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Civilian case Nr. 2-1396-553/08
Procedural decision category: 117.1;118.1;

Vilnius City 2nd District Court

RULING
February 25, 2008
Vilnius

Vilnius city 2nd District Court judge Aldona Tilindienė, assisted by clerk Liucija Vildžiūnienė, and with the declarant's representative lawyer's assistant Ieva Klimavičiūtė present, in the court's open session investigated the civil suit pertaining to declarant Grant Arthur Gochin's declaration to the interested party, the Migration Department of the Ministry of Internal Affairs, for the determination of a legally significant fact, and

determined:

The declarant contacted the court requesting that it determine a legally significant fact that Samuilis (Samuelis) Gochinas, [the word "grandfather" is omitted] of the declarant Grant Arthur Gochin, was a citizen of the Republic of Lithuania.

The declarant notes that he is seeking citizenship of the Republic of Lithuania because the declarant's grandfather - Samuilis (Samuelas) Gochinas had Republic of Lithuania citizenship, but the documents directly affirming this fact have not survived, and so the declarant is forced to address the court seeking to determine the fact of legal significance, that Samuilis (Samuelis) Gochinas, the grandfather of the declarant Grant Arthur Gochin, was a citizen of the Republic of Lithuania. The declarant points out to the court that genealogical investigations of the declarant's family were made in several of Lithuania's archives and documents were found which confirm that Samuelis Gochinas is Grant Arthur Gochin's grandfather, who had Republic of Lithuania citizenship. The declarant Grant Arthur Gochin's father is Harold Gochin. The submitted complete birth certificate and its translation confirm this fact. Harold Gochin's father was Republic of Lithuania citizen Samuelis (Samuelas) Gochinas, born in Lithuania. The information from the submitted birth certificate Nr. 17 confirms this fact. The declarant also notes that Grant Arthur Gochin's grandfather Samuilis (Samuelis) Gochinas was born February 15, 1902 in Papilė, Lithuania (at that time, the province of Kaunas). His birth should have been registered in the Papilė Jewish community registry, but the Lithuania state history archive's document Nr. (PI-9652)P2-8908 of September 4, 2007 notes that the Papilė Jewish community registry for the years 1900-1905 has not survived, and so there is no possibility of providing a certificate from the archive regarding Samuilis (Samuelis) Gochin's birth. It is known that at the end of World War I S. Gochinas along with his family ended up in Charkov (Ukraine), from

where at the end of 1922 they returned and lived anew in Papilė. Documents related to the Šiauliai committee for drafting recruits have likewise not survived in the Šiauliai city and district head's repository. Documents which did survive were received upon contacting the Lithuania central state archive.
There has survived Šiauliai city and district head's file Nr. 53, which gives passport information pages from January, February and March 1926. In the abovementioned file's Šiauliai district Papilė parish passport information page it is stated that on January 15, 1926, Samuilis (Samuelis) Gochinas, born in Papilė, was given a Republic of Lithuania internal passport (passport book line Nr. 4306). The declarant asserts that Samuilis (Samuelis) Gochinas's Republic of Lithuania internal passport has not survived.
In March, 1926, S. Gochinas left for South Africa and due to unfolding circumstances was never able to return to Lithuania. The declarant notes that a citizen of the Republic of Lithuania, older than 17 years old, traveling to a foreign country was required to have a passport. It is evident that Samuilis (Samuelis) Gochinas certainly had an internal passport affirming that prior to June 15, 1940, he had Republic of Lithuania citizenship. Analyzing the documents gathered, it was determined that Samuilis (Samuelis) Gochinas completed military service in the army of independent Lithuania. In the spring of 1924, Samuilis (Samuelis) Gochinas was drafted by the Šiauliai district committee for drafting recruits to serve compulsory military service. He was sent to the 5th infantry regiment (named after Lithuania Grand Duke Kęstutis) in Kaunas. Practically at once because of his health condition he was sent to the Jonas Basanavičius military hospital in Kaunas. The said facts are confirmed by documents in Samuel Gochinas's personal medical history file. Additionally, there have survived photographs of Samuilis (Samuelis) Gochinas where he wears the military uniform of the Republic of Lithuania. In seeking to draw the most precise conclusions possible, Vytautas Magnus University Humanities Faculty Vice-Dean, Lithuania's war history association chairman, associate professor Dr. Jonis Vaičenonis was contacted. An answer was received, which stated that in the photographs provided of Samuel Gochin, he is wearing a Republic of Lithuania army uniform. Replying to the question, whether the soldier wearing the uniform was a citizen of the Republic of Lithuania, it was indicated, that it is possible to answer only in the affirmative. This is confirmed by the Military compulsory service law published in Vyriausybės žinios (Administration News) (Kaunas, June 3, 1922, Nr. 91), where the law's first article declares: every male citizen of Lithuania must complete compulsory military service. The declarant believes that based on the said documents it is possible to draw the conclusion that the declarant's grandfather Samuilis (Samuelis) Gochinas was indeed a citizen of the Republic of Lithuania and so Grant Arthur Gochin has the right to be a citizen of the Republic of Lithuania.

The interested party, the Migration Department of the Ministry of Internal Affairs submitted to the court a reply to declarant Grant Arthur Gochin's declaration for determination of a fact having legal significance and a request to consider the case without the presence of a representative of the Migration Department. In the reply submitted to the court, the interested party noted that G. A. Gochin, who is a citizen of the United States of America and of South Africa, submitted to the Migration Department a request for Republic of Lithuania citizenship

according to Republic of Lithuania citizenship law (Žin., 2002, Nr. 95-4087) article 1, paragraph 1, which states that Republic of Lithuania citizens are individuals who up until June 15, 1940 had had Republic of Lithuania citizenship, their children, grandchildren and great grandchildren. The Republic of Lithuania Constitutional Court recognized, in its November 13, 2006 decision, "Regarding the compliance of the provisions of legal acts regulating terms of citizenship with the Constitution of the Republic of Lithuania" (Žin., 2006, Nr. 123-4650), that the portion of article 1, paragraph 1 of the Republic of Lithuania citizenship law, where it is established that citizens of the Republic of Lithuania are also those individuals indicated in this article, who also have citizenship of other countries, conflicts with article 12, part 2 of the Constitution of the Republic of Lithuania and therefore cannot be applied. The Republic of Lithuania, Ministry of the Interior, Migration Department, Division on Citizenship Matters on June 18, 2007 made a decision Nr. (15/3-1 1)-8P-675), in which it declared that G. A. Gochin is not a citizen of the Republic of Lithuania because there are insufficient documents to demonstrate G. A. Gochin's and Samuilas (Samuelas) Gochin's family ties, and furthermore the individual is a citizen of the United States of America and of South Africa.
G. A. Gochin filed a complaint to annul this decision to the Vilnius County Administrative Court. The interested party believes that the documents appended to the declarant's representative's declaration (the excerpt from the birth registry regarding A. G. Gochin's birth, the document as to A. G. Gochin's father's H. Gochin's birth, the Šiauliai city and district head's file Nr. 53b, the copy of the medical history Nr. 3153) do not demonstrate a family tie between G. A. Gochin and Samuilas (Samuelis) Gochinas, but demonstrate that Samuilis (Samuelis) Gochin before June 15, 1940 had Lithuanian citizenship, and also, that the declarant's representative's assertion that the photographs provided are of G. A. Gochin's grandfather Samuilis (Samuel) Gochin are ungrounded, because in seeking to determine if the individual pictured in the photograph is G. A. Gochin's grandfather Samuilis (Samuelis) Gochin, a portraiture investigation must be completed.
The interested party indicates in its response that it is not appropriate to determine the legally significant fact, that Samuilis (Samuelis) Gochinas, declarant G. A. Gochin's grandfather, had Lithuanian citizenship before June 15, 1940 because:
1) according to article 445 of the Civil process code, the court determines legally significant facts only when the declarant cannot by any other procedure acquire the documents needed to confirm these facts, and the documents provided by the declarant's representative demonstrate that Samuilis (Samuelis) Gochinas had Lithuanian citizenship before June 15, 1940;
2) the decision of the Republic of Lithuania's Constitutional Court on November 13, 2006 having come into force, G. A. Gochin will be able to become a citizen of the Republic of Lithuania by article 1, paragraph 1 of the Republic of Lithuania's citizenship law only upon renouncing citizenship of the United States of America and of South Africa.

The interested party also indicates that the declarant's representative links the right to determine this legally significant fact with article 20, part 2 of Republic of Lithuania citizenship law, which determines that an individual who had lost Republic of Lithuania citizenship up until the day of this law coming into force, and also on the basis provided by article 18, part 1, 3 or

4, of this law, and by article 4, part 7 of the Republic of Lithuania's citizenship implementation law, and corresponding to the conditions of this law's article 1, part 1, point 1, 2 or 3, Republic of Lithuania citizenship can be reinstated by request of such an individual, without applying to him the conditions provided in this law's article 12. That is, by this part, Republic of Lithuania citizenship is reinstated to those individuals who had had it, but had lost it. G. A. Gochin was not recognized as a citizen of the Republic of Lithuania, and also he had not lost citizenship of the Republic of Lithuania, and so there is no legal basis to reinstate citizenship of Republic of Lithuania according to the abovementioned law's article 20, part 2.

At the preliminary court's hearing, the declarant's representative confirmed to the court that the declarant Grant Arthur Gochin is a citizen of the United States of American and of South Africa, and explained that the individual represented by her did not indicate any circumstances regarding his intentions to renounce these citizenships.

The case should be dismissed.

The court can determine legally significant facts, under these circumstances: 1) the fact which is requested to be determined must have legal significance; 2) the declarant does not have documents confirming that legally significant fact; 3) the declarant is unable by other means, i.e. outside the courts, to acquire the documents confirming the corresponding legally significant fact, or the declarant is unable, without judicial process, to reconstruct lost documents confirming the legally significant fact. When not a single one of these circumstances is met, the matter of determining a legally significant fact is not to be taken up by the court (Civil Process Code articles 444, 445). Judicial process determines only those facts which are related to the arisal, modification or end of subjective rights (civil, family, labor, welfare and so on). When it is evident from the declaration provided that the fact which the declarant requests to determine will not have legal consequences, the court declines to accept the declaration as one that is not to be taken up by the court (Civil Process Code article 137, part 2, point 1), and if it is accepted, - then the case is dismissed (Civil Process Code article 293, point 1).
The declarant's demand to determine the legally significant fact "that Samuilis (Samuelis) Gochinas, declarant Grant Arthur Gochin's grandfather, was a Republic of Lithuania citizen" encompasses in its content essentially a request to determine two different kinds of legally significant facts, i.e., that Samuilis (Samuelis) Gochinas is declarant Grant Arthur Gochin's grandfather and that Samuilis (Samuelis) Gochinas was a Republic of Lithuania citizen. The court could determine these facts only if they had legal significance (in the case considered, if their determination was a condition for the declarant to receive Republic of Lithuania citizenship) and if the declarant did not have documents determining the legally significant fact and was unable to get them.

As can be seen from the reply of the interested party, the Migration Department of the Ministry of Internal Affairs of the Republic of Lithuania, the interested party recognizes that the

documents provided confirm that Samuilis (Samuelis) Gochinas had Republic of Lithuania citizenship before June 15, 1940, and so there is no basis for determining this fact by judicial process. However, in any event, neither the one, nor the other fact requested to be determined will not have legally significant consequences - Republic of Lithuania citizenship cannot be granted to citizens of other states (the Republic of Lithuania's Constitutional Court's decision of November 13, 2006, "Regarding the compliance of the provisions of legal acts regulating terms of citizenship with the Constitution of the Republic of Lithuania").

Considering the circumstances set forth above, on the basis of the provisions of the Republic of Lithuania's Civil Process Code article 293, point 1, the civil suit pertaining to Grant Arthur Gochin's declaration to the interested party, the Migration Department of the Ministry of Internal Affairs of the Republic of Lithuania regarding a legally significant fact is dismissed.

On the basis of the Republic of Lithuania Civil Process Code articles 290, 291, 293, 444, 445, the court

ruled:

The civil suit pertaining to declarant Grant Arthur Gochin's declaration to the interested party, the Migration Department of the Ministry of Internal Affairs of the Republic of Lithuania, regarding a legally significant fact is dismissed.

This ruling may in the next seven days be appealed to the Vilnius County Court, submitting the complaint through the Vilnius City 2nd District Court.

Judge (signature) Aldona Tilindienė

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