

2. Is the application of the restitutory effects of a term held to be unfair within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts affected, limited or precluded by the principle that the subject-matter of an action is defined by the parties, the principle that the parties determine the facts and evidence forming the basis for a decision, the principle of substantive *res judicata*, and the principle of the prohibition of *reformatio in pejus*?
3. Are the functions of a court of second instance limited by the fact that the judgment at first instance granted limited effect to a declaration of unfairness, and the judgment has not been appealed against by the consumer but only by the seller or supplier, who included the term, in order to dispute the unfairness of the term or any effects arising from the declaration that the term was unfair?
4. Do the functions of a court of second instance extend to the possibility of applying all the consequences provided for in Council Directive 93/13/EEC of 5 April 1993 and the case-law interpreting it, even where the consumer did not seek, in his initial claim in the application, all the effects deriving from a declaration that the term in question is unfair?

⁽¹⁾ OJ 1993 L 95, p 29.

**Reference for a preliminary ruling from The Labour Court, (Ireland) made on 27 February 2018 —
Tomás Horgan, Claire Keegan v Minister for Education & Skills, Minister for Finance, Minister for
Public Expenditure & Reform, Ireland and the Attorney General**

(Case C-154/18)

(2018/C 166/29)

Language of the case: English

Referring court

The Labour Court, Ireland

Parties to the main proceedings

Applicants: Tomás Horgan, Claire Keegan

Defendants: Minister for Education & Skills, Minister for Finance, Minister for Public Expenditure & Reform, Ireland and the Attorney General

Questions referred

1. Does it constitute indirect discrimination on grounds of age, within the meaning of Article 2(b) of Directive 2000/78/EC ⁽¹⁾ establishing a general framework for equal treatment in employment and occupation, for a Member State, in its capacity as an employer, to introduce lower salary scales for new entrants to the profession of national teacher while leaving unaltered the pay of those teachers already in employment, where:
 - a) the revised salary scales and the existing salary scales apply to all teachers in the respective categories regardless of their age;
 - b) at the point at which they were recruited and placed on the respective scales there was no difference in the age profile of those in the higher paid group and those in the lower paid group;
 - c) the introduction of the revised scales has resulted in a substantial difference in pay as between two groups of teachers who are engaged in work of equal value;
 - d) the average age of those placed on the reduced salary scales is lower than that of the average age of those on the original salary scales;

- e) at the point at which the lower salary scales were introduced, the State's statistics showed that 70 % of teachers appointed were 25 years of age or under and it was acknowledged that this was typical of the age profile of entrants to national teaching in any given year; and
- f) national teachers who entered the profession in 2011 and later suffer a clear financial disadvantage in comparison to their teaching colleagues appointed prior to 2011.
2. If the answer to question 1 is in the affirmative, can the introduction of the lower salary scales be objectively justified by a requirement to achieve a medium- to long-term structural reduction in the cost of the public service, having regard to budgetary constraints facing the State and/or the importance of maintaining good industrial relations with existing civil and public servants?
3. Would the answer to question 2 be different if the State could have achieved equivalent savings by reducing the pay of all teachers by a significantly lesser amount than the reduction applied only to newly recruited teachers?
4. Would the answer to questions 2 or 3 be different if the decision not to reduce the salary scales applicable to teachers already in employment was taken in compliance with a collective agreement between the Government as an employer and the trade unions representing public service workers whereby the Government committed not to further reduce the pay of existing public servants who had already been subject to pay cuts and the industrial relations consequences that would flow from a failure to comply with that agreement, having regard to the fact that the new pay scale introduced in 2011 did not form part of such a collective agreement?

⁽¹⁾ OJ 2000, L 303, p. 16.

**Request for a preliminary ruling from the Justice de paix du troisième canton de Charleroi (Belgium)
lodged on 27 February 2018 — André Moens v Ryanair Ltd**

(Case C-159/18)

(2018/C 166/30)

Language of the case: French

Referring court

Justice de paix du troisième canton de Charleroi

Parties to the main proceedings

Applicant: André Moens

Defendant: Ryanair Ltd

Questions referred

[The] request for a preliminary ruling concerning the interpretation of Article 5(3) of 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 ⁽¹⁾ [is] worded as follows:

1. Does the circumstance at issue in the present proceedings, that is to say, the spillage of petrol on a runway which caused that runway to be closed, fall to be classified under the notion of an 'event' within the meaning of paragraph 22 of the judgment of 22 December 2008, *Wallentin-Hermann* (C-549/07, EU:C:2008:771), or under that of 'extraordinary circumstances' within the meaning of recital 14 of that regulation, as interpreted by the judgment of 31 January 2013, *McDonagh* (C-12/11, EU:C:2013:43), or do those two concepts overlap?