G. Gochin v Lithuanian resident Genocide and Resistance Centre (Administrative procedure)

FACTS

In 2016 Lithuanian resident Genocide and Resistance centre, budget institution accountable to Parliament, conducting official historical research of Soviet/Nazi crimes & Lithuanian resistance during and post WWII, published a historical memorandum on Jonas Noreika, who was a head of Siauliai district during 1941-1943 and signed orders on Jewish convoy and isolation in Zagare ghetto as well as numerous orders on confiscation of Jewish property.

In memorandum all accusations and testimonies on participation in Holocaust and giving personal orders are dismissed as unfounded. Noreika is portrayed as a victim of war who was involved in Nazi administration against his will, unknowing the consequences of orders he signs and did no wrong because Head of Siauliai district office was a mere civil institution, not involved with bodies executing or convoying Jews. Memorandum is very fragmented, is silent about JN leadership in pro Nazi political parties LAF & LNP, personal orders & his murder comrades. Albeit numerous glorifications in regards his national resistance movement are made.

ISSUE

Numerous documents were found picturing events of 1941 summer-autumn, evidencing that JN took active role in Holocaust in Zemaitija region, documents signed by him or his office, documents evidencing his leadership in Lithuanian Activist Front - anti Soviet - pro Nazi resistance movement, etc. Collected historical documents show contrary to what's been said in the memorandum, JN war crimes are interpreted contrary to Nurnberg statute and Genocide convention.

Genocide centre is in breach of its statutory obligation to reveal truth, in breach of main administrative law principles of objectivity, due use of powers, non damage to residents, in breach of mass media law requirements for objectivity & non disinformation.

The historical memorandum is denial of Holocaust, causing suffering to applicant, who's relatives were murdered in Siauliai district, therefore Genocide centre should be given court order to review memorandum in the light of historical documents submitted to court, covering aspects indicated in claim.

HOLDING

2019-03-27 Vilnius county administrative court decision is taken to dismiss the claim. No evaluation of Genocide Centre issued memorandum was made.

RATIONALE

Complaint sent to Genocide Centre is not to be held as a claim to start administrative procedure (evaluate memorandum, evaluate arguments and negative consequences caused to applicant, take action) but a mere request to provide information, which was rendered to applicant in a good manner - in a complete neglect answer given to applicant earlier. Therefore Genocide centre did not breach administrative procedures.

HOLDING (appeal)

2020-04-01 Lithuanian Supreme administrative court order is taken to dismiss appeal, reverting the court order.

RATIONALE (appeal)

Genocide centre performs two types of activities one which fall in scope of administrative law (i.e. sustainability of resistance veterans) whereas historical research and publication fall outside

administrative powers. Court of first instance went too far saying that answer given to applicant was served in a good manner, claims falling outside administrative capacity of institution are not in jurisdiction of administrative courts, therefore claim is dismissed as not adjudicated, earlier court arguments on due service eliminated from decision and decision reverted accordingly.

G. Gochin v Lithuanian resident Genocide and Resistance centre (Civil procedure)

FACTS

Same as in administrative procedure + Genocide centre publishes a new memorandum in DEC 2019 claiming that Jonas Noreika was leader of a ring that was saving Jews from Nazi crimes in Siauliai district. This new memorandum was under severe public opposition by Lithuanian chief historians, dean of Vilnius University history faculty and head of History Institute, who declared memorandum unfounded, null and void.

ISSUE

The historical memorandums are illegal, in breach of mass media law, it is a denial of Holocaust, causing suffering to applicant. Genocide centre memorandums are causing moral damage to applicant, continuous tort, therefore memo's should be upheld illegal & removed from public domain, in this way rectifying the situation and eliminating the source of applicant's suffer. Even though civil code does not grant such rectification of tort, Lithuanian Constitution and Constitutional court doctrine indicates that all damage caused should be rectified.

HOLDING

2020-06-08 Vilnius regional court order is taken not to accept the claim as not adjudicated.

RATIONALE

One may raise claims only in his own name and interest, to defend personal rights. Requested litigation does not influence rights and obligations of applicant therefore "such litigation is useless" as court decision will not impact scope of applicants rights or obligations. Requested satisfaction for moral damages in tort (removal of memorandums from public domain) is not enshrined in civil code, providing only monetary means of compensation.

HOLDING (appeal)

2020-07-16 Vilnius district court order is taken to dismiss appeal.

RATIONALE (appeal)

One may defend only his own rights and obligations. Historical memorandums do not speak or mention applicant or his relatives, therefore upholding them illegal will not impact material rights or obligations of applicant. Claim seeks compensation of moral damage however there is no request for monetary remuneration as per civil code. Therefore court of first instance was right not accepting the claim.

HOLDING (cassation)

2020-09- Lithuanian Supreme court declines request for cassation review.

RATIONALE (cassation)

Standard decline. Issues raised in the cassation claim are not affecting current Lithuanian jurisprudence.