

Administrative case no. eI-534-281/2019
Trial no. 3-61-3-02757-2018-5
Procedural decision categories: 41; 55.1.3



VILNIUS DISTRICT ADMINISTRATIVE COURT

DECISION

IN THE NAME OF THE REPUBLIC OF LITHUANIA

March 27, 2019
Vilnius

The jury of the Vilnius District Administrative Court, consisting of the judges Mefodija Povilaitienė (chief justice and speaker), Donatas Vansevičius and Liudmila Zaborovska, with attorney Rokas Rudzinskas and Andrius Jonas Kulikauskas representing Grant Arthur Gochin participating, and attorney Kristinai Čeredničenkaitė and attorney Juris Pterekis, and Alfredas Rukšėnas, Arūnas Bubnys and Dalius Egidijus Stancikas representing the defendant, the state institution Center for the Study of the Genocide and Resistance of Residents of Lithuania, participating,

in a public trial considered the administrative case according to the suit of the plaintiff Grant Arthur Gochin against the defendant, the state institution Center for the Study of the Genocide and Resistance of Residents of Lithuania, for the retraction of a text and being ordered by the court to perform certain actions.

The Court

d e t e r m i n e d :

Plaintiff Grant Arthur Gochin presented to the court a suit, requesting the retraction of text no. 14R-52 of July 18, 2018, by the Center for the Study of the Genocide and Resistance of Residents of Lithuania (hereinafter Center), and to order the Center to perform an administrative procedure according to the questionnaire and appended documents presented by the plaintiff on June 15, 2018, namely, to perform research and redact an historical finding on the activities of Jonas Noreika, and to post this changed finding on the internet site www.genocid.lt.

He explains the defendant in July of 2015 and later in October of 2015 prepared a finding on Jonas Noreika and published these on their internet webpage. The plaintiff believes the defendant's conclusion on the activity of Jonas Noreika is misleading. Hence he approached the defendant, asking it to take into account arguments and documents presented, and to change the official finding of history regarding Jonas Noreika. The plaintiff asked the defendant to explain upon what it based its conclusion regarding the activity of Jonas Noreika. He believes the defendant in the disputed letter of July 18, 2018, did not discuss any of the documents which the plaintiff had presented along with the request to change the historical finding, and also states that his questionnaire basically went unanswered. He

indicates the defendant cherry-picked the topics to which it wished to reply and avoided the main questions posed by the plaintiff, and that the information provided was based on speculations and wasn't true. The plaintiff claims the interpretation and explanation of historical facts by the Center is not objective. The defendant in the disputed letter did not comment upon the proof provided by the plaintiff regarding the activities of Jonas Noreika, remained silent on important circumstances surrounding one or another event, assessed his activities in a fragmented manner, failed in its assessment to include the full historical facts, and did not comment upon Jonas Noreika's ties with other members of the Lithuanian Activist Front (hereinafter LAF). The defendant in the disputed letter failed to provide arguments forming an objective basis for its position regarding the questions raised by the plaintiff. Thus the defendant failed to perform the tasks assigned it and operated against goals established by law.

The plaintiff's representatives maintained the circumstances described in the complaint and asked the court to find in their favor.

The defendant in its rebuttal to the plaintiff's suit said it did not agree with the complaint and asked the court to reject it as unfounded.

It explained the plaintiff doesn't have legal standing to dispute the Center's letter of an informational nature in which the Center's assessment is presented. The information provided in the disputed letter has no influence at all on the plaintiff's rights and duties. The disputed letter by the Center is not considered an act of law and therefore cannot be the subject of dispute in an administrative court. The plaintiff's disagreement on the contents of the text of an informational nature is a circumstance of a subjective nature which by itself does not lead to the legality, legitimacy or good foundation of that text [sic]. That means the plaintiff does not have a material legal interest [legal standing] to bring suit in court for the retraction of Center text no. 14R-52 of July 18, 2018.

It is stated that the defendant, having considered thoroughly the facts indicated in the plaintiff's letter and the assessments of Noreika's activities based on them, informed the plaintiff in writing on July 18, 2018, that the defendant did not discover in the material he presented any information which would allow for essentially changing the conclusion regarding Jonas Noreika. In the disputed letter the defendant thoroughly and logically answered the questions posed by the plaintiff, and provided rational statements on his assumptions and categorical conclusions, as well as regarding the activities of Noreika. The defendant numerous times exhaustively investigated the facts presented by the plaintiff, the sources he indicated and its conclusion questioned by him was adopted based on existing (objectively existing) sources, based on the necessary methodology required by the discipline of history for making such a conclusion.

It is noted the defendant is unable to consider the research initiated by the plaintiff and his conclusion academic or objective, first of all because it was not produced based on the principle of historiographic approaches; secondly, because of its questionable methodology of history research; thirdly, this hasn't been confirmed as academic by specialists in the field of history; fourthly, the researchers who did the research--Andrius Kulikauskas and Evaldas Balčiūnas--are not recognized as professional historians in academic circles; and fifthly, some of the conclusions drawn by the plaintiff are disconnected from research and reality and are connected with propaganda disinformation from the time of the occupations. The plaintiff fails to assess the historiographic content of the documents which he apparently discovered in research he initiated, and therefore the conclusions drawn from these disparate documents cannot be considered academic or objective.

The defendant's representatives at the court proceeding adhered to the arguments made in the rebuttal and asked the plaintiff's suit be thrown out as unfounded.

The Court

s t a t e s :

In the case under consideration, the dispute arose regarding the legality and good foundation of the Center's letter no. 14R-52 of July 18, 2018, and also on the foundation for requiring the defendant to perform an administrative procedure according to the questionnaire and documents appended to it from the plaintiff presented on June 15, 2018.

The Law on the Center for the Study of the Resistance and Genocide of Residents of the Republic of Lithuania (hereinafter Law) regulates the Center's activities, its tasks, functions, legal status, structure and work organization. Section 1, article 2 of the Law defines the Center as a state budgetary institution researching all expressions of genocide, other war crimes and crimes against humanity and armed and non-violent resistance to the occupations [of Lithuania], initiating a legal judgment of the actions of the organizers and executors of genocide. The tasks assigned the Center include the restoration of historical truth and justice, commemoration of freedom fighters and victims of genocide and the initiation of a legal judgment of the consequences of occupation.

To fulfill the tasks assigned, the Center collects, examines and summarizes material on processes and participants involved in resisting the occupational regimes (article 5, part 1, point 1, subpoint c in the Law); publishes academic, informational and analytic material (article 5, part 1, point 1, subpoint d); and determines the facts in the persecution of Lithuanian residents and genocide as well as the perpetrators of these repressions (article 5, part 1, point 1, subpoint h).

The court in the context of the case being considered notes that the forms for approaching a public administration subject are set in the Lithuanian Law on Public Administrations (hereinafter LPA, in effect since April 2, 2018), namely, the request and the complain. A request is a personal address unconnected with the violation of the rights or the legitimate interests of the person, made to the public administration subject, asking for the adoption of an administrative decision, or for the performance of other actions defined in law (LPA article 2, section 14). A complaint is a person's written address to a public administration subject in which it is indicated his rights or legitimate interests have been violated, asking for them to be defended (LPA article 15).

The court notes that in attempting to determine whether the Center's letter disputed by the plaintiff meets the requirements of law, the form of the plaintiff's address to the Center of June 16, 2018, must first be determined: is it considered a complaint or a request under the LPA? This determines the sort of administrative service which should have been provided to the plaintiff: a reply to the request for information, or the execution of an administrative procedure, and the legality and foundation of the letter in dispute depends upon this.

Article 15, section 1, point 5 of the LPA lists as one administrative service the presentation to people of information by the public administration subject according to law. A person's request to provide administrative services defined in article 15, section 1, points 1-5 of the LPA is not connected with the violation of the rights of this person, and therefore it is not considered according to the rules of administrative procedure defined in articles 19-36 of the LPA, but rather according to rules for considering a person's requests and servicing them in public administration institutions, agencies and other public administration bodies, adopted by Lithuanian Government Resolution no. 875 on August 22, 2007 (hereinafter Rules for considering a person's requests) (e.g., see the Lithuanian Supreme Administrative Court's (hereinafter LSAC) finding in administrative case no. A63-1146/2012 issued on March 22, 2012).

Another administrative service listed in the LPA is the execution of an administrative procedure (LPA article 15, section 1, point 6). This administrative procedure is defined in the LPA as mandatory actions which the public administration subject must undertake in considering a complaint about that public administration subject's actions, non-action or administrative decisions which are alleged to have

done harm to the indicated person's rights or legitimate interests, and in making an administrative procedural decision regarding this (LPA article 19, section 1).

In point 4 of the Rules for considering a person's requests, consideration of the person's request is defined as an activity or action by the institution including the reception of the person's request, registration of the request, determination of its basis and preparation of a response to the person. Then the response, depending on the contents of the request, presented orally or in writing to the person in the manner prescribed by law, is an administrative service being delivered, presenting a copy of the requested administrative act [order], either a handwritten copy or a recording, explaining the institution's opinion about the person's critique, suggestions or desires. According to article 25 of the Rules for considering a person's requests, requests, except for requests which can be answered that same work day without harming the interests of the person making the requests or those of other people or institutions, must be deliberated within 20 working days from the day of receipt of the request at the institution.

Based on the written material in the case, it was determined that the Center in October of 2015 published its finding "The Activities of Jonas Noreika (General Storm) in Nazi-Occupied Lithuania," which claims research performed on Jonas Noreika's activities during the period of the German occupation allowed them to state confidently that he could not be assessed in a single way, noting repeated exhaustive studies by the Center's historians did not confirm claims made in the memoirs of A. Pakalniškis alleging Jonas Noreika was a participant in operations for the mass murder of the Jews, showing that in 1941 the Nazi occupational regime was unable to lure Noreika into an operation to exterminate Jews in the Plungė rural district of the Telšiai district, that Noreika did not take part in acts of discrimination against and isolation of the Jews because he only began working in the post of head of the Šiauliai district on August 3 or 5, 1941, and that no information was found in archive documents or works by historians indicating Jonas Noreika had been a participant in operations for the extermination of Jews in the Šiauliai district.

On June 15, 2018, the plaintiff contacted the Center requesting a well-founded answer to the question of whether Jonas Noreika's activities "cannot be assessed in a single way," demanding the Center categorically condemn Jonas Noreika and changes the findings it had published. The plaintiff also expressed a request to take into account facts and documents determined and discovered during this research and to change the existing findings by the Center on the activities of Jonas Noreika, discussing all of the historical facts and documents cited.

On June 15, 2020, he posed these fundamental questions (indicated verbatim--note by court) to the Center in his letter: 1) Are the studies by your Center academic and are the conclusions correct? 2) How many Lithuanians are responsible for crimes committed against humanity in Nazi-occupied Lithuania? 3) How can Lithuania learn from your academic work if you don't address issues of guilt? 4) How can Almas be guilty and Noreika not? 5) Who more than Jonas Noreika is responsible for the extermination of the Jews of the Telšiai region? 6) How do you assess the mobilization for the Lithuanian military carried out in the Plungė region? 7) Where do you discuss Lithuanian responsibility for these units? 8) Why didn't you examine all of the 270 court cases described in Lithuanian Central State Archive file f. R-1441, a. 2? 9) Why haven't you published Jonas Noreika's order of July 25, 1941 (Lithuanian Central State Archive file f. 1075, a. 2, b. 6) and haven't explained the circumstances surrounding it? 10) Where have you listed all [LAF] activists subordinate to Jonas Noreika, their activities and crimes? 11) What do you think, when Jonas Noreika commanded the LAF, how many Lithuanians were shot by Lithuanians? 12) Why haven't you described the brutality of the Lithuanian torturers and the innocence of the Jewish victims? 13) Why don't you mention on your webpage that the witnesses to these mass murders, Lithuanian prison guards, were shot by a gang called the Republic of Lithuania, after Jonas Noreika rejected their pleas for clemency? 14) Why haven't you published on your website that the medical protocol written by doctor Plechavičius and the 1988 testimonies of the

doctor's assistant Vaclovas Rubinas deny the tortures made up in the Lithuanian press? 15) Do you think Jonas Noreika's isolation of Jews was acceptable or unacceptable? 16) Why haven't you published documents illuminating the post which I. Urbaitis declined but which Noreika accepted? 17) Jonas Noreika served the Nazi extermination policy better than his superior! Why don't you emphasize this? 18) Then how do you justify Jonas Noreika's actions in setting up camps, arming guards, capturing escaped prisoners and collecting fees from farmers for each prisoner? 19) Why in his book about the Lithuanian battalions didn't Arūnas Bubnys examine Jonas Noreika's ties with the 14th battalion? 20) How have you researched the development of legends about Jonas Noreika? What is core of the Jonas Noreika legend? Why is it important? 21) Are you concerned Noreika's biographer Viktoras Ašmenskas worked for state security? Why didn't you mention this in publishing his book?

The Center in the disputed letter no. 14R-52 of July 18, 2018, informed the plaintiff it had not found in the presented material information which could change in a fundamental way the finding on Jonas Noreika, and that the finding demanded by the plaintiff for adoption possibly violated the Lithuanian constitution and other legal acts.

Having examined the contents of the plaintiff's letter of June 15, 2018, and the questions it contained for the Center, the court comes to the conclusion this letter should be considered a request according to article 15, section 1, point 5 of the LPA, and should not be considered a complaint, on whose basis an administrative procedure should be initiated and carried out. It is noteworthy that the plaintiff in his letter to the Center of June 15, 2018, in the section entitled "Questionnaire on the Criminal Gang of Jonas Noreika" raised questions about Jonas Noreika's activities and sought explanation on why these activities were judged as they were laid out in the October, 2015, finding by the Center, and that he wanted Jonas Noreika's activities to be assessed in the opposite way, i.e., that Noreika would be assessed as a person who contributed to the execution of the Holocaust in Lithuania. The plaintiff in his letter of June 15, 2018, did not include arguments on how that violated his personal rights, and didn't detail how the findings presented by the Center on Jonas Noreika affected his rights and duties, but did present questions (including of an hypothetical nature) on the assessment of Jonas Noreika's activities, and expressed his conviction the Center's assessment as reflected in October, 2015, findings published was incorrect. Therefore, having considered the content of the plaintiff's letter of June 15, 2018, the conclusion should be made that this text was intended not for the defense of personal rights and interests, but for yielding information and the corresponding position of the Center regarding it concerning the issue raised, and also for expressing criticism on the position the Center had presented regarding the assessment of the activities of Jonas Noreika. Therefore there is no foundation for considering the aspects of violation of personal rights or interests in the Center's disputed letter of July 18, 2018, because the disputed reply only presented information and opinion, an assessment of the facts indicated by the plaintiff.

LSAC jurisprudence states that the legality and good foundation of a disputed reply which presents information should be judged in terms of the completeness, relevance, legality and objectivity of the information presented (LSAC finding of September 28, 2012, in administrative case no. AS662-538/2012).

Although the plaintiff says the Center in its letter of July 18, 2018, in rejecting the request for changing its historical finding did not address even one of the historical documents he had submitted, tendentiously selecting the topics for its reply while avoiding the main topic--the roles of Jonas Noreika and the LAF in the mass murder of the Jews of Žemaitija--the court does not agree with the plaintiff's claims here. Examining the contents of the disputed letter of July 18, 2018, it's clear the defendant did present a position regarding Jonas Noreika's actions in Žemaitija and his possible influence over the mass murder of Jews. Assessing the roles of the LAF and Noreika, the defendant in the disputed decision simply indicated it did not agree Noreika or the Telšiai LAF organization he commanded held the main role of instigation, organization or execution, and explained the reasons for this assessment

had been presented to the plaintiff as well in earlier responses to queries from the plaintiff.

The court notes that the Center's letter of July 18, 2018, is exhaustive, detailed, it discusses all the main questions by the plaintiff on Jonas Noreika's activities, and the Center's position on the plaintiff's arguments is presented regarding the influence of Noreika's personal and professional activities on the mass murder of Jews. The Center's letter of July 18, 2018, lays out its position clearly, presenting specific bases for the arguments made by the Center, i.e., history research, archival information, the historical context of the facts and excerpts from academic articles. There is not a basis for agreeing with the claims made by the plaintiff to the effect the Center's answers were presented by selecting topics for reply tendentiously, and it is clear from the disputed letter the Center presented a comprehensive position on Jonas Noreika's actions. It is worth noting the Center in the disputed letter affirmed the fact Jonas Noreika's activities cannot be judged categorically, and that there was no confirmed information the conclusions made by the plaintiff in his letter of June 15, 2018, could be considered correct.

The court in this case has no basis for coming to the conclusion the assessment presented in the disputed letter from the Center was insufficient, incomplete or irrational. On the contrary, the facts determined and the information presented in the Center's reply of July 18, 2018, reveal the Center carefully and comprehensively took into consideration the observations made by the plaintiff, replied to his questions, presented its position on the criticism expressed regarding Noreika's activities and based its position on factual information and documents. The defendant in its disputed letter of July 18, 2018, explained in regards to the archival documents signed by the head of the Telšiai district and the Telšiai burgermeister presented by the plaintiff that all orders connected with discrimination against the Jews and ghettos originate with the German occupational regime's agencies. Regarding the book by Bubnys cited by the plaintiff, the Center states there was no task set during the writing of this book for examining the relations between the [June, 1941] Uprising and the Holocaust. The defendant answered in regards to other academic conclusions and academic articles presented by the plaintiff and presented its position regarding each issue raised. The court further notes that in terms of comprehensiveness the defendant's reply didn't exclusively assess the written documents and evidence presented to the defendant in the letter of June 16, 2018. Furthermore, the defendant indicated in its written explanations that all of these archival documents, newspaper clippings and academic articles presented by the plaintiff had been known to the Center previously, and were taken into consideration in adopting its finding on Jonas Noreika's activities back in October of 2015. Therefore it is considered that the Center did take into account sufficiently the written evidence presented by the plaintiff.

Judging the archival information and other written evidence which the plaintiff himself submitted in this administrative case, the court notes that administrative courts rule on disputed in the sphere of public administration (Law on the Procedures of Administrative Cases (hereinafter LPAC), article 3, section 1), i.e., the administrative court decides whether in a specific case the law or other legal acts were broken, whether the public administration entity acted beyond its authority, and also whether or not a legal act or actions (or non-action) was in violation of the goals and tasks for which the institution was founded and for which it received authority (LPAC article 3, section 2). In this case this aspect is important because the court may not assume for itself the functions and authorizations set for the Center, and the court in rendering justice may not carry out public administration functions itself. It is, to wit, the Center which examines and summarizes material about processes of and participants in the resistance to the occupational regimes, publishes academic, informational and analytical material, determines the facts of genocide and the persecution of residents of Lithuania and the executors of repression, and presents material on specific perpetrators of genocide.

Furthermore, the court notes that the Center's letter of July 18, 2018, also conforms to the requirements contained in article 8, section 3 of the LPA, namely, it is signed by the Center's general director and it was adopted [or "received"] without violating the 20 working-day deadline of point 25

of the Rules for considering a person's requests, and therefore there is no basis for the claim the Center's disputed letter no. 14R-52 dated July 18, 2018, did not constitute a reply to the demands made according to point 4 of the Rules for considering a person's requests, nor according to the requirements of article 8 of the LPA.

Based on the foregoing, the court finds that the Center's letter no. 14R-52 of July 18, 2018, disputed by the plaintiff Grant Arthur Gochin conforms to the law, and the court has no basis for annulling it based on the arguments made by the plaintiff or other arguments, and therefore the demand made in this suit is rejected. Since there is no foundation for satisfying the main demand in the plaintiff's case to annul the Center's letter no. 14R-52 of July 18, 2018, also rejected as unfounded is the derivative demand made by the plaintiff in his complaint to order an administrative procedure regarding the questionnaire presented by the plaintiff on June 15, 2018. Thus the plaintiff's complaint is rejected as unfounded (LPAC article 88, section 1, point 1).

On the recovery of legal fees

The plaintiff requested all his legal fees be paid compensated by the defendant. According to article 40, section 1 of the LPAC, the legal party in whose favor a decision is issued has the right to receive compensation from the other legal party of all expenses. Since in this case the plaintiff's suit was rejected, he doesn't acquire the right to demand the recovery of legal fees from the defendant.

Based on article 88, section 1, point 1, and articles 132 and 133 of the LPAC, the court

r e s o l v e s:

To reject plaintiff Grant Arthur Gochin's suit as unfounded.

This decision can be appealed within 30 days of its issuance by an appellate case made to the Lithuanian Supreme Administrative Court by passing the appeal through the Vilnius District Administrative Court.

Jurists

Mefodija Povilaitienė

Donatas Vansevičius

Liudmila Zaborovska