

Section I

Lithuanian High Administration court's board of judges which consists of judges Audrius Bakaveckas, Dainius Raidzys (chairman of the board) and Skirgaile Zalimienė (the speaker), and the secretary Lilija Andrijauskaite, also present are the attorney of Grant Arthur Gochin – Laura Altun, and Agne Urmaviciene, the representative of defendant – Migracijos Departamentas.

The board analyzed the appeal in a public case in which Grant Arthur Gochin appealed the 2010 September 23 decision of the Vilnius municipality administrative court in which Grant Arthur Gochin is seeking the MD to overturn its previous decision.

The (previous) court has found that:

The claimant, Grant Arthur Gochin (from here onward – the claimant) has brought a case to the court in which he asks to: 1) Overturn the September 21st 2010 decision of MD (from here onward – the MD decision); 2) To oblige the MD to re-evaluate the case of the claimant regarding his right to Lithuanian Citizenship according to the law which states that people who had relatives living in Lithuania prior to 1940 June 15th have the right to retain Lithuanian citizenship and to admit that the claimant is the grandchild (born on 1963 November 2nd in SA, Port Elisabeth) of Samuil (Samuel) Gochin.

The claimant notes, that on 2009 June 22nd he made contact with the defendant with a request to issue him the certificate that the claimant has the right to regain Lithuanian citizenship on the grounds that the grandfather of the claimant, Samuel Gochin, has had Lithuanian citizenship prior to 1940 June 15th. He also notes that the MD has made a completely unjustified decision to dismiss the documents provided by the claimant which prove the family link between him the claimant and his grandfather.

The claimant has noted, that in this case the discussion is not about whether or not Samuel Gochin has had Lithuanian citizenship (because the MD has admitted this fact). The question being argued in this case is whether or not the decision by the MD not to issue the certificate of Lithuanian citizenship retention to the claimant, on the basis that there is insufficient data provided to prove the family link between the claimant and his grandfather, is justified.

From the South African issued birth certificate it is evident that the claimant was born on 1963 November 2nd in Port Elisabeth. His parents are Harold Gochin and Sandra Joan Smollan. Harold Gochin's father is Samuel Gochin, who was born in Lithuania and who was Lithuanian citizen. This is proven by the birth certificate translation of Harold Gochin and information retrieved

from from a birth act #17 dated to 1923 which shows that a son was born on 1933 June 13th in Port Elisabeth in the family of Samuel Gochin and his wife Dora Rummel and that his name was Harold. It was also noted that the information given in birth metrics and in the birth act of claimant's father is identical, i.e. from the aforementioned documents it is evident, that when the claimant was born in 1963, his father, Harold Gochin (b. 1933) was 30 years old.

In the case is also provided the death certificate of Samuel Gochin with an apostille. From the death certificate it is evident that he was born on 1984 June 2nd and died in Port Elisabeth due to illness. The aforementioned document was issued to the claimant due to the fact that he is Samuel Gochin's relative. It was also noted that the grandfather of the claimant, Samuel Gochin, was born in Papile, Lithuania(in what was then Kaunas municipality). His birth should have been registered in the Papile Jewish community books, however the books cannot be retrieved for objective reasons that are out of claimant's control – the Papile Jewish Community books were destroyed during the first world war. This fact was attested by a document #P2-8908 from Lithuanian history archive which says that the Papile Jewish community books are not present in the archive from the period Samuel Gochin was born and therefore it is impossible to retrieve a document that would prove the birth of Samuel Gochin. During the war, Samuel Gochin was exiled to Russia by the Tzar government along with his family and many other Lithuanian Jews. It is known that in the end of 1-st world war the family ended up in Kharkov, Ukraine, from where they returned to Papile in 1922.

Migration Department was provided with a file # 53 from Siauliai City municipality, with information about issued passports from 1926 January – March. In this file it is mentioned that in 1926 January 15th, Samuel Gochin, who was born in Papile was issued a Lithuanian internal passport. This passport was never retrieved and it is likely that it went missing during the war along with other personal documents of Samuel Gochin. On 1926 March Samuel Gochin left for South Africa and due to factors that were out of his control he was never able to return to Lithuania. It should be noted that people who were leaving Lithuania and were older than 17 must have had a passport. It is evident that Samuel Gochin did indeed have an internal passport issued in 1926 January 15th. His exact birth date and place must have been mentioned in that passport.

The claimant explained that due to objective reasons it is impossible to provide the court with the passport of claimant's grandfather, where his birth date and place could be confirmed, but this information is already visible from other documents. It is clear, that the defendant's argument that only the information sheet with a list of issued Lithuanian passports where the birth place and date of claimant's grandfather is shown is not only unfounded, but also even absurd.

The claimant is seeking to be issued the certificate of the right to Lithuanian citizenship retention, which would prove the future generations the roots and history of claimant's family. Analysis of documents from the archives reveals that grandfather of the claimant Samuel Gochin did undertake service in the army of independent Lithuania. In the spring of 1924 Samuel Gochin was called by Siauliai municipality army recruiting commission to undertake his obligatory military service. He was sent to the 5th infantry regiment called "Lithuanian Grand Duke Kestutis" in Kaunas. Due to his health, he was nearly immediately sent to Jonas Basanavicius war hospital in Kaunas. He was treated in the hospital for a month and the doctor responsible for his treatment recommended to discharge him from the service and move him to the reserve. The aforementioned facts are confirmed by the documents in the personal illness history of Samuel Gochin. The claimant has also managed to find a photograph of his grandfather wearing Lithuanian army uniform.

The claimant notes, that along with the case are also provided the letters of Samuel Gochin's relatives to the Migration department which reveal that the family history of the claimant is well known to other relatives. The aforementioned accounts from the relatives reveal that it is well known fact that Samuel Gochin was born in Lithuania, Papile, that he married a girl called Dora Rummel from Latvia and that they had two sons together: Harold Gochin (father of the claimant) and Arnold Gochin (uncle of the claimant). Arnold Gochin's birth certificate is also provided and it shows that the claimant's grandfather had a son called Arnold Gochin.

The claimant thinks, that the Migration Department's decision to turn down his request was unambiguously unfounded. The defendant's decision was motivated solely by the argument that there is lack of evidence to prove the family link between Grant Arthur Gochin and Samuel Gochin. This argument cannot be considered valid, because the official birth and death certificates, other metrics, and genealogical research has concluded only the fact that Samuel Gochin is the grandfather of Grant Arthur Gochin.

The Migration Department was provided, along with the request, of all available documents, that prove that the grandfather of the claimant is Samuel Gochin and therefore, by applying the law of Lithuanian citizenship retention (from here onward the Citizenship law) 17th article, which describes the process of Lithuanian citizenship retention, the decision by the defendant is unfounded.

The defendant did not agree with claimant's complaint and asked to dismiss it as without merit. In the response (b. 1. 62-64) the defendant notes that the decision of defendant that is being appealed was made by keeping all relevant laws in mind and is therefore justified. In the decision that is being appealed the motive to turn down claimant's request is clearly stated – Grant Arthur Gochin did not save his right to Lithuanian citizenship because there is insufficient data to prove the family link between him and Samuel Gochin.

The defendant noted, that the claimant does use his own convictions, and not laws that are currently in place in his motives to overturn the decision taken by the MD. The MD also noted that Lithuanian administrative law (from here onward – ABTI) 89th article provides the cases when the decision being appealed can be changed. The decision being appealed in this case is, according to MD, rightful and lawful so there is no reason to change it.

The defendant has pointed out, that 17th article of the Citizenship law states that people who save the right to Lithuanian citizenship are the descendants of people who had Lithuanian citizenship before 1940 June 15th. The 14th article of the law states that the request to issue the certificate of Lithuanian citizenship retention must be provided along with documents that show the family link between the claimants and their relatives that had Lithuanian citizenship.

The defendant notes that on 2005 February 24th the claimant Grant Arthur Gochin asked the MD to issue him the certificate of Lithuanian citizenship retention. Along with the request the claimant had to provide certain documents proving the family link with the person who had Lithuanian citizenship until 1940 June 15th. The citizenship matters division of MD analyzed the request and concluded that Grant Arthur Gochin did not save the right to Lithuanian citizenship due to the fact that there is insufficient data to prove the family link between him and Samuel Gochin. Grant Arthur Gochin appealed this decision in the Vilnius municipality administrative court.

The migration department explained that the claimant explained why he thinks he has the right to Lithuanian citizenship using the following arguments: in the birth registry record that was provided with the case it is shown that his father is Harold Gochin (30 years old), who was born in Port Elisabeth, and Sandra Joan Smollan (23 y/o), born in Port Elisabeth; also provided was a birth certificate of his father where his birth name is stated as Chone Hessel Gochin (he changed his name to Harold Gochin), the birth date of Harold Gochin is 1933 June 13. Harold Gochin's father was Samuel Gochin (31 y/o) born in Lithuania, and Dora Rummel (30 y/o), born in Latvia. Also provided were Siauliai city municipality medical documents where the name of Samuel Gochin is mentioned, various photographs, Lithuanian war history society's president's account that the man in the photograph is certainly wearing Lithuanian army uniform. In the case there are data about Samuel Gochin, who lived in Papile and who was issued a Lithuanian passport, but this data does not include the birth place and location of Samuel Gochin and it is thus insufficient to prove that the passport was issued to the claimant's grandfather and not somebody else. Lithuanian history archive's account of 2007 September 4th states that the archive does not have the records of Papile Jewish community and thus the archive is unable to provide the birth certificate of Samuel Gochin. Therefore, from the legal point of view, the birth certificate becomes unnecessary when evaluating other evidence provided in the case.

Medical documents do not provide direct evidence of the family link between Samuel Gochin and Grant Arthur Gochin. Other evidence provided with the case (among which is Dr. E. Bendikaite's account from 2006 January 20th) also does not provide direct evidence that would contradict the decision made by the Migration Department. The (previous) court has made a decision that with the evidence provided, the decision of the MD was more likely to be correct than wrong due to the fact that important documents were missing.

The (previous) court also noted that Grant Arthur Gochin did not provide any additional evidence in his 2009 June 22nd request to issue him the certificate of Lithuanian citizenship retention and thus the Migration Department made a justified decision that the claimant did not save his right to Lithuanian citizenship.

Section II

On 2010 September 23rd Vilnius municipality administrative court dismissed the complaint of the claimant. The court stated, that in the 1992 March 30th law titled "Regarding the right to Lithuanian citizenship retention" article 1.1 says that people who had saved their right to Lithuanian citizenship according to Citizenship law article 17 part 1 will be issued the certificate of Lithuanian citizenship retention.

The defendant does not argue against Samuel Gochin did have Lithuanian citizenship up until 1940 June 15th, but in this case it is important to prove that Grant Gochin is the grandchild of Samuel Gochin. The defendant states that the conflict between the parties was resolved on 2008 September 18, in the Vilnius municipality administrative court which made a decision (case # I-2369-426/2008). The court reject this argument of the defendant, because the question being considered in the aforementioned case was not the 2007 June 18th decision (# 15/3-11 8p-675) which states that Grant Arthur Gochin is not a citizen of Lithuania due to insufficient documents to prove the family link between him and Samuel Gochin. Rather the question of that case was not whether or not to grant Lithuanian citizenship to Grant Arthur Gochin, but to give him the right to retain Lithuanian citizenship.

The court mentioned that the parties in this case are the same as before. The documents that were provided in the case #I-2369-426/2008 (this is: the information from birth act, which states that Chone Hessel Gochin, who changed his name to Harold, was born on 1933 June 13 in Middle Avane, his parents are Samuel Gochin, 31, born in Lithuania, and Dora Rummel, 30, born in Latvia, a document from the birth registry, in which it is shown that Grant Arthur Gochin was born on 1963 November 2nd in Port Elisabeth, his parents are – Harold Gochin, 30, born in Port Elisabeth, Sandra Joan Smollan, 23, born in Port Elisabeth, Siauliai city municipality

director's passport division file copy (b 1. 17-199), in which it is shown that Samuel Gochin was issued a passport; war hospital's medical documents (b 1. 20-23), in which Samuel Gochin is mentioned, the claimant's relatives letters to the Migration Department (b 1 30; 43; 44), in which it is noted, that Samuel Gochin was born in Lithuania, Papile, married a girl called Dora Rummel, from Latvia, and had two sons together: Harold Gochin (the father of the claimant) and Arnold Gochin (claimant's uncle); photographs (b. 1 81)) – all this evidence has already been evaluated by the court and a decision was made that they are insufficient to prove the family link between the claimant and his grandfather. The ABTI law article 58 part 2 states that facts that were considered in one administrative case are not to be re-evaluated in other cases where the parties remain the same (i.e. Grant Arthur Gochin vs Migration Department). Due to the fact that the parties are the same in both cases, the aforementioned decision in this case has a prejudicial meaning.

The claimant has added the following documents to the case: the birth certificate of Arnold Gochin and its translation, Samuel Gochin's death certificate and its translation, Harold Gochin's birth certificate, Ester Barsel's and Mervyn Michael Zelichov accounts to the MD translation, Uriel Meyer Gochin's account to the Migration department (b 1. 27, 36, 37, 40, 42, 43, 44). The court, after evaluating Arnold Gochin's birth certificate (b. 1 27(translation 40 b1) makes the conclusion, that this document itself does not prove that Samuel Gochin was the grandfather of Grant Gochin. Samuel Gochin's death certificate (b 1 29(translation 42b1)) notes that Samuel Gochin, born on 1902 February 15th in Lithuania, died 1984 June 2nd. This document also does not itself prove the family link between Samuel Gochin and Grant Arthur Gochin.

Harold Gochin's birth certificate has already been evaluated in the previous administrative case. From this birth certificate it is evident that on 1933 June 13 Harold Gochin's father was 31, which means that he was born in 1902. As already mentioned, Samuel Gochin's death certificate states that his birth date is 1901, so in this case there is inconsistency between dates, and this would not let the court to make the conclusion that Samuel Gochin, Harold Gochin, and Grant Arthur Gochin were related. Esther Barsel and Mervyn Michael Zelichov, as well as Uriel Meyer Gochin, made accounts to the MD, testifying that Samuel Gochin was born in 1902 in Lithuania Papile. These accounts were not considered because the information provided in them were not supported by proofs.

14 Article of the rules regarding Lithuanian citizenship retention requires people to submit documents to prove family link with people who have held Lithuanian citizenship until 1940 June 15th.

Lithuanian republic civil process codex (from here onward – LR CPK) article 444 part 2 point 1 states that common competence court works on the cases regarding family relationships. The

court, in evaluating the evidence, has to evaluate the whole of the evidence and not parts of evidence in isolation. According to the law, the claimant has to provide documents that would unambiguously prove the family link. The claimant has not provided such a document.

The court has analyzed all the factors in the case and the evidence provided, has made a conclusion that the decision of the MD is justified because Grant Arthut Gochin has not provided a document to prove the family relation between him and Samuel Gochin, in other words he could not prove that he is a grandchild of a person who has held Lithuanian citizenship until 1940 June 15th.

Section III

Grant Arthur Gochin appealed the Vilnius municipality administration court 2010 September 23 decision and asked to make a new decision, i.e. to overturn the 2010 January 21st Migration Department's decision regarding his right to Lithuanian citizenship retention and to oblige Migration Department to reconsider his case to the right to Lithuanian citizenship according to Citizenship law article 17, part 1, due to the fact that the claimant is a grandchild of Samuel Gochin.

The claimant notes that this case should be analyzed independently from the case concluded on 2008 September 18, in the conflict regarding the MD's decision of 2007 June 18 which decided that the claimant is not a citizen of Lithuania. Vilnius municipality administrative court made a justified decision on 2008 September 18 that the claimant is a national of South African Republic and the United States and so after Constitutional Court's ruling regarding double citizenship, he cannot gain Lithuanian citizenship.

The First instance court has justly noted that the question of this case is not whether or not Grant Arthur Gochin can become a Lithuanian citizen while holding other passports, the court has, however, made an unjustified decision that the conflict regarding Grant Arthur Gochin's and Samuel Gochin's family link has been resolved, and that new documents regarding this conflict should not be considered.

The claimant has provided the MD with new documents when he made a request to grant him certificate of right to Lithuanian citizenship, which show that claimant's grandfather was Samuel Gochin who had Lithuanian citizenship, and therefore the (previous) court's decision that it is impossible to prove the family link is not justified. It is worthwhile to note that South Africa has issued full birth metrics, that show that claimant's father is Harold Gochin (in the metrics it says that he was born on 1963, November 2nd in Port Elisabeth, in the family of Harold Gochin and Sandra Joan Smollan). Harold Gochin's birth certificate and the birth act of 1933 (#17) proves that Harold Gochin's father was a citizen of Lithuanian Republic Samuel

Gochin, who was born in Lithuania (documents show that Harold was born in 1933, June 13 in the family of Samuel Gochin and Dora Rummel, in Port Elisabeth, South Africa). Having these and aforementioned facts in mind, it is inconceivable how an argument that “there are insufficient documents to prove family link” can be used in this case.

The claimant notes that Vilnius municipality administrative court has used a completely unjustified argument in its decision – the MD has claimed that the claimant has not provided a document that proves the family link between the claimant and his grandfather. The Migration Department in its decision that was appealed states that the claimant must have presented the issued passports information sheet that would also show Samuel Gochin’s birth place and date, and in the first instance court the MD also noted that the only document that would prove the family link is the birth certificate of Samuel Gochin. The law of Citizenship does not provide an exhaustive list of documents that can prove whether or not a person is a relative of another person, so in all cases, all documents should be evaluated as a whole. A case similar to this is case #I-398-602/2009.

Lithuanian history archive 2007 september 4th document, which states that Papile Jewish community metrics from the period 1900-1905 are not in the archive explains why it is not possible to retrieve the birth certificate of Samuel Gochin, which, according to the MD, is the only document that could prove the family link between Samuel Gochin and the claimant. The court considers the fact that the birth metrics of period 1900-1905 as force majeure. But on the other hand, it is more likely that the actions of Lithuanian officials led to the disappearance of the metrics.

The claimant is also asking to take note that he did a lot of work in retrieving all possible documents, and if there was any doubt that Samuel Gochin is his grandfather, he would not have possibly be able to retrieve all of this personal documents both in Lithuania and South Africa. The documents provided should also be considered in the light of the fact that they show an interrupted relationship between the relatives in this family. Analysis of the documents provided shows that claimant’s grandfather entered service in Lithuanian army. In the spring of 1924 Samuel Gochin was called to military service by Siauliai city municipality. He was sent to the 5th infantry regiment in Kaunas. Almost immediately he was discharged from service due to his health. These facts are supported by medical records. The claimant has also managed to retrieve some pictures of his grandfather wearing Lithuanian army uniform.

The claimant notes that Migration Department does not have the right to refuse to do the actions that are under its competence, as well not to evaluate the documents provided without any legal merit, and that MD does not have legal ground to state that a single document (the birth certificate) can prove the family link between the claimant and his grandfather.

The defendant in its response to the appeal asks to dismiss the appeal and to leave the previous court decision in force and unchanged. The defendant notes, that the Migration department's citizenship matters division's decision did not state that the claimant must provide the issued passports information sheet with the birth place and date of Samuel Gochin shown on it, rather, the MD states there are insufficient documents to prove the family link between the claimant and Samuel Gochin and in the brackets they explain that in the issued passports information sheet Samuel Gochin's birth date and place is not shown. This in no way means, that the Migration Department has demanded for the issued passports information sheet to be provided by the claimant and that this is the only document that would prove the family link. It should be noted that it is the claimant that provided this document in an attempt to prove the family link.

The Migration Department stated that the claimant is misleading the court in his appeal by giving facts that are not accurate, and that he deceitfully claims that Samuel Gochin, born in Papile, was issued an internal passport. The Migration Department claims that the issued passports information sheet does not prove that Samuel Gochin was born in Papile, it only proves that he lived there.

The defendant states that the claimant has no legal ground to state that the metrics of Papile Jewish community were destroyed during world war I. Lithuanian national history archive did not receive the metrics, but this can also mean that the metrics are held in other archives, museums or elsewhere.

The claimant notes in his appeal that the accounts of his relatives show the family was in close contact, that its history is well known to family members. The court decided that these factors do not prove the family link between Grant Arthur Gochin and Samuel Gochin (administrational case #2369-426/2008). In the aforementioned case the court evaluated the testimonies of the relatives critically and concluded that the testimonies are not supported by necessary evidence (i.e. birth certificate).

The court also found stated from the photographs provided it is not evident that this person is actually Samuel Gochin. These photographs merely confirm the fact that the person in the photographs is wearing a Lithuanian army uniform and that he might be a Lithuanian citizen (which has been stated in Lithuanian war history society's director's account)

IV

The Board of Judges Concludes:

The appeal has been partly accepted.

The Claimant, Grant Arthur Gochin, has submitted an appeal to the court in which he asks to: 1) Overturn the 2010 January 21 decision of the migration department (from here onward – the decision); 2) to oblige the defendant to re-valuate the request of the claimant to grant him the right to Lithuanian citizenship retention on the grounds that the claimant is a grandchild of Samuel Gochin, a Lithuanian national.

Article 17 part 1 point 1 of the Citizenship law states that people who are the descendants of people who had Lithuanian citizenship until 1940 June 15 have the right to retain Lithuanian citizenship. Lithuanian Republic Government's 1992 march 30 decision #198 "Regarding the issuance of documents of Lithuanian citizenship retention" article 1.1 states that people who have the right to Lithuanian citizenship according to the 17th article of the law will be issued a certificate which proves their right to citizenship. This law also says that people who have such certificate save the right to Lithuanian citizenship for indefinite time period.

The Board of Judges notes that in the administrative case #2369-426/2008, where the parties were the same as in this case, all the previous birth information and family relations between the claimant and his immediate family has already been evaluated. With the facts at hand the previous court has made a decision that there is insufficient data to prove the family link between the claimant and his grandfather. However, in this case, the claimant has also provided the birth certificate of Arnold Gochin, and the account of Uriel Meyer Gochin to the Migration department.

Lithuanian Republic's public administrative law (from here onward – the public administrative law) 8 article part 1 provides a statement that an individual administrative act has to be proven with objective facts. Lithuanian highest administrative court has, in its jurisprudence, concluded that this means that the cases has to be provided with facts, arguments, and proofs.

The Board of Judges concludes that request of the claimant to overturn the decision of the Migration Department is justified, and that the decision of the Migration Department is unmotivated. The decision of the MD in the case "Regarding Grant Arthur Gochin right to Lithuanian citizenship" did not analyze the new documents submitted with the case, i.e. the birth certificate of Arnold Gochin, Samuel Gochin's death certificate, Harold Gochin's birth

certificate, Uriel Meyer Gochin's account to the Migration department. The MD also did not prove the reasons of why exactly the documents provided by the claimant did not prove the family link. For these reasons, the decision by the MD does not adhere to the Public administration law and is to be overturned.

According to ABTI article 57 part 1 an evidence in an administrative case is any fact, data, that is accepted by the court, and which the court uses to make its decision. The Board of Judges concludes that all the data gathered in the case allows the court to confirm that Samuel Gochin was, indeed, born on February 15th. The inconsistency in this case was due to differing birth dates. However, the Board of Judges took into account the birth certificate of Arnold Gochin,, the brother of the claimant (this is actually not true, they made a mistake in writing this), which shows that during birth of Arnold Gochin his father was 29 years old, additionally the court took into account the death certificate of Samuel Gochin which then proves the death date. The whole of the evidence lets the court conclude that Samuel Gochin was born on 1902 february 15 and that the claimant is the grandchild of Samuel Gochin.

The Board of Judges also notes that the claimant has the right to provide any additional documents regarding Samuel Gochin's exact birth date, as well as other type of evidence. The court notes that the citizenship law does not provide an exhaustive list of documents that can be used in proving family links and therefore the migration department must consider all evidence as a whole when making its next decision.

Using aforementioned arguments, the board of judges concludes that the decision of the first instance court is unjust and wrongly motivated. Therefore, the appeal is partly accepted and the decision of the first instance court is overturned.

The board of judges uses administrative cases law article 140 part 1 point 2 and decides:

The appeal of the claimant is to be accepted in part.

Vilnius municipality administrative court 2010 september 23 decision is overturned and a new decision takes into effect: the complaint of the claimant is accepted and the decision of the Migration Department is overturned, the MD is also obliged to re-evaluate the case and make a new decision regarding the claimant's request to provide him the right to retain Lithuanian citizenship.

This decision is final and cannot be appealed.

Judges: Audrius Bakaveckas, Dainius Raizys, Skirgaile Zalimiene