Administrative case no. eAS-312-552/2020
Court hearing no. 3-61-3-00957-2020-8
Procedural decision category 43.5.1.1

LITHUANIAN SUPREME ADMINISTRATIVE COURT

V E R D I C T

May 6, 2020
Vilnius

A panel of judges from the Lithuanian Supreme Administrative court, constituted of the judges Laimutis Alechnavičius, Ramūnas Gadliauskas (reporter) and Arūnas Sutkevičius (chief judge of panel),

during trial by written procedure considered plaintiff Grant Arthur Gochin's separate suit regarding the finding of the Vilnius District Administrative Court's of March 17, 2020, in the plaintiff Grant Arthur Gochin's suit against the Center for the Study of the Genocide and Resistance of Residents of Lithuania for changing the latter's finding.

The panel of judges

d e t e r m i n e d:

I.

The plaintiff Grant Arthur Gochin submitted to the Vilnius District Administrative Court a complaint asking for the annulment of a finding by the Center for the Study of the Genocide and Resistance of Residents of Lithuania (hereinafter Center) dated December 17, 2019, regarding the activities of Jonas Noreika in the anti-Nazi underground (hereinafter Finding).

II.

In its decision of March 17, 2020, the Vilnius District Administrative Court declined hearing the plaintiff's suit based on article 33, section 2, point 1 of the Law on Administrative Case Procedure (hereinafter LACP) of the Republic of Lithuania.

The lower court of first instance in ruling on the issue of hearing the plaintiff's suit took into account the jurisprudence of the Lithuanian Supreme Administrative Court under which a document written by a public administration subject which does not contain orders (obligations placed on a person) by the public administrative subject cannot be a matter for trial, and that a case which disputes such a document should not be considered by the courts (e.g., see the March 10, 2011, verdict in administrative case no. AS^{62}-180/2011, the May 21, 2012, verdict in administrative case no. AS^{858}-336/2012 and etc.)

The court determined from the contents of the disputed Finding that the Center prepared the finding on December 17, 2019, in which the facts known to the Center concerning Jonas Noreika's activity in the anti-Nazi underground are laid out. The court judged the disputed Finding is informational and not a decision-making document. The court noted that at the stage of accepting the complaint for a hearing, the Finding did not have any legal consequences for the plaintiff, did not affect his material rights or duties, the Finding doesn't contain any formulae regarding mandatory behavior by the plaintiff and it only presented information without any mandatory actions. The court points out this Finding is intended for the wider public and no specific person or agency is mentioned

in it for which it was intended, nor did it contain any means for making complaint against it. Taking into consideration the facts determined, the court declined accepting for hearing the plaintiff's complaint as lying outside the competency of the administrative courts (article 33, section 2, point 1 of the LAPC).

III.

The plaintiff filed a separate suit in which he requested the finding of the Vilnius District Administrative Court of March 17, 2020, be annulled and that the issue of accepting the plaintiff's suit for trial be solved.

The plaintiff disputes the court's finding that the disputed Finding is of an informational nature and hold no legal consequences for him. The plaintiff says the court failed to take into account the defendant under the Law on the Center for the Study of the Genocide and Resistance of Residents of Lithuania defines the institution as an academic/educational agency and that it does not author nor does it approve acts of a decision-making nature. The Center prepares official academic information on the genocide and resistance of residents of Lithuania for the public.

The plaintiff believes in this case the information the Center prepared on Jonas Noreika and other people is not academic, that it is misleading and that it dishonors the memory of Holocaust victims. The plaintiff observes that according to the conclusions reached by the court, neither the plaintiff nor any other person (Lithuanian citizen) has the right to appeal the historical findings prepared and published by the Center because they only contain official information for the public. The plaintiff believes he has good basis for demanding the Center annul the historical finding because it does harm to him, demeaning the memory of the plaintiff's relatives who died, and exalting Jonas Noreika as the commander and founder of a network for rescuing Jews.

The panel of judges

d e c l a r e s:

IV.

The plaintiff filed a separate suit concerning the Vilnius District Administrative Court of March 17, 2020, by which that court declined hearing his suit based on article 33, section 2, point 1 of the LACP.

The panel of judges first of all noted the right to appeal to the court enshrined in article 5, section 1 of the LAPC can only be implemented in the manner prescribed by law, i.e., by conforming to the conditions defined in laws (in this case the LAPC) for going to court. Article 33, section 2 of the LAPC provides a list of instances according to which, if they are present, the court declines hearing a suit. If the court before accepting for trial a case established there is even one of these instances present, it must decline to hear the case in a well-reasoned finding. One such instance is when the complaint should not be heard by the courts in the manner prescribed by the LAPC (LAPC article 33, section 2, point 1).

According to the jurisprudence of the Lithuanian Supreme Administrative Court, if at the stage of considering for trial a case it is clear the disputed act or action has not caused any legal consequences, the complaint can be declined for a hearing, and if the complaint has been accepted for a hearing, to withdraw the administrative case as not within the jurisdiction of the administrative courts, since, if cases are considered regarding acts or actions which cannot cause legal consequences, the court is unable to defend the person's rights, because even in the case of finding in favor of the suit, the scope of the person's rights and duties would remain unchanged, and the procedure would be essentially in vain (e.g., see the April 6, 2010, verdict in administrative case no. AS^{822}-172/2010; the verdict in the October 22, 2010, administrative case no. AS^{143}-560/2010 and etc.).

It should be noted that according to general principle the administrative court at the stage of accepting or declining a case is not able to assess whether a person's rights have in fact been violated, and cannot decline hearing a case by declaring a person's rights have not been violated. Exceptions

to this general principle can be in connection with specific obvious criteria, when at the stage of considering a case for a hearing there is no reasonable doubt the subject of the suit is not within the competency of the administrative courts. These sorts of exceptional cases, however, must be accompanied by extremely well-reasoned indications (e.g., see the April 13, 2016, verdict of the Lithuanian Supreme Administrative Court in administrative case no. AS-410-438/2016, the December 7, 2016, verdict in administrative case no. AS-738-143/2016, the February 22, 2017, verdict in administrative case no. AS-186-822/2017).

The panel of judges, having assessed the arguments in favor of the plaintiff's complaint and his separate complaint as well as the contents of the Finding which the plaintiff sought to dispute, agrees with the finding by the lower court of first venue that this Finding by the Center which contains no injunctions or orders from a public administration subject (obligations upon the plaintiff) is just a document of an informational nature and of itself poses no legal consequences upon the plaintiff, and therefore it should not be considered a complaint against an administrative act in the manner defined in the LAPC. Although the plaintiff in both his suits for the court of first instance and in his separate suit claims the Finding is misleading and dishonors the memory of the victims of the Holocaust, these arguments do not provide foundation for the conclusion the Finding in dispute constitutes a new individual administrative act holding legal consequences for the plaintiff.

It should be noted that the Lithuanian Supreme Administrative Court in its verdict of APril 1, 2020, in administrative case no. eA-1768-624/2020, assessing the plaintiff's demand the Center's letter no. 14R-52 "On the provision of information" dated July 18, 2018, in which the Center presented its position regarding the actions of Jonas Noreika in Žemaitija and his possible influence over the mass murder of Jews, stated that the plaintiff's letter of June 15, 2020, to the Center in which he categorically calls for the redaction of the Center's document "Historical Finding on Jonas Noreika's Activities in World War II" is not connected with the Center's activities which can be categorized as public administration, that it should be considered neither a request nor a complaint in terms of the Lithuanian Law on Public Administration, and that therefore the demand the Center's letter no. 14R-52 of July 18, 2018, which responded to the plaintiff's letter of June 15, 2018, be annulled is not a matter for consideration by the courts according to the regulation set down in the LAPC.

It is the belief of this panel of judges that the Lithuanian Supreme Administrative Court's finding contained in the April 1, 2020, verdict in administrative case no. eA-1768-624/2020 is relevant in this case under consideration. The Center as a state agency carries out activities which fall under both public administration (recognizing the legal status of freedom fighters and victims of genocide and caring for them) and which fall outside public administration (for example, research in the fields and periods defined). The plaintiff in this case is essentially seeking the same legal remedies as in administrative case no. eA-1768-624/2020, i.e., changing the Center's findings on Jonas Noreika's activities in the anti-Nazi underground. Therefore, having assessed the established facts and the legal jurisprudence in this case, there is no foundation in this case to consider the Center's finding of December 17, 2019, on the anti-Nazi underground activities of Jonas Noreika an individual administrative act in the sense this is defined in the Lithuanian Law on Public Administration.

Summarizing the facts as laid out and the conclusions reached, the panel of judges declares the finding of the court of first instance was well-founded and correct, for which there is no legal basis to annul it according to the arguments of the separate suit. For the reasons explained, the disputed finding of the court of first instance of March 17, 2020, is left unchanged, and the separate suit by the plaintiff is rejected.

Based on article 154, point 1 of the Lithuanian Law on Administrative Case Procedure, the panel of judges

r u l e s:

To reject the separate case by plaintiff Grant Arthur Gochin.

To leave in place the Vilnius District Administrative Court's verdict of May 16, 2020.

There is no appeal to this verdict.

Judges Laimutis Alechnavičius

Ramūnas Gadliauskas

Arūnas Sutkevičius