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Piotr Kaźmierkiewicz

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- *To maintain high level of arrivals of the citizens of Belarus, Russia and Ukraine following the full integration of Poland with the requirements of Schengen regulations, it is necessary to consider an alternative to the current practice of issuing short-term tourist visas to eastern neighbours on a mass scale.*
- *The type of a visa should correspond to the actual purpose of travel. Short-term Schengen visas allowing transit through other EU member states ought to be granted only to persons with genuine tourist purposes. At the same time, the discrepancy between the purpose of travel that is declared by the traveller and one that is specified in the visa should be grounds for the Border Guards' refusing the entry.*
- *Poland should issue on a far greater scale national medium-term visas that would correspond to travellers' genuine needs (seasonal work, business activity or cultural and educational contacts). The visas ought to be issued far in advance, and the holder should be free to make use of the limit on length of stay within a longer validity period.*
- *An interview with a consul should precede every instance in which a visa is issued. The final decision as to granting or denying a visa would be taken by the consul after considering some framework guidelines from labour offices.*

This article aims to raise several problems resulting from the lack of coordination between the principles of the Polish visa policy and the Schengen obligations. It also outlines the activities

that are needed to work out a long-term consular policy, taking into account the needs of our eastern neighbours.

Strong sides of the Polish visa policy

The current Polish visa policy towards eastern neighbours, in particular towards the nationals of Ukraine, has been developed with one objective in mind: maintaining the number of travellers at the pre-visa level. This objective was to be served by expansion of the network of Polish consulates in Belarus, Russia and Ukraine, investment in equipment and increasing

the staff. The aim was achieved after the first few months so that the exchange of persons and goods has returned to the level characteristic of the period prior to introducing visas. Over a million of Polish visas are issued a year to nationals of Belarus, Russia and Ukraine, with two-thirds of them given to the Ukrainians, who enjoy a fee waiver.

Short-term tourist visas are only a temporary solution for managing the traffic across the eastern border

However, the policy is hampered by the temporary character of regulations currently in force. The liberal New Visa Policy for eastern neighbours was developed against the background of EU accession requirements, including the obligation to introduce Schengen standards. Eventually, upon closing accession negotiations, Poland declared that it would impose a full Schengen regime on the eastern border in the first few years of membership. It is therefore unfortunate that the debate on the need to accelerate preparations for accession to Schengen has been silent on the implications for national visa policy.

In the practice of issuing visas, as in many other fields of public life, European integration requires that the applied procedures should be rearranged and made more transparent, and that some long-term solutions should be worked out. In the years 2000-2003 experts, research centres and politicians

realized that the Schengen requirements could pose threats to the maintenance of people-to-people contacts with the neighbours with whom we are bound with historical, economic and social ties. Various proposals were put forward, some of them quite ambitious. Nonetheless, only a temporary solution was introduced, stipulating that short-term visas would be used as the main (and virtually the only instrument of entry control. The problem is that this type of visas is subject to a full Union regime so that the Polish government is bound to introduce necessary restrictions.

It must be borne in mind that many of the fundamental liberal measures for travel of Ukrainians to Poland would have to be discontinued or seriously amended when Poland accedes fully to the Schengen convention, which is forecast to take place in 2007. Introduction of visa charges would be felt most strongly, but a change in the approach of

consuls to the procedure of issuing short-term visas is also likely to be of high significance. While a short-term tourist visa is issued practically to anyone who is not found undesirable on the territory of Poland, there are no obligatory checks on potential reservations on the entry of the applicant into the Schengen states. Such checks will be standard when Polish databases are integrated with the Schengen Information System and the Polish consuls adopt the Common Consular Instruction. To make these

complicated matters simple, under the current system of issuing visas, to reject an application, the consul needs to prove the applicant's bad faith. Full integration with the Schengen system assumes that the consul may issue a visa only to persons who are able to demonstrate that they are in possession of sufficient own means of subsistence for the time of stay and that they do not represent a threat to the national labour market. In case of any doubt, the consul ought to reject the application.

Problems related to the current Polish visa policy

Introduction of a liberal procedure of issuing short-term visas two years ago practically put an end to the Polish debate on the necessary measures for regulating the movement of persons with Ukraine. Poland has not worked out a special visa regime for the borderland areas, which led to the rapid increase in demand for short-term visas at consulates in Lviv and Lutsk (more than a thousand visas are issued a day in each of them). Although Poland has supported the idea of a dedicated local traffic regime, no special national solutions have been developed (as opposed to Hungary or Slovakia). In addition, once local border traffic bilateral agreements were revoked and the European Commission took the lead in laying down the procedures for these regimes, Poland has virtually lost the opportunity for raising its profile as a country interested in this issue.

Using short-term visas as a tool of national policy does not improve Poland's image as a candidate for Schengen entry. Open declarations of the Polish diplomacy of willingness to minimize the ratio of

rejected applications were premature, especially if one considers persistent media coverage of criminal activities in the vicinity of the Polish consulates in Lviv and Lutsk. Technical approach to the problem is highly insufficient—introducing administrative solutions (queuing systems, online registration) will not address the fundamental issue—lack of a comprehensive visa policy that would be clear both to the state administration, applicants and international partners.

Three pillars of the national visa policy

Around a year and a half is left for working out solutions that would help avoid the threats related to Poland's entry into the Schengen system. Instead of wasting the consuls' working time on processing the hundreds of thousands of applications for short-term visas, maintaining fictitious requirements of possessing considerable financial means for entry into Poland, and investment into the infrastructure for crowds of applicants for Schengen visas, our country needs a package of national visa policy solutions for residents of a broader area within the Polish cultural and economic attraction (Kaliningrad, western districts of Belarus and Ukraine). There is an agreement among the experts that the Polish economy benefits from stable interest of our closest neighbours in seasonal labour and cross-border trade. Schengen accession provides an opportunity for adjusting the visa policy to these realities. In this context, I postulate three fundamental changes, which should prevent a conflict of the Polish visa policy with the Schengen obligations and build foundations for effective management of the movement of persons on the eastern border that has served as the demonstration of our country's EU membership. Our policy should therefore adjust the type of visas to the actual purpose of travel, develop an array of medium-term visas and grant broad decision-making powers to the consuls in the assessment of an application on the basis of an obligatory clarifying interview.

a. Adjusting the type of visas to the actual purpose of travel

First of all, we ought to abandon the tradition of facade-like regulations that ignore the real state of affairs instead of calling things by their real names. The most important problem of current procedures consists in accepting in good faith the travellers' declarations regarding the purpose of their trip or in attempts at fitting the genuine purpose into the categories borrowed from the Schengen visa model.

Short-term visas subject to the Schengen system requirements, which permit transit across other EU Member States, ought to be issued only to persons with genuine tourist purposes for travel. This limitation is justified on a number of grounds:

- the price of the Schengen visas is too high considering the income levels found in the regions neighbouring Poland,
- the validity period of under three months does not meet the needs of the majority of travellers who are interested in maintaining permanent cross-border contacts,
- taking up employment or conducting business activities on the basis of a tourist visa may be grounds for cancelling the visa,
- issuing tourist visas on a mass scale would breach the „spirit” of the Schengen consular instruction in view of the possibility for transit travel once controls are lifted on the borders with the Czech Republic, Germany and Slovakia.

Opinions which recur in the national debate announcing an existing opportunity for „adjusting”

the Schengen requirements to the needs of the Polish visa policy, including facilitating measures for the citizens of Ukraine, only reinforce an illusory belief. Following a visa scandal in Germany and negative signals for further EU enlargement, it is hard to expect a light treatment in the application of the Schengen restrictions. Considering the fact that border controls with the Schengen states are going to be lifted initially on a trial basis with the option of being reintroduced, we should at all costs avoid a scenario in which tourist visas issued by the Polish consuls should facilitate illegal migration westwards.

Medium-term visas ought to become the basic document enabling the residence on the Polish territory of the majority of the citizens of neighbouring states. Such visas valid for 91 to 365 days should be issued with reference to the genuine purpose of travel: seasonal work (with simplified formalities for the employer and the employee), trade exchange (up to a certain turnover value) and personal or business reasons (based on a detailed exhaustive list).

b. Developing a range of medium-term visa types

Secondly, to lower the pressure on consulates, opportunities should be made for issuing visas far in advance (e.g. six months early). This postulate considers the mentality stemming from the period of shortage economy where any limits on goods availability encouraged efforts at obtaining them „just in case”. We should not hesitate to issue visas with longer validity, allowing a relatively short period of stay (e.g. for family visits). Although the period of validity would be up to a year, the visas would permit a proportionally shorter period of actual stay.

This practice has been used by Polish consuls while issuing short-term visas for the designated period of stay shorter than the maximum 90 days, taking into account the actual needs of the travellers and the state interest.

By clearly differentiating among visas based on the purpose of travel, it is going to be possible to enforce entry controls truly effectively. The current system is insufficiently transparent to allow the Border Guards to take effective and predictable decisions on the refusal of entry. Tourist visa holders do not take the category of the purpose of travel seriously enough so that visas are cancelled by the border services when the travellers declare a purpose that is at variance with that shown in the visa. In the future, entry should be refused to a strictly identifiable group of persons based on the evidence such as incompatibility of documents. This would have fundamental importance for evoking respect for visa procedures among the travellers (including declarations of genuine travel purposes) and for turning Polish visas into more trustworthy documents meeting Schengen standards, accepted by the services of other states participating in the system.

At present, the Polish law, following the Union standards, fails to identify medium-term visas as a separate set, making them a part of the long-term category. I do not call for changes in this area as the notion of ‘medium-term visas’ only reflects the specific needs of the travellers from the East. In fact, making this type of long-term visas more widely available depends on the acceleration of work on the regulations of foreigners’ seasonal employment and bilateral agreements with the neighbouring countries.

c. Granting broad decision-making powers to the consuls

It may be forecast that as the Schengen computer system enters the Polish consuls' practice, the decision-making time on short-term visas is going to decrease, and the workload should additionally diminish as the demand drops due to higher costs for applicants. In light of the above, the consuls' experience in holding interviews with the applicants should be utilized in the process of issuing medium-term visas, which ought to become the basic document of residence in Poland for the majority of the neighbouring states' nationals. National medium-term visas should be issued on the basis of a detailed interview held by the consul.

Consuls know the local conditions in the area of origin of the applicants for visas permitting employment or trade. They are able to verify information supplied in the applications far better than officials in Poland given their contacts with institutions of the country of origin (e.g. passport-issuing offices). It is also significant that during the

interview the consul may assess the likelihood of effective integration of a person on the Polish labour or trade markets and briefly present to the applicant the difficulties related to trade or labour migration as well as notify of legal and economic effects of illegal employment. An early interview with a person interested in employment may save costs both to the potential traveller and to the Polish State. Legislation on seasonal work needs to specify the procedure of obtaining work permits in such cases. Given the scale of the phenomenon, it appears reasonable to shorten to the minimum the process of getting the permit (e.g. to two weeks) by introducing the principle that the consul would take the final decision after consulting the labour office in the destination on the situation on the local labour market.

Benefits from having a clear and coherent national visa policy

In the final account, a new Polish visa policy should embody to the eastern neighbours EU standards of the rule of law and, regardless of the level of restrictions, it should provide an example of fairness and predictability. The debate so far has been replete with the arguments that the Polish liberal visa policy has a positive influence on Ukraine's Euroatlantic orientation. This objective has certainly not been served by the evident passivity

of the Polish decision-makers in the runup to some inevitable changes in the visa policy related to the entry into Schengen. There is certainly enough time left for working out the needed changes in the set of procedures so that the Schengen requirements do not take either the officials or the applicants by surprise. The current state in which we wait for decisions from Brussels, maintaining an artificial divide between the issues of entry into the Schengen zone and the

Polish visa policy towards eastern neighbours does not bode well in this regard.

Differentiating visas by the actual purpose of travel and limiting the practice of using tourist visas for long-term business activity or employment is going to be a major step towards civilizing the sector of economy that, as one of the few, remains beyond state control. Lack of reliable data on the real scale of foreigners' employment or trade in Poland on the one hand hampers efforts at conducting a migration policy, which has been experts' postulate for years. On the other hand, illegal employment or semi-legal trade do not serve the travellers themselves as they are thus not immune to deportation. Another serious argument in favour of legalizing the employment and trade is an increase in state budget revenue—not through raising visa fees but through an even minimal tax on seasonal work and introduction of genuine marketplace fees and lump-sum tax on small-scale activity related to cross-border trade.

Piotr Kaźmierkiewicz is an expert at the Migration and Eastern Policy Programme of the Institute of Public Affairs.

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Editor: Mateusz Fałkowski
e-mail: mateusz.falkowski@isp.org.pl
Layout design: Andrzej Jasiocha
e-mail: jasio70@interia.pl

Institute of Public Affairs
Address: 5 Szpitalna St., # 22
00-031 Warsaw, Poland
e-mail: isp@isp.org.pl
www.isp.org.pl