



Press and Information

Court of Justice of the European Union

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Judgment in Case C-584/18

D.Z. v Blue Air- Airline Management Solutions SRL

**A passenger's denied boarding on the ground that he presented allegedly inadequate travel documentation does not, in itself, deprive the passenger from protection under the Regulation on compensation and assistance to air passengers**

*In the event of challenge by that passenger, it is for the competent court to assess whether his denied boarding was reasonably justified or not*

On 6 September 2015, D.Z., a Kazakh national, went to Larnaca airport (Cyprus) to board a flight with the Romanian air carrier Blue Air to Bucharest (Romania) where he had planned to stay until 12 September 2015. At the airport passport control, he presented his passport, a Cypriot temporary residence permit, the application for an entry visa into Romanian territory previously submitted online via the website of the Romanian Ministry of Foreign Affairs, and the Ministry's reply that such a visa was not necessary.

Contacted by the employees of the company acting as Blue Air's handling agent at Larnaca airport, Blue Air's ground control staff at Bucharest airport stated that D.Z. could not enter Romania without holding a national visa, which led to his denied boarding.

D.Z. brought an action against Blue Air before the Eparchiako Dikastirio Larnakas (District Court, Larnaca, Cyprus) seeking compensation for the prejudice he claimed to have suffered as a consequence of that denied boarding.

In those circumstances, the referring court asks the Court of Justice to interpret the Decision on the simplified regime for the control of persons at the external borders ('the decision'),<sup>1</sup> the Schengen Borders Code<sup>2</sup> and the Regulation on compensation and assistance to air passengers.<sup>3</sup> Under Article 3 of the decision, the four Member States concerned by that decision, including Romania, may recognise as equivalent to their national visas, for stays not exceeding 90 days in any 180-day period, visas and residence permits issued by the other Member States thus concerned.

By today's judgment, the Court finds first of all that, in so far as a Member State concerned by that decision undertakes, as Romania did, to apply the decision and the regime provided for in Article 3 thereof, and to recognise as equivalent to its own visas the national visas and other residence permits issued by the other Member States to which that decision is addressed, **that Member State is required to recognise, as a rule, all the documents covered by that article for stays not exceeding 90 days in any 180-day period and may not derogate, on a case-by-case basis, from that regime.**

<sup>1</sup> Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ 2014 L 157, p. 23).

<sup>2</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1).

<sup>3</sup> 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).

Since that article of the decision, in this respect, satisfies the criteria of unconditionality and sufficient precision, the Court holds that **a third-country national holding an entry visa or a residence permit which qualifies for such recognition may rely on that provision against that Member State (direct effect).**

Nonetheless, **the passenger may not cite the decision against the air carrier which denied him boarding on the ground that entry into the territory of the Member State of destination has been refused by the authorities of that State because, in so doing, the air carrier does not act as an emanation of that Member State.** Its task is manifestly different from that of border guards under the Schengen Borders Code: it is required solely to verify whether foreign nationals hold the necessary travel documentation for entry into the territory of the Member State of destination.

Next, pointing out that, under the Schengen Borders Code, refusal of entry is subject to particularly strict formal requirements, inter alia seeking to safeguard the rights of defence, the Court states that **the fact that an air carrier denies boarding to a third-country national, in the absence of a decision refusing entry which is in writing, substantiated and communicated to the person concerned, is contrary to that code.**

Finally, the Court holds that **denied boarding based on the allegedly inadequate nature of travel documentation does not deprive, in itself, the passenger from protection under the Regulation on compensation and assistance to air passengers.** It would be contrary to the objective of that regulation, which implies a high level of protection for passengers, to confer on the air carrier concerned the power to assess and decide unilaterally and definitively whether denied boarding is reasonably justified and, consequently, to deprive the passengers in question of protection they are entitled to under that regulation. Accordingly, in the event of challenge, **it is for the competent court to assess whether such denied boarding is reasonably justified or not.**

In that regard, **the Regulation on compensation and assistance to air passengers precludes a provision, included in the air carrier's general terms, which limits or excludes its liability in the event of denied boarding for reasons relating to the allegedly inadequate nature of the passenger's travel documentation** and thus deprives the passenger of any right to compensation he or she may have.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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