



30.11.2016

NOTICE TO MEMBERS

Subject: Petition No 0789/2015 by Andrei Sumar (Belarusian) on behalf of the Fundacja RENESANS.BY Belarusian opposition movement, concerning the trafficking of Polish visas, in Belarus

1. Summary of petition

The petitioner expresses concern at the illegal trafficking in Polish visas in Belarus, indicating that the use of illegal intermediaries significantly increases the price thereof. He also expresses concern at infringements of fundamental rights allegedly occurring in the Linię refugee camp in Poland. In both cases, legal proceedings were initiated unsuccessfully before a Polish court.

2. Admissibility

Declared admissible on 4 March 2016. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 November 2016

The petitioner has been writing regularly to the Commission since September 2015. In all his correspondence he repeats the same accusations directed towards Polish consular offices in Belarus, as well as to the Polish Ministry of Foreign Affairs and President Donald Tusk in his previous capacity as Prime Minister of the Polish government.

The petitioner raised three separate issues which he wanted the Commission to investigate. The Commission is not in a position to provide an answer on the matter related to the alleged fraud concerning the issuing of national (long-stay) visas by the Polish consulate in Belarus, as this is a matter of exclusive national competence. The Commission is also not competent to deal with the issue of alleged assassinations. The Commission informed the petitioner of the need to address these issues to - respectively - the competent Polish authorities, and to the law enforcement/judicial authorities competent regarding the alleged assassination.

As regards the issues linked to the common visa policy, namely to the alleged 'visa fraud' occurring in Polish consulates in Belarus, the Commission investigated the matter, as it concerns the application of EU law in the visa policy area. The Commission has provided answers to the petitioner on several occasions.

In particular, replies were sent to the following letters:

- letters addressed to the President of the European Commission, Mr. Jean-Claude Juncker, of 25 September, 21 October, 17 November, 8 December, 17 December, 18 December 2015, as well as of 22 February, 13 March, and 3 April 2016;
- letter addressed to the High Representative of the Union for Foreign Affairs and Security Policy, Ms. Federica Mogherini of 6 October 2015;
- letter addressed to the Commissioner for Migration and Home Affairs, Mr. Dimitris Avramopoulos, of 3 April 2016.

The Commission's reply dated 17 December 2015¹ explained that the European Commission had been aware of the problems linked to the use of a system for booking appointments in Polish consulates in Belarus, and had been in contact with both the Polish and Belarusian authorities in order to remedy this situation. Following the analysis conducted by Commission services, it was concluded that the Polish consulates in Belarus issue visas in compliance with the procedures set out in the Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas. The Commission informed the petitioner that following the European Commission's analysis of the situation, nothing indicated the existence of any illegal or corrupt activities by Polish officials in relation to the issuing of visas in the Polish consulates in Belarus.

The Commission's reply dated 26 January 2016² confirmed that it had already provided replies to petitioner's previous letters to the President of the European Commission of 25 September, and 21 October, on 17 December 2015 to the address indicated in all correspondence with European Institutions.

The Commission's reply dated 23 February 2016³ re-confirmed the replies provided to the questions repeatedly posed by the petitioner. The two above-mentioned replies concerned also letter of 17 November 2015 addressed to President Juncker, as well as the letter of 6 October 2015, addressed to High Representative of the Union for Foreign Affairs and Security Policy, Ms. Federica Mogherini. The Commission informed the petitioner that it considered that the replies already sent presented a comprehensive picture of the situation concerning the problems linked to the use of the system for booking appointments in Polish consulates in Belarus. As regards the petitioner's request for compensation for damages payable to the government of Belarus and to the non-governmental organisation which he is heading, namely the Foundation RENESANS.BY, the Commission informed the petitioner that he was free to take any legal action which he might consider appropriate.

As none of the arguments in the petitioner's letter of 22 February 2016 and e-mail of 13 March 2016 provided elements to justify a re-evaluation of the above conclusions, the Commission therefore reiterated and confirmed what has been indicated in its replies to the Petitioner dated 17 December 2015, January 26, and 23 February 2016.

¹ ARES(2015)5925685 of 17 December 2015

² ARES(2016)423097 of 26 January 2016

³ ARES(2016)935826 of 23 February 2016

The Commission, in accordance with the Code of Good Administrative Behaviour for staff of the European Commission in their relations with the public, informed the petitioner on 18 March 2016¹ that it was possible for the Commission to discontinue the exchange of correspondence with any person who has been provided with the Commission's consistent position and who repeatedly raises issues already addressed without providing any new relevant arguments.

On 18 April 2016, Director for Migration and Mobility in Directorate General for Migration and Home Affairs, Ms. Belinda Pyke, replied to the e-mail correspondence of 3 April 2016, addressed to the President of the European Commission, Mr. Jean-Claude Juncker, and to the Commissioner for Migration and Home Affairs, Mr. Dimitris Avramopoulos. In her letter² she fully confirmed the content of the letter on the discontinuation of correspondence dated 18 March 2016 and signed by Ms. Yolanda Gallego-Casilda Grau, Head of Unit Visa Policy in DG HOME. She reiterated that none of the arguments in the e-mail sent by the petitioner on 3 April 2016 provided elements allowing for the re-evaluation of the conclusions already shared.

Following this exchange, on 1 July 2016 the petitioner wrote a letter on the same issues to the First Vice-President of the Commission, Mr. Frans Timmermans. Given that no new facts were presented in that letter, the Commission has decided not to answer it, given the previous decision on discontinuation of correspondence, communicated to the petitioner on 18 March 2016 and confirmed on 18 April 2016.

Conclusion

The petitioner alleges irregularities without providing the details necessary to investigate them. The Commission received only isolated complaints regarding this issue, which provided no evidence of a systematic violation of EU law. The Commission has, however, investigated the issue of the difficulty to obtain an appointment in Polish consulates in Belarus in 2012 and 2015. The Commission analysed the compliance of the Polish appointment system in place in Belarus with the deadline for scheduling an appointment set out in Article 9(2) of the Visa Code. The investigation confirmed the existence of irregularities. However, it was established that the Polish authorities were taking the necessary steps to remedy the situation. The opening of visa application centres run by the external service providers in Belarus substantially improved the access of visa applicants to lodge their visa applications.

Given that the Commission services have no proof of the alleged existence of a criminal network selling Schengen visas in Belarus, as explained in the Commission's replies to the petitioner dated 17/12/2016, 26/01/2016 and 23/02/2016, and taking into account that the petitioner failed to present any new facts that could alter the results of the Commission's investigation, the Commission decided to discontinue correspondence with the petitioner and informed him about this decision on 18 March and 18 April 2016.

¹ ARES(2106)1367361 of 18 March 2016

² ARES(2016)1824067 of 18 April 2016