Administrative case Nr. J-1548-171/2010
Process Nr. 3-61-3-00719-2010-3
Procedural decision category 3.5; 74

VILNIUS REGIONAL ADMINISTRATIVE COURT

DECISION
IN THE NAME OF THE REPUBLIC OF LITHUANIA

September 23, 2010
Vilnius

The Vilnius regional administrative court judicial panel, consisting of judges Irena Paulauskienė (panel chairman and reporter), Halina Zaikauskaitė and Ernestas Spruogis, with Jūratė Domarkaitė as secretary, and the declarant's representative lawyer's assistant Ieva Klimavičiūtė present, and the respondent's representative Ramunė Žūklijaitė present,

in open session of court deliberated the administrative case as per declarant Grantas Arturas Gochinas's (Grant Arthur Gochin's) complaint against the defendant, the Migration Department of the Ministry of Internal Affairs of the Republic of Lithuania, regarding the annulment of its decision and the obligation that it take actions.

The judicial panel, having deliberated the case,

determined:

the declarant Grant Arthur Gochin submitted a complaint to the court (pages 1-5 of the case), in which he requests:
1. to annul the Internal Affair Ministry's Migration Department's decision Nr. (15/3-11)8P-179 of January 21, 2010;
2. to oblige the respondent to decide anew the matter of the declarant's Republic of Lithuania citizenship.

[The declarant] clarified that on June 22, 2009 the declarant Grantas Arturas Gochinas, invoking article 17 of the Citizenship law, approached the defendant with a request to issue a certificate of retention of the right to Republic of Lithuania citizenship because the declarant's grandfather Samuilis (Samuel) Gochinas, born in 1901 in Lithuania, had Lithuanian citizenship prior to June 15, 1940.

[The declarant] notes that the declarant rightfully approached the defendant with a request to determine the matter of his retention of Republic of Lithuania citizenship, noting that his grandfather had Lithuanian citizenship prior to June 15, 1940. The Migration Department completely unjustifiably recognized the documents submitted by the declarant as insufficient to prove kinship, and thus rejected the declarant's request.

[The declarant] remarked that in this case there is no disagreement as to whether the declarant's grandfather Samuilis (Samuelas) Gochinas had Republic of Lithuania citizenship, because the declarant acknowledged this fact. In this disagreement the question to decide is whether the defendant rightfully rejected the declarant's request for retention of Republic of Lithuania citizenship, invoking the argument that there are insufficient facts to prove the kinship of the declarant and his grandfather Samuilas (Samuelis) Gochinas (the information page of the passports provided do not indicate Samuilas (Samuelis)

Gochinas's date of birth and place of birth.

The complaint notes that the declarant's Grantas Arturas Gochinas's father is Haroldas Gochinas (Harold Gochin). From the complete birth certificate provided, issued by the Republic of South Africa, and it's translation it can be seen that the declarant was born November 2, 1963 in Port Elizabeth to the family of Haroldas Gochinas and Sandra Joan Smollan (maiden name).

Haroldas Gochinas's father (the declarant's grandfather) was Republic of Lithuania citizens Samuilis (Samuel) Gochinas, born in Lithuania. This is confirmed by the translation of Haroldas Gochinas's birth certificate along with the information from the 1923 birth document Nr. 17, from which it can be seen that on June 13, 1933, in Port Elisabeth, Republic of South Africa, to the family of Samuelis Gochinas and his wife Dora Rummel was born a son (the declarant's father) to whom was given the name Haroldas.

[The declarant] remarked that the specified information accords both in the declarant's complete birth certificate and in the declarant's father's birth certificate, that is, from the abovementioned documents it can be seen that in 1963 when the declarant was born, his father Haroldas Gochinas (born in 1933) was 30 years old.

Also submitted is the apostilized death certificate of Samuilas (Samuel) Gochinas, from which it can be seen that he died of an illness on June 2, 1984 in Port Elizabeth. The said document was issued in the Republic of South Africa to the declarant as to Samuilis (Samuel) Gochinas's grandson. It shows that Grantas Arturas Gochinas's grandfather Samuilis (Samuelis) Gochinas was born February 15, 1901 in Papilė, Lithuania (at that time, the province of Kaunas). His birth should have been registered in the Papilė Jewish community's record books, however there is no possibility of submitting an entry from the record books about the time and place of his birth for objective reasons, having nothing to do with the declarant's will - the Papilė Jewish community record books from the beginning of the 20th century were lost during World War I. The said fact is confirmed by the Lithuania state history archive's document Nr. (P1-9652)P2-8908 of September 4, 2007, which notes that there are no Papilė Jewish community record books for the years 1905-1915 and therefore there is no possibility to issue an archival certificate about Samuilis (Samuelis) Gochinas's birth. During World War I, S. Gochinas along with his family was deported by the czar's military government from his birthland to the interior of the Russian empire, as were many of Lithuania's Jews. It is known that at the end of World War I the family ended up in Charkov (Ukraine), from where at the end of 1922 they returned and settled anew in Papilė.

Much material did not survive because of World War II and its consequences. The Šiauliai city and district chief's archive did not preserve the documents related to the activities of the Šiauliai committee for drafting recruits. Surviving documents were received upon approaching Lithuania's central state archive. Archival material from the Šiauliai district which is preserved in said Lithuania's central state archive is sparse and reflects many areas of life only fragmentarily.

The Šiauliai city and district chief's file Nr. 53, in which are provided the information pages of internal passports from January, February and March 1926, was submitted to the Migration Department. In the said file, in the information page of the Šiauliai district Papilė parish passports is indicated that on January 15, 1926, a Republic of Lithuania internal passport was issued to Samuilas (Samuelis) Gochinas, born in Papilė (passport books' entry Nr. 4306). Samuilas (Samuelis) Gochinas's Republic of Lithuania internal passport has not survived, and presumably, it was lost during the war along with personal files and other documents. In March 1926, S. Gochinas departed for South Africa and for circumstances that arose was never able to return to Lithuania. It should be noted that a citizen of the Republic of Lithuania, older than 17 years of age, traveling to a foreign country was required to have a passport. Clearly, Samuilis

(Samuelis) Gochinas definitely had an internal passport issued on January 15, 1926, in which there also must have been indicated his precise date and place of birth.

Today for objective reasons independent of the will of the declarant and his ancestors there certainly is not any possibility of providing the declarant's grandfather's passport, wherein would again be noted his place and date of birth, however the aforementioned facts are clearly apparent from the other documents provided. Clearly, the defendant's argument, which is that kinship between the declarant and his grandfather could be proven only if the grandfather's place and date of birth were indicated in the passport information pages provided, is to be unambiguously considered not only unsound, but even absurd.

The declarant seeks to receive a certificate of retention of the right to Republic of Lithuania citizenship which would confirm to future generations his family's history and roots. Analyzing the documents received from the archives, he succeeded in discovering that the declarant's grandfather Samuilis (Samuelis) Gochinas performed military service in the army of Independent Lithuania. In the spring of 1924, Samuilis (Samuelis) Gochinas was called by the Šiauliai district committee for drafting recruits to perform compulsory military service.

He was sent to the 5th infantry brigade "Lithuanian Grand Duke Kęstutis" in Kaunas. Almost at once because of the state of his health he was sent to Jonas Basanavičius hospital in Kaunas. There S. Gochinas spent 1 month and the doctor responsible for his treatment recommended that he be excused from military service and transferred to the army reserve. The aforementioned facts are confirmed by documents in Samuelis Gochinas's personal medical history file. The declarant also was able to find and retrieve several of his grandfather's photographs in which he wears the Republic of Lithuania military uniform.

[The declarant] remarked that along with his complaint are submitted the declarant's relatives' letters to the Migration Department which reveal that the declarant's family history is well known to other of the closest relatives as well.

The attestations of the said relatives reveal that it is common knowledge that Samuilis (Samuelis) Gochinas was born in Papilė, Lithuania, married a young woman Dora Rummel from Latvia and had two sons, Haroldas Gochinas (the declarant's father) and Arnoldas Gochinas (the declarant's uncle). Also submitted is the declarant's uncle Arnoldas Gochinas's (Arnold Gochin's) apostilized birth certificate, from which it can be seen that the declarant's grandfather had a son Arnoldas Gochinas.

In the opinion of the declarant, the Migration Department unambiguously unjustifiably rejected the declarant's request. The contested decision of the Migration Department is founded solely on the claim that there are insufficient documents to prove the kinship of Grantas Arturas Gochinas and Samuilas (Samuelis) Gochinas. This reason cannot be considered sound, as the previously analyzed and submitted official documents, certificates, genealogical investigations conducted of the declarant's family in various archives in Lithuania and other documents discovered, confirming the facts of birth and death, unambiguously confirm that Samuelis Gochinas is Grantas Arturas Gochinas's grandfather.

All of the available documents proving that the declarant's grandfather is Samuelis Gochinas were submitted to the Migration Department along with the request, thus, on the basis of article 17 of the Citizenship law of the Republic of Lithuania, we believe that the contested decision of the defendant is unfounded.

It is clear from the submitted documents that there were submitted all of the irrefutable proofs of kinship. There is no way to accept as sound and right the merely formal, completely unreasoned judgment by the defendant that given the circumstance that "the information pages of the passports provided does not indicate Samuilas (Samuelis) Gochinas's date and place of birth", the declarant's documents are to be judged inadequate.

The defendant, the Internal Affairs Ministry's Migration Department, did not agree with the declarant's complaint and requested that it be dismissed as unfounded.

In their reply (pages 62-64 of the case), the defendant does not agree with the statements set forth in the declarant's complaint, whereby the Migration Department's decision is contested as unfounded, unreasoned, and not in accord with due process or with principles of intelligence and uprightness. The contested decision of the Migration Department is made based on applicable acts of law, and is thus sound. The contested decision has a clearly indicated reasoning - Grantas Arturas Gochinas did not retain the right to Republic of Lithuania citizenship because there are insufficient documents to prove the kinship of G. A. Gochinas and Samuilas (Samuelis) Gochinas.

[The defendant] emphasized that it is the declarant who bases his complaint and requests to annul the Migration Department's Citizenship Matters Divisions' decision of January 21, 2010 based solely on his own convictions and not on the provisions of acts of law.

[The defendant] remarked that article 89 of the Republic of Lithuania's law of due process for administrative cases (ABTĮ in what follows) determines in which cases a contested act of law should be annulled. The contested decision of the Migration Department's Citizenship Affairs Division is made based on applicable acts of law, made by a competent administrative subject, and made without violating and procedures, thus there are no grounds for annulling it.

The defendant noted that article 17 part 1 paragraph 1 of the law determines that the right to Republic of Lithuania citizenship is indefinitely retained by individuals who had Lithuanian citizenship prior to June 15, 1940, and by their children, grandchildren and great grandchildren living in other states.

The procedure for submitting requests in matters of Republic of Lithuania citizenship, for preparing Republic of Lithuania citizenship documents and for making decisions about Republic of Lithuania citizenship are determined by the rules for preparing Republic of Lithuania citizenship documents, confirmed on March 29, 2006 by decision 312 of the government of the Republic of Lithuania (the Rules in what follows). Paragraph 14 of the Rules determines that along with a request for retention of the right to Republic of Lithuania citizenship one must append documents or their copies which confirm kinship with an individual who had Lithuanian citizenship prior to June 15, 1940, if the right to retention of Republic of Lithuania citizenship is sought by the child, grandchild or great grandchild of an individual who had Lithuanian citizenship prior to June 15, 1940.

[The defendant] noted that on February 24, 2005 the declarant Grantas Arturas Gochinas had submitted a request to the Migration Department for Republic of Lithuania citizenship and a request to exercise the right to Republic of Lithuania citizenship. Along with their request, the declarant was obliged to submit documents proving kinship with an individual who had Lithuanian citizenship prior to June 15, 1940.

The Migration Department's Citizenship Matters Division, having deliberated Grantas Arturas Gochinas's request for Republic of Lithuania citizenship, on June 18, 2007 made a decision Nr. (15/3-11) 8P-675, by which it was decided to recognize that Grantas Arturas Gochinas is not a Republic of Lithuania citizen

because there are insufficient documents to prove the kinship of G. A. Gochinas and Samuilas (Samuelis) Gochinas (in the passport information page provided there is not indicated Samuilis (Samuelis) Gochinas's date and place of birth). Grantas Arturas Gochinas appealed the said decision of the Migration Department Citizenship Matters Division to the Vilnius Regional Administrative Court.

[The defendant] remarked that the declarant based his right to be recognized a Republic of Lithuania citizen on these proofs: the entry in a copy of the birth registry where it is recorded that Grantas Arturas Gochinas was born on November 2, 1963 in Port Elisabeth, his parents - Haroldas Gochinas, 30 years old, born in Port Elisabeth, and Sandra Joan Smollan, 23 years old, born in Port Elisabeth; a copy of a document of his father's birth, where it is recorded that Cho ne Hesselis Gochinas (Hessel Gochin), who changed his names to Haroldas, was born June 13, 1933 in Middle Avenue, his parents - Samuelis Gochinas, 31 years old, and Dora Rummel, 30 years old, born in Latvia; a copy of the Šiauliai city and district chief's file, where it is recorded that Samuilas Gochinas was issued a passport; medical documents, in which Samuelis Gochinas is mentioned; photographs; an explanation by Lithuania's war history association's chairman that the individual in the said photographs is wearing a Republic of Lithuania military uniform. In the case there is information that Samuilas Gochinas, living in Papilė, was issued a passport, however there is not indicated in the document this individual's date or place of birth, and thus it does not prove that the passport was issued namely to the declarant's grandfather.

The certificate of Lithuania's state history archive of September 4, 2007 indicates that the said archive did not receive the Papilė Jewish community's record books for the years 1900-1905, and therefore cannot issue a certificate regarding Samuelis Gochin's birth. Consequently, the said certificate is legally inconsequential as regards judging the proofs.

The respective medical documents do not verify the kinship to Grantas Arturas Gochinas of the individual Samuilas Gochinas which they mention. Other proofs in the case (among them the explanation of junior researcher E. Bendikaitė of January 20, 2006) likewise do not allow for a different conclusion than that made by the Migration Department in the contested decision. The panel, having thoroughly deliberated the whole of the assembled proofs, judged that the facts assembled in the administrative case allow more the conclusion that the Migration Department made a sound decision and did not have grounds to assert the sufficiency of documents proving the kinship of Samuilas (Samuelis) Gochinas and the declarant.

The defendant remarked that article 58 part 2 of ABTĮ determines that facts determined in judicial decisions which have come into force in an administrative or civil case are not proven anew when deliberating other administrative cases which involve the same parties.

[The defendant] emphasized that Grantas Arturas Gochinas did not add to his June 22, 2009 request for retention of Republic of Lithuania citizenship any new documents confirming his kinship with an individual having Lithuanian citizenship prior to June 15, 1940, therefore the Migration Department's Citizenship Matters Division made a valid and sound decision by which it was decided that Grantas Arturas Gochinas did not retain a right to Republic of Lithuania citizenship.

In the court session the declarant's representative supported the complaint based on the reasoning it referred to.

The defendant's representative during the judicial deliberation asked that the declarant's complaint be not satisfied.

The complaint should be dismissed.

At the heart of the dispute is whether the Migration Department was justified in recognizing in its decision Nr. (15/3-11)8P-179 of January 21, 2010 that the declarant has not retained the right to Republic of Lithuania citizenship.

Legal terms of citizenship are regulated by the citizenship law of the Republic of Lithuania and the Constitution of the Republic of Lithuania.

Article 17, part 1, paragraph 1 of the citizenship law provides that the right to Republic of Lithuania citizenship is retained indefinitely by individuals who had Lithuanian citizenship prior to June 15, 1940, their children, grandchildren and great grandchildren living in other states;

The Republic of Lithuania's Government's resolution Nr. 198 of March 30, 1992, "Regarding the issuance of documents confirming the right to retain Republic of Lithuania citizenship" (the Resolution in what follows) paragraph 1.1 provides that individuals who have retained the right to Republic of Lithuania citizenship according to Republic of Lithuania citizenship law article 17, part 1, upon their request are issued a certificate of the right to retain Republic of Lithuania citizenship.

The Resolution provides that an individual who has this certificate indefinitely retains the right to Republic of Lithuania citizenship by the Republic of Lithuania citizenship law.

On the basis of the facts in the case it is established that the declarant submitted a request to issue (to modify) a certificate of retention of the right to Republic of Lithuania citizenship (pages 9-10 of the case). On January 21, 2010 the Migration Department made a decision Nr. (15/3-11)8P-179, in which it indicates that the declarant did not preserve the right to Republic of Lithuania citizenship because there lack documents to prove the kinship of Grantas Arturas Gochinas and Samuilas (Samuelis) Gochinas (the passport information page provided does not specify Samuilas's (Samuelis's) date and place of birth. (pages 6-7 of the case).

The defendant does not dispute that Samuilas (Samuelis) Gochinas had Lithuanian citizenship prior to June 15, 1940, thus in this case it is important to determine whether the declarant proved that he is Samuilas (Samuelis) Gochinas's grandchild.

The defendant asserts that the parties' dispute was already resolved on September 18, 2008 when the Vilnius Regional Administrative Court made a decision in administrative case Nr. I-2369-426/2008. The court rejects this argument by the defendant because in the said case was being decided the validity and soundness of the Migration Department's decision Nr. (15/3-11) 8P-675 of June 18, 2007 by which it recognized that the declarant is not a Republic of Lithuania citizen because there lack documents to prove the kinship of Grantas Arturas Gochinas and Samuilas (Samuelis) Gochinas (the passport information page provided lacks Samuilas's (Samuelis's) data and place of birth).

In this case the issue being decided is not the granting of citizenship to G. A. Gochinas, but rather the retention of the right to Republic of Lithuania citizenship and the issuance of the certificate, and so the matter in this case is different than it was in the administrative case Nr. I-2369-426/2008.

The parties in the deliberated case and in this case are the same. The documents which were submitted to the court in deliberation of administrative case Nr. I-2369-426/2008 (namely: the birth document's information (page 11 in the case) where it is recorded that Chone Hesselis Gochinas, who changed his names to Harold, was born on June 13, 1933 in Middle Avenue, his parents - Samuelis Gochinas, 31

years old, born in Lithuania, and Dora Rummel, 30 years old, born in Latvia; the entry from the birth registry (page 13 in the case) where it is recorded that Grantas Arturas Gochinas was born on November 2, 1963 in Port Elisabeth, his parents - Haroldas Gochinas, 30 years old, born in Port Elisabeth, and Sandra Joan Smolian, 23 years old, born in Port Elisabeth; the copy of the Šiauliai city and district chief's passport division's file (pages 17-19 in the case) where it is recorded that Samuilas Gochinas was issued a passport; the medical documents of the military hospital (pages 20-23 in the case), where Samuelis Gochinas is mentioned; the declarant's relatives' letters to the Migration Department (pages 30; 43; 44 in the case), in which it is indicated that Samuilas (Samuelis) Gochinas was born in Papilė, Lithuania, married the young woman Dora Rummel from Latvia and had two sons Harold Gochinas (the declarant's father) and Arnoldas Gochinas (the declarant's uncle); photographs (page 81 in the case)) were already evaluated by the court and the conclusion was made that they are insufficient to prove the kinship of the declarant and his grandfather Samuilas (Samuelis) Gochinas.

ABTĮ article 58 part 2 provides that facts determined in a judicial decision in force in one administrative or civil case are not established anew in deliberating other administrative cases in which the same parties are participating. Since the same parties are participating in both cases, in this case the abovementioned judicial decision has prejudicial significance.

The declarant newly submitted these documents along with the complaint: Gochinas Arnoldas's birth certificate and its translation, Gochinas Samuelis's death certificate and its translation, a translation of Gochinas Haroldas's birth certificate, a translation of Estera (Ester) Barsel's and Mervynas Michaelis Zelichovas's (Mervyn Michael Zelichov's) writings to the Migration Department, Urielis Mejeris Gochinas's writings to the Migration Department (pages 27, 36, 37, 40, 42, 43, 44 of the case).

The court, having evaluated Gochinas Arnoldas's birth certificate (page 27 of the case (translation on page 40 of the case)), makes the conclusion, that it does not prove kinship between Grantas Arturas Gochinas and Samuilis (Samuelis) Gochinas. The birth certificate indicates that Arnoldas Gochinas's father was Samuelis Gochinas, but it does not confirm the fact that Samuelis Gochinas was the declarant's grandfather.

Samuelis Gochinas's death certificate (page 29 of the case (translation on page 42 of the case)) indicates that Samuelis Gochinas, born on February 15, 1901, died on June 2, 1984. This document likewise does not confirm Samuelis Gochinas's kinship with Grantas Arturas Gochinas.

The translation of Haroldas Gochinas's birth certificate was already evaluated in the administrative case Nr. I-2369-426/2008. From the said birth certificate it can be seen that on June 13, 1933 Haroldas Gochinas's father was 31 years old, which would mean that he was born in 1902. As already mentioned, Samuelis Gochinas's death certificate indicates his date of birth - 1901, so that in this case there is a discrepancy between the dates, which does not allow one to make a conclusion about the kinship of Samuelis Gochinas, Haroldas Gochinas and Grantas Arturas Gochinas.

Estera Barsel's (page 37 of the case (translation on page 44 of the case)) and Mervynas Michaelis Zelichovas's (page 36 of the case (translation on page 43 of the case)) writings to the Migration Department, Urielis Mejeris Gochinas's (page 30 of the case) writing to the Migration Department, explanations that Samuelis Gochinas in 1902 was born in Papilė, Lithuania, are not to be evaluated as the information provided is not substantiated by proofs.

Paragraph 14 of the Rules establishes that along with a request for the retention of the right to Republic of Lithuania citizenship it is necessary to append documents (or their copies) confirming kinship with an

individual who had Lithuanian citizenship prior to June 15, 1940 if the one who seeks to retain the right to Republic of Lithuania citizenship is the child, grandchild or great grandchild of the individual who had Lithuanian citizenship prior to June 15, 1940.

In CPK 444 article 2 part 2 paragraph 1 it is specified that a court of general competence deliberates cases of the determination of kinship. In establishing facts of legal significance, the court judges the totality of the proofs. Proofs can be not only written proofs but also testimonies of witnesses, material proofs, photographs, video recordings and more.

In this case, deliberating the declarant's request and making a decision as to retention of the right to Republic of Lithuania citizenship and issuing a certificate, according to the rules it is necessary to submit a document or its copy which would prove kinship. The declarant did not submit such a document which would prove his and his grandfather's kinship, that is, he did not prove kinship in the administrative judicial procedure in the way that public law requires.

The court, having deliberated the circumstances of the case, and having evaluated the proofs submitted, makes the conclusion that the Migration Department's decision Nr. (15/3-11) 8P-179 is sound because documents were not submitted that prove Grant Arturas Gochinas's and Samuilas (Samuelis) Gochinas's kinship, that is, the declarant did not prove that according to article 17, part 1, paragraph 1 of the Citizenship law he is the great grandchild of an individual who had Lithuanian citizenship prior to June 15, 1940.

Based on what is set forth above, and abiding by articles 85-88 part 1 paragraph 1, article 127 part 1 of the Republic of Lithuania's administrative case due process law, the judicial panel

decides:

to dismiss declarant Grantas Arturas Gochinas's complaint.

The decision may be appealed within 14 days of its declaration by appellate complaint to Lithuania's Supreme Administrative Court, submitting the complaint directly to that court or by way of the Vilnius Regional Administrative Court.

Judges Irena Paulauskienė, Halina Zaikauskaitė, Ernestas Spruogis.

Genuine copy. Judge's assistant ...