the purposes of this Regulation the following definitions shall apply:

...

- (2) “carrier” means the contractual railway undertaking with whom the passenger has concluded the transport contract or a series of successive railway undertakings which are liable on the basis of this contract;

...

- (8) “transport contract” means a contract of carriage for reward or free of charge between a railway undertaking or a ticket vendor and the passenger for the provision of one or more transport services;

...

- (16) “General Conditions of Carriage” means the conditions of the carrier in the form of general conditions or tariffs legally in force in each Member State and which have become, by the conclusion of the contract of carriage, an integral part of it;

...'

- 6 Chapter II of Regulation No 1371/2007, entitled 'Transport contract, information and tickets', includes Articles 4 to 10 thereof. Article 4 of that regulation, entitled 'Transport contract', provides:

'Subject to the provisions of this Chapter, the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I.'

- 7 Annex I to Regulation No 1371/2007, entitled 'Extract from Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV)', consists of Titles II to VII of Appendix A to the Convention Concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Vilnius Protocol of 3 June 1999 ('the COTIF'). Annex I thus includes Title II of that appendix, entitled 'Conclusion and performance of the contract of carriage', which contains Articles 6 to 11 of that appendix.

- 8 Under Article 6, entitled 'Contract of carriage', of Appendix A to the COTIF:

'1. By the contract of carriage the carrier shall undertake to carry the passenger as well as, where appropriate, luggage and vehicles to the place of destination and to deliver the luggage and vehicles at the place of destination.

2. The contract of carriage must be confirmed by one or more tickets issued to the passenger. However, subject to Article 9 the absence, irregularity or loss of the ticket shall not affect the existence or validity of the contract which shall remain subject to these Uniform Rules.

3. The ticket shall be prima facie evidence of the conclusion and the contents of the contract of carriage.'

- 9 Article 9 of Appendix A, entitled 'Right to be carried. Exclusion from carriage' provides in its paragraph 1:

'The passenger must, from the start of his journey, be in possession of a valid ticket and produce it on the inspection of tickets. The General Conditions of Carriage may provide:

- (a) that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge;
- (b) that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his journey;
- (c) if and under what conditions a refund of the surcharge shall be made.'

***Polish law***

*The Civil Code*

- 10 Article 117(2) and (2<sup>1</sup>) of the ustawa – Kodeks cywilny (Civil Code) of 23 April 1964 (Dz. U. of 1964, No 16, position 93), in the version applicable to the dispute in the main proceedings, provides:

‘(2) Following the lapse of the period of limitation, a person against whom a claim may be pursued may avoid the duty to satisfy it, unless he waives his or her right to use the defence of limitation. ...

(2<sup>1</sup>) After the expiry of the period of limitation, it is no longer possible to pursue a claim against a consumer.’

*The Transport Law*

- 11 Under Article 16(1) of the ustawa Prawo przewozowe (Law on Transport) of 15 November 1984 (Dz. U. of 1984, No 53, position 272), in the version applicable to the dispute in the main proceedings (‘the Transport Law’):

‘A transport contract is concluded by purchasing a ticket prior to the start of a journey or by meeting other conditions for accessing the means of transport specified by the carrier or the organiser of public transport or, where such conditions are not met, by simply boarding the means of transport.’

- 12 Article 33a(3) of the Transport Law provides:

‘Where it finds that the passenger is not in possession of a valid ticket, the carrier or the organiser of public transport or a person authorised by it is to collect the carriage charge and the additional charge or is to issue a demand for payment.’

- 13 Article 77(1) and Article 77(3)(4) of that law provides:

‘1. Without prejudice to paragraph 2 and Article 78, demands based on the present law or its implementing provisions shall be brought within a period of one year.

...

3. The period of limitation shall begin to run:

...

(4) for demands for payment or reimbursement – from the date of payment or, if there has been no payment, from the date on which the payment should have been made.’

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 14 On 10 September 2016, KG travelled on a train operated by the rail carrier company Koleje Mazowieckie – KM sp. z o.o. without a valid ticket. In accordance with the rail carrier's tariff, he was charged the sum of 191.82 zlotys (PLN) (approximately EUR 40.50), corresponding to the ticket price in the amount of PLN 6.82 (approximately EUR 1.50) plus a surcharge of PLN 185 (approximately EUR 39).
- 15 By a receivables purchase agreement of 2 January 2019, Dunaj-Finanse acquired the carrier's claim against KG.
- 16 By application of 16 June 2021, Dunaj-Finanse brought an action before the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie (District Court, Warsaw-Śródmieście, Warsaw, Poland), the referring court, seeking an order that KG pay that sum, plus default interest calculated at the statutory rate until the date of payment, pursuant to Article 33a(3) of the Transport Law. That company claimed that, under Article 16(1) of that law, no transport contract had been concluded between the rail carrier and KG, with the result that the latter could not be regarded as a party to a transport contract or, therefore, as a consumer. It added that the national provision providing that the court is to raise of its own motion the period of limitation in respect of a claim relied on as against a consumer was therefore not applicable in the context of the main proceedings.
- 17 The referring court states that it is apparent from Article 77 of that law that the debt claimed was time-barred on the date on which the action was brought, on 16 June 2021 but that, under Article 117(2<sup>1</sup>) of the Civil Code, in the version thereof applicable to the dispute in the main proceedings, it may declare of its own motion that the claim is time-barred, and therefore dismiss the action, only if KG can be regarded as a consumer, which presupposes that the latter has concluded a transport contract with the rail carrier. By contrast, if it must be held that no contract has been concluded and that, therefore, KG cannot be regarded as a consumer, the period of limitation can be taken into account only if KG relies on it, which it has not done, with the result that the action should be upheld.
- 18 In that regard, the referring court states that, although a transport contract may be concluded tacitly in accordance with the general rules of national law, Article 16(1) of the Transport Law, as interpreted, inter alia, by the Sąd Okręgowy w Kielcach (Regional Court, Kielce, Poland) in a judgment of 1 September 2019, does not suggest that such a contract exists in a situation where the passenger boarded a train without having purchased a ticket, whereas the general terms and conditions at issue provided that the condition for the conclusion of a contract is the purchase of a ticket and the validation or activation thereof.
- 19 Thus, that court asks whether such national rules comply with Regulation No 1371/2007, in particular Article 3(8) of that regulation, which defines the concept of a 'transport contract', as interpreted by the Court in the judgment of 7 November 2019, *Kanyeba and Others* (C-349/18 to C-351/18, EU:C:2019:936).
- 20 The referring court adds that the provisions of that regulation must be regarded as precluding that national legislation, such a solution being supported, in particular, by the principle of effectiveness. That court notes that the main objective of Regulation No 1371/2007 is to ensure a high level of protection and safety for passengers who are the weaker party to transport contracts. That objective would be nullified in part if at least some of the provisions of that regulation were not applicable to a given category of passengers. Furthermore, a passenger travelling without a

ticket cannot be regarded as a ‘consumer’ under other provisions of EU law, such as those of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), with the result that the legal position of that passenger is even more undermined.

- 21 In those circumstances, the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie (District Court of Warsaw-Śródmieście, Warsaw) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 3(8) of Regulation [No 1371/2007], Article 6(1) and (2) of Appendix A in Annex I to Regulation No 1371/2007, Article 169(1) [TFEU], Articles 20 and 38 of the Charter of Fundamental Rights of the European Union as well as the principles of effectiveness, equality before the law and consistency of EU law be interpreted as precluding a provision of national law under which no transport contract is concluded between a carrier and a passenger who boards a train without the intention of purchasing a ticket?’

### **Consideration of the question referred**

- 22 Under Article 99 of its Rules of Procedure, where, inter alia, the reply to the question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to the question referred admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 23 That provision must be applied in the present case.
- 24 As a preliminary point, it should be noted that, in its question, the referring court referred to Regulation No 1371/2007 and to Article 169(1) TFEU, Articles 20 and 38 of the Charter of Fundamental Rights of the European Union and the principles of effectiveness, equality before the law and consistency of the legal system. However, it is apparent from the request for a preliminary ruling that the only issue in the context of the present case is the concept of a ‘transport contract’ within the meaning of that regulation.
- 25 In that regard, it follows from the Court’s settled case-law that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgments of 8 June 2017, *Freitag*, C-541/15, EU:C:2017:432, paragraph 29, and of 18 November 2021, *A.S.A.*, C-212/20, EU:C:2021:934, paragraph 36 and the case-law cited).
- 26 Consequently, it must be held that, by its question, the referring court asks, in essence, whether Article 3(8) of Regulation No 1371/2007, read in conjunction with Article 6(1) and (2) of Appendix A in Annex I to that regulation, must be interpreted as precluding a provision of national law under which no transport contract is concluded between a carrier and a passenger who boards a train without the intention of purchasing a ticket.

- 27 It should be noted that, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms a part (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 35 and the case-law cited).
- 28 First of all, as regards the wording of Article 3(8) of Regulation No 1371/2007, first, the word ‘contract’ is generally understood to designate an agreement by consensus intended to produce legal effects. Secondly, in the context of the field covered by that regulation and in the light of the wording of that provision, that effect consists principally in the obligation imposed on the rail undertaking to provide to the passenger one or more transport services and the obligation imposed on the passenger to pay the price of that transport, unless the service is provided free of charge (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 36).
- 29 Therefore, on the one hand, by allowing free access to its train and, on the other hand, by boarding that train with an intention to travel, both the rail undertaking and the passenger demonstrate their agreement to enter into a contractual relationship, so that the conditions necessary for establishing the existence of a transport contract are, in principle, satisfied. The wording of Article 3(8) of Regulation No 1371/2007 however does not allow it to be determined whether the possession, by the passenger, of a ticket is essential for the purposes of considering that there exists a ‘transport contract’ within the meaning of that provision (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 37).
- 30 Next, as regards the context of Article 3(8), it follows clearly therefrom that the ticket, also referred to in Appendix A in Annex I to that regulation as a ‘ticket’, is only the instrument which embodies the transport contract, for the purposes of that regulation (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 48).
- 31 In that regard, the term ‘transport contract’ occurs in several other provisions of that regulation, in particular in Article 4, which provides that, ‘subject to the provisions of [Chapter II of Regulation No 1371/2007], the conclusion and performance of a transport contract and the provision of information and tickets shall be governed by the provisions of Title II and Title III of Annex I’ to that regulation. Title II of Appendix A of the COTIF relating to the conclusion and performance of the contract of carriage is, inter alia, reproduced in that Annex I, Article 6(1) of which provides that, ‘by the contract of carriage the carrier shall undertake to carry the passenger ... to the place of destination’, whilst Article 6(2) specifies that the contract of carriage must be confirmed by one or more tickets issued to the passenger and that, without prejudice to Article 9 of that appendix, the absence, irregularity or loss of the ticket does not affect the existence or validity of the contract which remains subject to the uniform rules established by the COTIF (see, to that effect, judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraphs 38, 40 and 41).
- 32 As regards Article 9 of Appendix A, although it provides in the first sentence of paragraph 1 thereof that the passenger must, from the start of his or her journey, be in possession of a valid ticket, Article 9(1) states, in the second sentence, subparagraphs (a) and (b) thereof, that the general conditions of carriage may provide that a passenger who does not produce a valid ticket must pay, in addition to the carriage charge, a surcharge, and that a passenger who refuses to pay the carriage charge or the surcharge upon demand may be required to discontinue his or her journey (see, to that effect, judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 45).

- 33 In so far as a passenger who does not produce a valid ticket or refuses to immediately pay for a ticket, in accordance with Article 9, the general conditions of carriage may be relied upon against that passenger, and in so far as those conditions, according to Article 3(16) of that regulation, read in conjunction with Article 3(2) thereof, form, for the purposes of that regulation, an integral part of the transport contract between the rail undertaking and the passenger by the conclusion of the latter, it follows that such an undertaking which allows free access to its trains and a passenger who boards such a train for the purposes of travel must be considered to be parties to a ‘transport contract’ for the purposes of that same regulation, as soon as that passenger is thus on board the train. Otherwise, those general conditions of carriage could not be relied upon as against that passenger on the basis of Regulation No 1371/2007 (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 47).
- 34 Consequently, the wording of Article 3(8) of Regulation No 1371/2007 and the context of that provision lead to the conclusion that the concept of ‘transport contract’ within the meaning of that provision must, for the purposes of that regulation, be understood as being independent from the possession, by the passenger, of a ticket and in the sense that it covers a situation in which a passenger boards a freely accessible train for the purposes of travel without having obtained a ticket (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 49).
- 35 That interpretation is supported by the objectives pursued by Regulation No 1371/2007. First, in accordance with Article 1(a) thereof, the purpose of that regulation is, in particular, to establish rules concerning the conclusion of transport contracts. Secondly, recital 1 of that regulation points out in particular that, in the context of the common transport policy, it is necessary to safeguard the rights of rail passengers. Moreover, it follows from recital 2 of that regulation that a high level of consumer protection in the field of transport must be achieved and, according to recital 3 thereof, since the rail passenger is the weaker party to the transport contract, his or her rights in this respect should be safeguarded (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 50).
- 36 It would be contrary to those objectives to consider that the concept of a ‘transport contract’, for the purposes of Regulation No 1371/2007, must be interpreted as not covering a situation in which a passenger boards a freely accessible train for the purpose of travel without having obtained a ticket. If it were permissible to consider that such a passenger can, on the sole ground that he does not have a ticket when he boards a train, be regarded as not being a party to a contractual relationship with the rail undertaking which grants free access to its trains, that passenger could, in circumstances beyond his or her control, be deprived of the rights that that regulation attaches to the conclusion of a transport contract, which would undermine the objective pursued by that regulation of protecting rail passengers and which is noted in recitals 1 to 3 thereof (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 51).
- 37 It follows that the concept of a ‘transport contract’ within the meaning of Article 3(8) of Regulation No 1371/2007, which constitutes an autonomous concept of EU law that must be interpreted uniformly in all the Member States, covers a situation in which a passenger boards a freely accessible train for the purposes of travel without acquiring a ticket, whether or not that passenger had the intention of purchasing such a ticket (judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 53).



- 38 Consequently, a Member State cannot provide that a situation in which a passenger boards a freely accessible train for the purposes of travel without acquiring a ticket and without the intention of purchasing a ticket is excluded from that concept of a ‘transport contract’.
- 39 Furthermore, it must be borne in mind that the interpretation referred to in paragraph 37 of the present order, in the absence of provisions in that regard in Regulation No 1371/2007, is without prejudice to the validity of that contract or the consequences which could result from the non-performance, by one of the parties, of its contractual obligations, which, in the absence of provisions in that regard in that regulation, remain governed by the national law (see, to that effect, judgment of 7 November 2019, *Kanyeba and Others*, C-349/18 to C-351/18, EU:C:2019:936, paragraph 52).
- 40 In the light of the foregoing, the answer to the question referred is that Article 3(8) of Regulation No 1371/2007, read in conjunction with Article 6(1) and (2) of Appendix A in Annex I to that regulation, must be interpreted as precluding a provision of national law under which no transport contract is concluded between a carrier and a passenger who boards a freely accessible train without the intention of purchasing a ticket.

### **Costs**

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Sixth Chamber) hereby rules:

**Article 3(8) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers’ rights and obligations, read in conjunction with Article 6(1) and (2) of Appendix A in Annex I to that regulation**

**must be interpreted as precluding a provision of national law under which no transport contract is concluded between a carrier and a passenger who boards a freely accessible train without the intention of purchasing a ticket.**

[Signatures]