Administrative case Nr. J-2369-426/2008
Procedural decision category 3.5; 74

VILNIUS REGIONAL ADMINISTRATIVE COURT

DECISION
IN THE NAME OF THE REPUBLIC OF LITHUANIA

September 18, 2008
Vilnius

The Vilnius regional administrative court judicial panel, consisting of judges Henrikas Sadauskas (chairman), Rūta Miliuvienė (reporter) and Raimondas Blaudžius, with Aurelija Pauliukaitė as secretary, and the declarant's representative lawyer's assistant Ieva Klimavičiūtė present, and the respondent's representative Ramūnė Žuklijaitė present, in open session of court considered the administrative case as per declarant Grant Arthur Gochin's complaint regarding annulment of the decision of the Migration Department of the Ministry of Internal Affairs of the Republic of Lithuania and the obligation to take action.

The judicial panel, having considered the case,

determined:

the declarant Grant Arthur Gochin requests to annul the Internal Affair Ministry's Migration Department's decision Nr. (15/3-11)8P-675 of June 18, 2007 and to oblige the respondent to decide anew the matter of the declarant's Republic of Lithuania citizenship.

The complaint (pages 3-7) explains that his father is Harold Gochin. This fact is confirmed by the birth certificate, sufficiently complete, and its translation, which have been provided. The latter's father was Republic of Lithuania citizen Samuilis (Samuelas) Gochinas, who was born in Lithuania. This fact is confirmed by the information in the 1923 birth document Nr. 17 provided. Since his grandfather had Republic of Lithuania citizenship, the declarant approached the Migration Department with a request to decide the matter of his citizenship. He believes that the Migration Department's dismissal of his request was unfounded. Genealogical investigations conducted in various of Lithuania's archives and the documents found confirm that Samuelis Gochinas is Grant Arthur Gochin's grandfather, who had Republic of Lithuania citizenship. All of the documents in possession proving this fact were submitted to the Migration Department along with his request. In the declarant's opinion, the decision at issue is unfounded, unmotivated, not compliant with the principles of due process or intelligence or integrity, and therefore should be annulled.

He asserts that Samuilis (Samuelis) Gochinas was born on February 15, 1902 in Papilė,

Lithuania (at that time, in Kaunas province). His birth should have been registered in the Papilės Jewish community registry books, however it is not possible to provide a record from these books about his place and date of birth for objective reasons independent of the declarant's will - the Papilės Jewish community registry books from the 20th century were lost in World War I. During World War I, Samuilis (Samuelis) Gochinas along with his family, as was the case with many of Lithuania's Jews, was deported from his birth place by the czar's military authorities to the interior of the Russian empire. 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 it returned and settled down in Papilė. Much material did not survive because of World War II and its consequences.

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In the Šiauliai city and district chief's archive there likewise did not survive documents related to the activity of the Šiauliai committee for drafting recruits. Upon contacting Lithuania's central state archive, documents which have survived were received. The archival material is scant and reflects many areas of life only fragmentarily, however, from the secondary documents it is evident that Samuilis (Samuelis) Gochinas was a citizen of the Republic of Lithuania.

The Migration Department was provided with the surviving file Nr.53b, in which are the information pages of the internal passports for January, February and March of 1926. In the forementioned file, the Šiauliai district Papilė parish passport information page indicates that on January 15, 1926 Samuilas (Samuelis) Gochinas, born in Papilė, was issued an internal passport of the Republic of Lithuania (passport record book entry Nr. 4306). [The declarant] notes that Samuilas (Samuelis) Gochinas's internal passport did not survive. Presumably it disappeared during the war along with personal files and other documents. In March 1926, Samuilis (Samuelis) Gochinas departed for South Africa and due to circumstances which developed was never able to return to Lithuania. [The declarant] points out that a citizen of the Republic of Lithuania older than 17 years old was requirted to have a passport when traveling to a foreign state. It is evident that Samuilis (Samuelis) Gochinas truly had an internal passport, confirming that prior to June 15, 1940 he had Republic of Lithuania citizenship.

[The declarant] asserts that Samuilis (Samuelis) Gochinas completed military service in the army of independent Lithuania. The documents proving that he had had Republic of Lithuania citizenship prior to June 15, 1940 are also documents about service in Lithuania's army or employment in civil service. In the spring of 1924, Samuilis (Samuelis) Gochinas was called by the Šiauliai district committee for drafting recruits to serve compulsory military service. He was sent to the 5th infantry brigade (named after Grand Duke of Lithuania Kęstutis) in Kaunas. Because of the state of his health he was sent to the Jonas Basanavičius military hospital in Kaunas. Samuilis (Samuelis) Gochinas spent one month there and the doctor responsible for his treatment recommended that he be excused from military service and transferred to the army reserve. The abovementioned facts are supported by the documents in

Samuelis Gochinas's personal medical case history file.

According to the declarant, there have survived photographs of Samuilis (Samuelis) Gochinas where he is wearing the military uniform of the Republic of Lithuania. Vytautas Magnus University Humanities Faculty vice-dean, Lithuania's war history association chairman, associate professor Dr. Jonis Vaičenonis explained that Samuel Gochin depicted in the photographs provided is wearing a military uniform of the Republic of Lithuania. In the photographs there is discernible number "5" pinned on his shoulder mark. The Lithuanian army's infantry brigades were marked by such numbers. In this particular case the number "6" indicates that the soldier is serving in the 5th infantry Grand Duke Kęstutis brigade, which was deployed in Kaunas. In reply to the question, whether the uniformed soldier was a citizen of the Republic of Lithuania, it was asserted that the only possible answer was yes. That is confirmed by the Compulsory military service law published in Vyriausybės žinios (Kaunas, June 3, 1922, Nr. 91) where the first paragraph declares that every adult male citizen of Lithuania completes military service. An individual who is not a citizen of the Republic of Lithuania could not wear the Republic of Lithuania military uniform clearly visible in the photographs.

The defendant, the Migration Department of the Internal Affairs Ministry, disagrees with the declarant's complaint and requests that it be dismissed as unfounded.

In the reply (pages 38-40 of the file) [the defendant] points out that of all of the documents provided by Grant Arthur Gochin only does his explanation provide his grandfather's Samuelis Gochin's birth date and place - February 15, 1902, Papilė.

[The defendant] asserts that the complaint provides incorrect information. The Department was provided with a copy of the Šiauliai city and district chief passport division file Nr. 37 "Information about internal passports issued by the Papilė parish board", whereas the declarant's representative indicated in the complaint that "the Migration department was provided with Šiauliai city and district chief's file Nr. 53 which survived".

The copy of the Šiauliai city and district chief's file Nr. 53 appended to the complaint by the declarant's representative indicates that on January 15, 1926 Samuelas Gochinas, living in Papilė, was issued passport Nr. 1274208, but it does not specify the birth date or place of the person indicated, and so this document does not prove that the passport was issued to Grant Arthur Gochin's grandfather.

According to the defendant, the complaint indicates that Samuilas (Samuelis) Gochinas departed for the Republic of South Africa on March 1926. Whereas Grant Arthur Gochin in his explanation to the Department asserts that his grandfather departed in March 1928. The complaint's proposition that the photographs provided depict Grant Arthur Gochin's grandfather Samuilas (Samuel) Gochin is unfounded because, endeavoring to determine that the depicted indivdual is Grant Arthur Gochin's grandfather Samuilas (Samuelis) Gochin, a portraiture

investigation must be completed.

[The defendant] points out that Grant Arthur Gochin is a citizen of the United States of American and of the Republic of South Africa. This is confirmed by the United States of America citizen's passport Nr. 038735574 issued on February 10, 2004 by the Los Angeles passport agency, and the Republic of South Africa citizen's passport Nr. 403263718 issued on February 11, 1997 by the Internal affairs ministry. [The defendant] believes that Grant Arthur Gochin, considering his existing citizenships, cannot be a Republic of Lithuania citizen by Republic of Lithuania citizenship law article 1 paragraph 1.

In the court session the declarant's representative supported the complaint by invoking the reasons it notes.

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

The complaint is to be dismissed.

In the case deliberated the dispute has arisen as to whether the Migration Department had grounds to refuse to recognize the declarant as a citizen of the Republic of Lithuania.

The Republic of Lithuania citizenship law and the Constitution of the Republic of Lithuania regulate the legal terms of citizenship.

Article 1, paragraph 1 of the citizenship law provides that Republic of Lithuania citizens are individuals who prior to June 15, 1940 had Lithuanian citizenship, as well as their children, grandchildren and great grandchildren (if these individuals, their children, grandchildren or great grandchildren did not repatriate). Documents which prove that an individual had Lithuanian citizenship prior to June 15, 1940 are: surviving Republic of Lithuania internal or foreign passports issued prior to June 15, 1940; Republic of Lithuania foreign passports, issued by Republic of Lithuania diplomatic embassies or consular offices after June 15, 1940; documents about service in Lithuania's army or employment in civil service; birth certificates or other documents, which directly refer to possession of Lithuanian citizenship; personal testimonies issued according to documents issued prior to June 15, 1940 in Lithuania. If there are no such documents, there may be provided: documents about study, work or life in Lithuania prior to June 15, 1940; a sworn statement, notarized or verified by an official of a Republic of Lithuania embassy or consular office; a valid copy of a passport of a foreign country or other documents. Lithuanian descent is confirmed by documents proving that the individual's parents or grandparents, one of their parents or grandparents is or were Lithuanians, along with an individual's written declaration in which he admits to be a Lithuanian. If there are not enough documents proving that an indivdual had Lithuanian citizenship prior to June 15, 1940 or confirming Lithuanian descent, this matter may be

considered by the Commission for examining matters of Republic of Lithuania citizenship formed by the Republic of Lithuania administration or these facts are determined as prescribed by the courts (Citizenship law article 26 part 4). The minister of internal affairs or his authorized institution or the migration services make decisions concerning the Republic of Lithuania citizenship of individuals residing in the Republic of Lithuania according to this law's article 1 paragraphs 1, 2 or 3, and also decisions concerning the exercise of the right to Republic of Lithuania citizenship by this law's article 17 part 3 by those who retain the right to Republic of Lithuania citizenship according to this law's article 17 part 1 paragraph 1, and the minister of internal affairs or his authorized institution makes decisions concerning the Republic of Lithuania citizenship of individuals residing in foreign countries according to this law's article 1 paragraphs 1 or 3, and also decisions concerning the exercise of the right to Republic of Lithuania citizenship by this law's article 17 part 3 by those individuals residing in foreign countries who retain the right to Republic of Lithuania citizenship according to this law's article 17 part 1 paragraphs 1 or 2 (Citizenship law article 28 part 7).

From the facts of the case it is determined that the declarant submitted a request to exercise their right to Republic of Lithuania citizenship (pages 42-43 of the case) as well as a request for Republic of Lithuania citizenship (pages 44-45 of the case). On June 18, 2007 the Migration Department made a decision Nr. (15/3-11)8P-675 not to recognize the declarant as a citizen of the Republic of Lithuania because there are insufficient documents to prove the kinship of Grant Arthur Gochin and Samuilas (Samuelis) Gochinas (the information pages of the passports provided do not show Samuilas's (Samuelis's) birth date and place) and furthermore, the declarant is a citizen of other states - the United States of America and the Republic of South Africa (page 67 of the case).

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The declarant bases his right to be recognized a citizen of the Republic of Lithuania on these proofs: the entry in the copy of the birth register, in which it is recorded that Grant Arthur Gochin was born on November 2, 1963 in Port Elisabeth, that his parents are Harol Gochin, 30 years old, born in Port Elisabeth, and Sandra Joan Smollan, 23 years old, born in Port Elisabeth (pages 48-49 of the case), a copy of the document of his father's birth (pages 50-51 of the case), where it is recorded that Chone Hessel Gochin, who changed his names to Harold, was born on June 13, 1933 in Middle Avenue, that his parents are Samuel Gochin, 31 years old, born in Lithuania, and Dora Rummel, 30 years old, born in Latvia; a copy of the Šiauliai city and district chief's passport division's file, in which it is recorded that Samuilas Gochinas received a passport; medical documents (pages 18-21 of the case), where Samuelis Gochinas is mentioned; photos (pages 22-26 of the case); the Lithuania's war history association chairman's explanation that the individual in the abovementioned photographs is wearing a military uniform of the Republic of Lithuania (page 27 of the case).

Article 57 part 6 of the law for due process in administrative cases stipulates that no proof can

have any predetermined authority over the court, but rather the court evaluates proofs according to its own inner conviction grounded in complete, thorough and objective analysis of the overall circumstances of the case, guided by the law and also the criteria of justice and intelligence. This means that under the law, the evaluation of proofs, as the process of determining the objective truth, is grounded on a subjective factor - inner conviction.

The declarant indicates in his explanation of September 23, 2005 that his grandfather Samuelis Gochinas was born on February 15, 1902 in Papilė.

The judicial panel, having familiarized itself with the proofs in this case, according to its own inner conviction, based on a complete, thorough and objective analysis of the overall circumstances of the case, decides that there is a lack of documents confirming the kinship of the declarant and Samuilas (Samuelis) Gochinas.

First of all, it is to be taken into consideration, that there is not included in the administrative case the birth certificate of Samuilas (Samuelis) Gochinas, which would indisputably confirm kinship with Grant Arthur Gochin. The certificate (pages 50-51 of the case) which establishes Samuilas (Samuelis) Gochinas's birth in Lithuania is a document reflecting information about certain events, received from unknown sources, and therefore in principle cannot be accepted as written proof that is reliable and not raising legal ambiguities.

From the materials of the case it is evident that the declarant went to the Vilnius city 2nd District Court asking to determine a fact of legal significance that Samuilis (Samuelis) Gochinas, the declarant Grant Arthur Gochin's grandfather, was a citizen of the Republic of Lithuania (pages 73-76 of the case). The court's decision on February 25, 2008 (pages 82-84 of the case) to dismiss the case, asserting that the fact asked to be determined by the declarant, who currently has citizenship of the United States of America and the Republic of South Africa, will not create for him any consequences of legal significance - Republic of Lithuania citizenship cannot be granted to citizens of other states. The abovementioned decision of the court is in force.

In the case there is information that Samuilas Gochinas, when he lived in Papilė, was issued a passport, however the document (pages 15-17 of the case) does not indicate this individual's birth date or place, and thus does not prove that the passport was issued specifically to the declarant's grandfather.

During the proceedings the declarant's representative submitted Mervyn Michael Zelichov's, Esther Barsel's and Chone Hessel (Harr) Birin's clarifications that Samuelis Gochinas was born in 1902 in Papilė, Lithuania. The court judges these clarifications critically, as the information they provide is not confirmed by the necessary proofs (for example, a birth certificate or comparable court decision about the determination of a fact of legal significance).

The photographs submitted with the declarant's complaint likewise do not allow conclusions to be made about the validity of the declarant's complaint, for from them it is not clear if the individual they depict is Samuilas (Samuelis) Gochinas. These photographs merely confirm the fact that the individual they depict who wears a military uniform is possibly a citizen of the Republic of Lithuania, which was confirmed by the written explanation of Lithuania's war history association chariman.

The Lithuania state history archive's certificate of September 4, 2007, Nr. (P1-9652)P2-8908 (page 13 of the case) indicates that this archive did not receive for safekeeping the certificate books of the Papilė Jewish community for 1900-1905, and therefore cannot issue a certificate regarding Samuel Gochin's birth. Consequently, the abovementioned certificate is legally insignificant from the point of view of evaluating the proofs.
The respective medical documents do not confirm the individual's they mention - Samuilas Gochinas's - kinship with Grant Arthur Gochin. Other proofs in the case (among them, the explanation of junior researcher Eglė Bendikaitė of January 20, 2006, pages 62-63 of the case) likewise do not allow drawing any other conclusion then that which the Migration Department made in the contested decision.

The judicial panel, having thoroughly analyzed the totality of the collected proofs, judges, that facts assembled in the administrative case are more amenable to the conclusion that the Migration Department made a sound decision and had no basis to assert the sufficiency of the documents proving the kinship of Samuilas (Samuelis) Gochinas and the declarant. (Article 57 of the law for due process in administrative cases).

A similar precedent is formed by Lithuania's supreme administrative court (the decision of April 10, 2008 of administrative case Nr. A556 - 317/2008)

The judicial panel also notes that on November 13, 2006 the Constitutional court of the Republic of Lithuania made a ruling "Regarding the compliance of the provisions of acts of law regulating terms of citizenship of the Republic of Lithuania to the Constitution of the Republic of Lithuania", by which it admitted relevant provisions of the citizenship law of the Republic of Lithuania as conflicting with the Constitution of the Republic of Lithuania. According to the ruling of the Constitutional court of the Republic of Lithuania, likewise in conflict with the Constitution of the Republic of Lithuania is article 1 paragraph 1 of the Citizenship law in that scope wherein it establishes that citizens of the Republic of Lithuania are also those individuals indicated in this paragraph who have citizenship of another state as well.

As evident from the materials of the case, the declarant has citizenship of the Republic of South Africa and of the United States of America, and therefore subsequent to the ruling of the Constitutional court of the Republic of Lithuania cannot acquire citizenship on the basis of article 1 paragraph 1 of the Citizenship law, since from that date which a ruling of the Constitutional court is officially declared, that a certain act of law (or its part) conflicts with the Constitution of

the Republic of Lithuania, it may not be applied (article 107 of the Constitution of the Republic of Lithuania).

For the reasons listed above the conclusion is to be drawn that the contested decision of the Migration Department is valid and sound. There is no legal basis to annul it and to oblige the defendant to consider anew the matter of the declarant's citizenship in the Republic of Lithuania. Grant Arthur Gochin's complaint is dismissed as unfounded. (Article 88 part 1 paragraph 1 of the law for due process in administrative cases).

Based on that which is laid out above, and guided by articles 85-88 part 1 paragraph 1, article 127 part 1 of the Republic of Lithuania's law for due process in administrative cases, the judicial panel

decided:

to dimiss declarant Grant Arthur Gochin's complaint.

The decision may within 14 days of its declaration be appealled with an appelate complaint to Lithuania's Supreme Administrative Court upon submitting a complaint directly to that court or through the Vilnius Regional Administrative Court.

Judges Henrikas Sadauskas, Rūta Miliuvienė, Raimondas Blauzdžius

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