



VILNIUS CITY DISTRICT COURT

FINDING

June 8, 2020
Vilnius

Vilnius City District Court judge Urmila Valiukienė considered through written trial procedure the issue of accepting the suit by plaintiff Grant Arthur Gochin against the budgetary enterprise the Center for the Study of the Genocide and Resistance of Residents of Lithuania regarding the annulment of historical findings.

The court

d e t e r m i n e d :

The court received a claim by plaintiff Grant Arthur Gochin against the defendant the budgetary enterprise the Center for the Study of the Genocide and Resistance of Residents of Lithuania in which the plaintiff requests historical findings prepared by the defendant be recognized as illegal: the October, 2015, finding "The Activities of Jonas Noreika in Nazi-Occupied Lithuania;" the March 27, 2019, explanation "On Accusations against Jonas Noreika;" and the December 17, 2019, finding on Jonas Noreika's activities in the anti-Nazi underground; to remove public access to these findings of history from the defendant's internet site and to award legal expenses to the plaintiff.

The claim should not be accepted [for trial].

Based on article 137, section 2, point 1 of the Civil Procedures Code, the declines to consider a claim if the dispute should not be tried under the civil procedure.

One of the main principles of civil procedural law is the principle of access to legal defense, which means every person who believes his rights have been violated is guaranteed and given access to legal defense. But this constitutional right of the person to go to court for legal remedy cannot be understood as the ability to approach the court in any way and/or in any manner. The contents of article 30, section 1 of the Lithuanian constitution and article 5, section 1 of the Civil Procedures Code is the right of every interested person to approach the court in the manner prescribed by law to defend his violated or disputed subjective material rights or interest protected by law. Article 2, section 1 of the Civil Procedures Code determines that the defense of people whose material subjective rights or interests protected by law have been violated or disputed is the goal of civil procedure enshrined in law.

From the claim and appended documents presented, it is clear the plaintiff questions the truthfulness of documents prepared by the defendant, the Center for the Study of the Genocide and Resistance of Residents of Lithuania, i.e., the October 25, 2015, finding "The Activities of Jonas Noreika (General Storm) in Nazi-Occupied Lithuania;" the March 27, 2019, explanation "On Accusations against Jonas Noreika (General Storm); and the December 17, 2019, finding on Jonas Noreika's (General Storm's) actions in the anti-Nazi underground, even though the demand is made

to recognize these documents as illegal.

The activity of the defendant, the Center for the Study of the Genocide and Resistance of Residents of Lithuania, its tasks, functions, legal status, structure and labor organization, is defined by the Lithuanian Law on the Center for the Study of the Genocide and Resistance of Residents of Lithuania (hereinafter Law). The Center for the Study of the Genocide and Resistance of Residents of Lithuania (hereinafter Center) is a state enterprise researching all expressions of genocide and other crimes against humanity and war crimes, the persecution of Lithuanian residents during the periods of occupation, and also armed and peaceful resistance to the occupations, and initiates legal judgment of organizers and executors of genocide (Law, in effect until December 31, 2015, article 2, section 1), and which also researches the policies carried out by the occupational regime in the Vilnius area from 1920 to 1939 as well as opposition to these policies, and the aggression committed by the USSR and its consequences following Lithuanian independence (Law, in effect until December 31, 2015, article 2, section 1). The Center's tasks are the restoration of historical truth and justice, research on the physical and spiritual genocide of residents of Lithuania carried out by the occupational regimes from 1939 to 1990 and resistance to these regimes, commemoration of freedom fights and victims of genocide, and initiation of legal judgment of the consequences of occupation. The Center also investigates the policies carried out by the occupational regime in the Vilnius area from 1920 to 1939 and resistance to it, and aggression committed by the USSR and its consequences following the restoration of Lithuanian independence (article 4, Law). The Center in fulfilling its assigned tasks performs the following functions: carries out research into the defined time-periods and fields; commemoration of freedom fighters and victims of genocide; and executes the recognition of the legal status of freedom fighters and victims of genocide and cares for their welfare (article 5, Law). In the finding by the Lithuanian Supreme Administrative Court of May 6, 2020, which left unmodified the ruling of the Vilnius District Administrative Court of March 17, 2020 (in administrative case no. eAS-312-552/2020), it is shown the Lithuanian Supreme Administrative Court's conclusion of April 1, 2020, in administrative case no. eA-1768-624/2020 is binding, which says the Center as a state enterprise carries out activities which are categorized both as administrative (recognition of the legal status of freedom fighters and victims of genocide and caring for their welfare) and as not public administration (for example, research into the designated time-periods and fields).

In this case it is obvious the historical findings disputed by the plaintiff are documents which arise from the research activities of the defendant. These documents do not make a statement about the plaintiff or his relatives, the documents are dedicated to research on the activities of Jonas Noreika during the period of occupations. From the contents of the documents which constitute the matter of the dispute, it is clear the disputed documents do not raise any legal consequences for the plaintiff and do not affect his material rights and/or duties. Thus, recognizing them as illegal doesn't affect the plaintiff's subjective rights and/or duties either. The plaintiff's assertion that his relatives suffered from the Holocaust does not mean the disputed documents authored by the Center concerning Jonas Noreika (General Storm) have violated the rights or legitimate interests of the plaintiff. The individual's rather abstract kind of interest doesn't equate to an interest which should be defended in court. The plaintiff hasn't indicated which specific subjective right has been violated and needs to be defended. The complaint presented by the individual, unconnected with the defense of his subjective rights, is not a matter for consideration by the courts.

Implementation of the right to legal defense achieves a material legal effect, i.e., the subjective rights or duties of the interested person are modified (created, annulled, changed). A demand which does not cause material legal consequences cannot be an independent matter for consideration of a case, because its consideration and a favorable finding would not constitute implementation of the right to legal defense [the right to a trial in court]. The plaintiff's standing [interest] expressed in the demands of the claim cannot be abstract, but must be based on the arising of specific material legal consequences touching upon the plaintiff's rights being defended or his legitimate interests. Therefore, in cases where the person goes to the court with a demand whose granting would not give rise to material legal consequences, the court depending on the procedural

situation, must decline to accept such a demand as inappropriate for consideration by the court (article 137, section 2, point 1 of the Civilian Procedures Code), or reject a civil suit on the same basis (article 293, article 1, point 1 of the Civil Procedures Code) if it has already been accepted for a hearing. The jurisprudence of the Lithuanian Supreme Court says these kinds of actions by the court cannot be adjudged a violation of the interested party's right to legal defense [to a remedy by the courts] because, if the court accepted and considered the demand, the right to legal defense [remedy] would not be implemented. In that event, the scope of the rights and duties of the parties in the case would not change, and the process itself would be basically meaningless.

It is clear from the text of the claim presented by the plaintiff that the plaintiff's claim is an attempt to deny the historical context and to direct the interpretation of events towards the direction of his own personal opinion, based on selectively [cherry-picked] selected information which, moreover, was taken into account by the defendant in drafting its explanation of March 27, 2019, and this is not the goal or the function of civil procedure. The civil procedure is not intended for academic historical discussion or a judgment on its findings.

Based on the aforementioned, the conclusion must be drawn that the case of the complaint by the plaintiff, expressing a demand which has no material legal consequences for the plaintiff, is not a matter for civil court procedure, and there the complaint should be rejected (article 137, section 2, point 1 of the Civil Procedures Code).

The court, based on article 137, section 2, point 1 and articles 290 to 292 of the Civil Procedures Code,

r e s o l v e s:

To decline plaintiff Grant Arthur Gochin's claim against the defendant the budgetary institution the Center for the Study of the Genocide and Resistance of Residents of Lithuania for the annulment of historical findings.

This finding may be appealed within 7 days of receipt of an official copy of the finding through separate appeal to the Vilnius District Court by passing the claim to that court via the Vilnius City District Court.

Judge

Urmila Valiukienė