

/Coat of arms/

VILNIUS CITY COUNTY COURT
DECISION
IN THE NAME OF THE REPUBLIC OF LITHUANIA
12 April 2016
Vilnius

Judge Natalija Daškoviėnė of Vilnius County Court,
secretary Nijolė Jašinuskytė,
in the presence of an assistant of the lawyer Evelina Baliko,
and representatives Jūratė Palionytė and Saulius Česnavičius of State Commission of the Lithuanian Language, as the conclusion providing authority,

in an open court hearing, examined a civil case in accordance with the revised statement of the applicants Malgorzata Runiewicz-Wardyn and Lukasz Pawel Wardyn on the obligation to change the entry of the Civil Status Act. The parties concerned in the case are Vilnius City Municipality Administration, Civil Registry Office of Legal Department of Vilnius City Municipality Administration, Ministry of Justice of the Republic of Lithuania, State Commission of the Lithuanian Language, as institution providing the conclusion in the case,

e s t a b l i s h e d:

under the revised statement (Vol.2, c. p. 26-32) applicants Malgorzata Runiewicz-Wardyn and Lukasz Pawel Wardyn ask the court to declare as invalid and cancel the decision of 01/09/2009 of Civil Registry Office of Legal Department of Vilnius City Municipality, to oblige Civil Registry Office of Vilnius Municipality Administration to change the surname of the applicants' child Michal Leon Vardyn to 'Wardyn' and issue a new birth certificate, to adjudge the case costs. States that son Michal Leon Vardyn of the applicants: Lithuanian citizen Malgorzata Runiewicz-Wardyn and the Polish citizen Lukasz Pawel Wardyn was born in Belgium, in 2009. On 02/06/2009, Belgian birth certificate was issued in his name and the name and surname were entered in the original form: Michal Leon Vardyn, i.e, given his father's surname. On 19/06/2009, applicants applied to Consulate of the Republic of Lithuania for a passport for their son. Consulate issued a temporary passport No. LT..... with the incorrectly entered name and surname 'Michal Leon Vardyn', instead of Michal Leon Vardyn. In this way, name and surname of their son were changed by force and without their consent. At the time of registration of the applicants' son in Vilnius, contrary to their request, the son's name and surname in birth certificate No. (AA) were recorded as 'Michal Leon Vardyn'. On a basis of this entry, on

07/072009 a passport of the Republic of Lithuania No. was issued with the same and changed by force name and surname Michal Leon Vardyn, which does not meet a birth certificate issued in Belgium – the original resource of the personal name spelling. On 17/07/2009, the applicants applied to the Civil Registry Office of Vilnius City Municipality, with a request to change their son's birth certificate and asked to replace the incorrectly spelled son's name and surname. In the response of 01/09/2009, Civil Registry Office of Legal Department of Vilnius City Municipality refused to change the son's name into the original form of its spelling. The applicants seek the annulment of the entry of the act, issuance of a new birth certificate for their son with correctly recorded name and surname, as recorded in documents issued by Polish and Belgian authorities. Claims that Civil Registry Office of Vilnius City Municipality Administration did not take into account the documents submitted by the applicants, violated their and their son's rights, they suffered and still suffer a lot of inconveniences in public and private life, the disputable act contradicts to international and European Union legislation.

It notes that the Lithuanian Constitutional Court established that in some cases, non-Lithuanian names can be written using not only Lithuanian alphabet letters, but also other Latin characters. They suffer inconveniences due to inability to use the original surname, it prevents fostering Polish culture, religion; son suffers difficulties in self-identification and

communication with others in the social environment. Emphasizes that there are people registered with 'W' letter in the surnames in Lithuania. Considers that the refusal to change the child's surname to 'Wardyn' is contrary to the Art. 8 of the European Convention on Human Rights and Fundamental Freedoms, and Art. 11(1) of the Convention for the Protection of National Minorities of the European Council, and is a rough violation of the requirements of the Article 22(1) of the Constitution of the Republic of Lithuania, Art. 17, Art. 26, Art. 27 of the International Covenant on Civil and Political Rights and Art. 7, Art. 8, Art. 30, Art. 2 of the United Nations Convention on the Rights of the Child.

During the proceedings at the court, representative of the applicants supported the revised request, and asked to satisfy it.

The person concerned – Lithuanian Ministry of Justice of the Republic of Lithuania with the response (Vol.2, c. p. 38-39) to the Court did not object substantially to satisfy the statement of the applicants, requested to settle it at the Court's discretion, indicating that the existing legal regulation provides that functions of civil status act recording, record restoration, replacement, addition, correction or cancellation are carried out by the civil registry offices, which decisions can be appealed against in court, and the ministry can not change, revise decisions of the civil registry offices. The representative of the person concerned did not appear at the court, it was properly informed (Vol.2, c. p. 56), the case was investigated in the absence of a representative.

The person concerned – Civil Registry Office of Legal Department of Vilnius City Municipality (it is also the representative of the party concerned – Vilnius City Municipality Administration (Vol. 2, c. p. 46, 43)) supported the revised statement of the applicants and did not object its satisfaction. It asked to investigate the case in the absence of a representative (Vol. 2, c. p. 61, 62). The case has been examined essentially in the absence of a representatives of the parties concerned.

Authority which provide the finding – the State Commission of the Lithuanian Language – stated that the satisfaction of the applicants' statement would be contrary to existing legislation of the Republic of Lithuania, since, in accordance with the provisions of Art 3.282. of Civil Code of the Republic of Lithuania, documents of civil status are recorded in Lithuanian language. As Lithuanian language does not have consonant 'w', it is replaced by a Lithuanian consonant 'v'. However, it pointed out that according to the current demand of society, some exceptions may be applied, one of them – for Lithuanian citizens, entering into marriage with foreigners and taking their surnames, also, surnames of such spouses may be recorded in Latin characters, taking personal identification document of the foreigner as the resource (Vol.2, c. p. 50-51). This expressed view was supported during the trail.

The application should be upheld.

With the material of the case it was found that the son of the citizens of Lithuania and Poland Malgorzata Runiewicz-Wardyn and Lukasz Pawel Wardyn was born in Belgium, in 2009 and they gave him the name of Michal Leon Wardyn; this name was recorded in the birth certificate (Vol. 1, c. p. 7-8) issued in Belgium on 02/06/2009. Their son's birth was also registered under this name and surname in Poland (Vol. 1, c. p. 17-21).

On 19/06/2009, the applicants submitted a request to Lithuanian Embassy in the Kingdom of Belgium to issue the return documents for their son (Vol. 1, c. p. 9), such documents have been issued specifying the name and surname of the son of Michal Leon Vardyn (Vol. 1, c. p. 10), i.e. contrary to the initial documents issued by the Belgian and Polish authorities. On 04/07/2009, the applicants submitted a request to Vilnius Civil Registry Office to register the birth of a child born abroad (Vol. 12, c. p. 11), and record the applicants' son's name on the birth certificate No. (AA) , issued on 04/07/2009 (Vol.1, c. p. 12) as 'Michal Leon Vardyn'. On a basis of this entry, on 07/07/2009, a passport of the Republic of Lithuania No. (Vol.1, b.l. 13) was issued with the same personal name and surname 'Michal Leon Vardyn', which do not conform with records in documents issued by Belgian and Polish authorities.

On 17/07/2009 the applicants appealed to the Civil Registry Office of Vilnius City Municipality, with a request to change their son's birth certificate (Vol. 1, c. p. 14). On 01/09/2009, Civil Registry Office of Legal Department of Vilnius City Municipality with the response No. A133-8277-(3.3.5.1-TD1) refused to change the applicants' son's name and surname to the original form of its spelling, stating that such a form of entry is prohibited under legal regulation valid in Lithuania and available technical possibilities. The applicants request to

annul the decision, to issue a new birth certificate of their son with the correct entry of the name and surname, as recorded in documents issued by Polish and Belgian authorities, i. e., recording his name as 'Wardyn' instead of 'Vardyn'. The institution did not support anymore the request for using side (diacritical) marks in son's names. It claims that Civil Registry Office of Vilnius City Municipality Administration ignored the documents submitted by the applicants, the origin of the child, circumstances of the birth in another country, the fact of marriage of citizens of different countries, the current situation caused by these circumstances, arising inconveniences in public and personal lives of the applicants and their son.

In accordance with provisions of Art 3.282. of the Civil Code, civil status records are recorded in Lithuanian language; first name, last name and place names are written in accordance with the rules of the Lithuanian language. Article 15 of Law on State Language of the Republic of Lithuania states: 'genders of names for citizens of Lithuania are indicated in Lithuanian legislation. Personal names are changed and adjusted in accordance with legal procedure'.

Article 14 of the Constitution of the Republic of Lithuania stipulates that the official language is Lithuanian. On 31 January 1991, the Supreme Council of the Republic of Lithuania adopted the Resolution '*Concerning Name and Surname Spelling in the Passport of the Citizen of the Republic of Lithuania*', where established that names and surnames of citizens of Lithuania, who are Lithuanian and non-Lithuanian nationals, in passports should be written in the Lithuanian alphabet. Constitutional Court of the Republic of Lithuania, which, in accordance with Article 102 of the Constitution, is authorized to decide whether the laws and other acts of the Seimas contradict the Constitution, on 21 October 1999, issued a resolution stating that such regulation when names and surnames of all citizens of the Republic of Lithuania are written in the documents in the Lithuanian alphabet does not contradict the Constitution. In the above-mentioned resolution, the court pointed out that passport of the citizen of the Republic of Lithuania is a document certifying Lithuanian citizenship and identity. The passport includes the citizen's name, surname, other information. In accordance with Article 14 of the Constitution, the Lithuanian language is the official language. Constitutional status of the state language means that Lithuanian language is a constitutional value. State language preserves the identity, integrates a civil nation, ensures expression of national sovereignty, the integrity and indivisibility of the country, and normal functioning of the state and municipal institutions. The state language is an important guarantee of equal rights of citizens, as it allows for all citizens to communicate with state and local municipal institutions on equal conditions, implement their legitimate rights and interests. Constitutional status of state language also means that legislator must establish by law the ways of language usage in public life, in addition must provide means for state language protection. In accordance with the Constitution, Lithuanian language has acquired the status of state language and must be compulsorily used in all areas of public life. The Constitutional Court decided that the passport of the citizen of the Republic of Lithuania is an official document confirming the permanent legal connection between the person and the state, i. e., nationality of the person, and legal relationship of the nationality is area of public state life, thus a person's name and surname in the passport must be written in the state language. A contrary interpretation would deny the status of Lithuanian language as the state language and as a constitutional value.

On 6 November 2009, the Constitutional Court adopted the decision which clarified its Resolution's '*Concerning conformity of Resolution 'Concerning Name and Surname Spelling in the Passport of the Citizen of the Republic of Lithuania' of the Supreme Council of the Republic of Lithuania, issued on 21 January 1991, with Constitution of the Republic of Lithuania*' provision of motivational part of clause 4 'names and surnames must be recorded in the passport of the citizen of the Republic of Lithuania in the state language' and provision of motivational part of clause 7 'if under the legislation it is established that names and surnames are written in the passport of the Lithuanian citizen in other, non-Lithuanian characters, it would not only deny the constitutional principle of the state language, but also violate activity of state and local municipal authorities, and other enterprises, institutions and organizations'. The Constitutional Court presented a decision on the aspect that, if name and surname of the citizen of the Republic of Lithuania is written in the passport in a state language, the person's name and surname can be

specified in other, non-Lithuanian, characters and non-grammatical form in other records section of the same passport, when the person requests so and when there are existing primary personal identification documents issued by the foreign countries and containing a person's name and (or) surname written in other than Lithuanian language. This Constitutional Court's interpretation is also relevant in the present case, because Constitutional Court considered in it, whether clauses of the indicated motivational part of the Resolution of the Constitutional Court means that, if the name and surname of the citizen of the Republic of Lithuania is typed in the passport in the state language, the person's name and surname can be specified in other, non-Lithuanian, characters and non-grammatical form in other records section of the same passport, when the person requests so. The Constitutional Court noted that, if the person's name and surname is written in non-Lithuanian characters and non-grammatical form in other records section of the passport and when the person requests so, this passport of the citizen will also contain the official confirmation of the identity in the state language, and the person's name and surname in the passport section of other records in non-Lithuanian characters should not be treated as an entry equal to the record of personal identity in the official language. The Constitutional Court found that if the name and surname of the citizen of the Republic of Lithuania is typed in the other records section of the passport in non-Lithuanian characters and non-grammatical form, when the person requests so, the imperative deriving from the Constitution would not be denied that 'name and surname of the person must be written in the state language' and that the state language should be used in public life. So, Lithuanian legislator has the right of discretion to determine that the name and surname of the citizen of the Republic of Lithuania may be typed in the other records section of the same passport in non-Lithuanian characters and non-grammatical form, when the person requests so. In this case, the legislator should determine the basis for typing the person's name and surname in other records section of the passport of the Republic of Lithuania in non-Lithuanian characters, *inter alia*, what objective criteria indicate that the name and surname of the citizen of the Republic of Lithuania may be typed in the other records section of the passport in non-Lithuanian characters and non-grammatical form. So, there are legal preconditions in Lithuania to establish a legal framework, under which the name and surname of the person in other sections of the passport, other than the one in which the record of the person's name and surnames is official to identify the person, would be entered in non-grammatical form and non-Lithuanian characters.

Several years have already passed since the adoption of these conclusions. The existing legal regulation is not sufficient to satisfy the expressed social needs and rights of people in this context. The importance of the situation also show obvious will and intentions of the legislator to adjust the existing legal framework. The authority State Commission of Lithuanian Language, submitting conclusion in the case, acknowledged that it had applied conclusions to the Seimas concerning draft law on name and surname spelling in documents of the Republic of Lithuania No. XIIP-1653, NO. XIIP-1675, No. XTIP-of 1653 (2), amendment to Article 5 of the law on identity card and passport of the Republic of Lithuania No. XII-1519 and the draft law No. XIIP-3796, and expressed the opinion that names and surnames of the citizens of the Republic of Lithuania in individual documents should be written in the Lithuanian alphabet, but given the current needs of the society, with some possible exceptions. One of them – surnames of citizens entering into marriage with foreigners and taking up their surnames, also surnames of such spouses' children may be entered in Latin characters, considering personal document of the foreigner as the resource document.

Resolution of European Union Court of Justice (hereinafter – EUCJ) of 10/10/2003 in the case C-148/02 stated that 12 and 17 Articles of the EC Treaty contradicts to the administrative practice of Member States, resulting the refusal to uphold the request to change the surname, if the reasons for the request is that the applicant has nationality of another Member State of European Union and that his surname was spelled in accordance with spelling of that state. EUCJ also noted in operative part of the Resolution, issued on 14/10/2008 of the Case C-353/06 that Article 18 of the EC Treaty prevents the member states, applying national law, from refusal to recognize the surname of the child's relatives (which was determined and registered in other member state where the child was born and which is his place of residence since birth) in circumstances which constitute an object of the process party in court. EUCJ has repeatedly stated that although in accordance with the existing law of European Union, the governing rules on person's name and surname recording in entries of civil status acts depend on

competence of member states, in exercising that power they must comply with Union law and the provisions of the Treaty for all the freedom of movement of European citizens and residing in territory of member states (Decision of 02/10/2003 for Garcia Avellino, C-148/02; Decision of 14/10/2008 for Grunkin and Paul, C-353/06).

Article 3 of the Convention for the Protection of National Minorities provides that every person belonging to a national minority has the right to choose freely whether he/she should be treated as a person belonging to a national minority or not, and he/she shall not be in unfavourable situation due to this choice or due to the use of the rights relating to such option. In accordance with the Article 11 of the Convention for the Protection of National Minorities she/he has the right to use his/her name/surname in the minority language.

Applicants are of Polish origin, clearly identify themselves as Polish nationality, have nationality of different countries, it is clear that they cherish the Polish traditions, culture, and often stay in Lithuania, in Poland and in Belgium, thus spelling of their son's surname is important for them. The applicants' son is almost seven, he is socially adapted, attends school, a library, uses public transport, visits clubs, is registered at medical institutions, etc. From the documents (Vol. 2 c. p. 5- 22) submitted by the applicants it is evident that documents issued in Lithuania in his name are spelled using 'V', while documents issued in Poland and Belgium are spelled with 'W'. It is obvious that such a difference in spelling of the surnames undoubtedly caused him some inconveniences and can cause even greater inconveniences for him in the future as he grows and socializes. Therefore, in this particular case, taking into account all the circumstances of the applicants, the written evidence, views expressed by the persons concerned and position of the authority providing conclusion, as well as considering the lack of initiative of legislators and clear confirmation, what currently limits and obviously restricts the rights of individuals to choose a surname and also give the same surname to children in order to avoid big inconveniences due to different spelling, when a family lives in a few countries of European Union and freely moves across the European Union, it is assumed that in this particular case there is a basis to deviate from the existing legal regulation and court practice and annul the contested decision refusing to use the Latin character 'w' in the applicants' son's surname. This finding of the Court is supported by the fact that according to the information of the Population Register Service under the Ministry of Internal Affairs (Vol. 2. c. p. 33) it was determined that there are people whose names or surnames were registered using the Latin character 'w' in Lithuania.

In accordance with the provision of the Art. 6 of the Civil Procedure Code of the Republic of Lithuania, litigation costs shall not be reimbursed.

The court, on the basis set out and in accordance with Article 448 and 260 of the Civil Procedure Code of the Republic of Lithuania

decides

To declare decision (response) No. A133-8277-(3.3.5.1-TD1) of 01/09/2009 of the Civil Registry Office of Legal Department of Vilnius City Municipality void and annul, to commit Civil Registry Office of Legal Department of Vilnius City Municipality to change surname of the applicants' child Michal Leon Vardyn into 'Wardyn' and issue a new birth certificate.

Decision may be appealed against to the Vilnius Regional Court within 30 days since its adoption, submitting a complaint to Vilnius County Court.

Judge

Natalija Daškoviėnė