SUPREME COURT
FIRST DIVISION

THE WORLD HEALTH ORGANIZATION and DR. LEONCE VERSTUYFT,
***Petitioners*,**

-versus-

G.R. No. L-35131
November 29, 1972

HON. BENJAMIN H. AQUINO, as Presiding Judge of Branch VIII, Court of First Instance of Rizal, MAJOR WILFREDO CRUZ, MAJOR ANTONIO G. RELLEVE, and CAPTAIN PEDRO S. NAVARRO of the Constabulary Offshore Action Center (COSAC),
***Respondents*.**
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D E C I S I O N

TEEHANKEE, *J.*:

An Original Action for Certiorari and Prohibition to set aside respondent judge's refusal to quash a search warrant issued by him at the instance of respondents COSAC (Constabulary Offshore Action Center) officers for the search and seizure of the personal effects of petitioner official of the WHO (World Health Organization)

notwithstanding his being entitled to diplomatic immunity, as duly recognized by the executive branch of the Philippine Government and to prohibit respondent judge from further proceedings in the matter.

Upon filing of the petition, the Court issued on June 6, 1972 a restraining order enjoining respondents from executing the search warrant in question.

Respondents COSAC officers filed their answer joining issue against petitioners and seeking to justify their act of applying for and securing from respondent judge the warrant for the search and seizure of ten crates consigned to petitioner Verstuyft and stored at the Eternit Corporation warehouse on the ground that they "contain large quantities of highly dutiable goods" beyond the official needs of said petitioner "and the only lawful way to reach these articles and effects for purposes of taxation is through a search warrant."[1]

The Court thereafter called for the parties' memoranda in lieu of oral argument, which were filed on August 3, 1972 by respondents and on August 21, 1972 by petitioners and the case was thereafter deemed submitted for decision.

It is undisputed in the record that petitioner Dr. Leonce Verstuyft, who was assigned on December 6, 1971 by the WHO from his last station in Taipei to the Regional Office in Manila as Acting Assistant Director of Health Services, is entitled to diplomatic immunity, pursuant to the Host Agreement executed on July 22, 1951 between the Philippine Government and the World Health Organization.

Such diplomatic immunity carries with it, among other diplomatic privileges and immunities, personal inviolability, inviolability of the official's properties, exemption from local jurisdiction, and exemption from taxation and customs duties.

When petitioner Verstuyft's personal effects contained in twelve (12) crates entered the Philippines as unaccompanied baggage on January 10, 1972, they were accordingly allowed free entry from duties and taxes. The crates were directly stored at the Eternit Corporation's warehouse at Mandaluyong, Rizal, "pending his relocation into

permanent quarters upon the offer of Mr. Berg, Vice President of Eternit who was once a patient of Dr. Verstuyft in the Congo."[2]

Nevertheless, as above stated, respondent judge issued on March 3, 1972 upon application on the same date of respondents COSAC officers search warrant No. 72-138 for alleged violation of Republic Act 4712 amending section 3601 of the Tariff and Customs Code[3] directing the search and seizure of the dutiable items in said crates.

Upon protest of March 6, 1972 of Dr. Francisco Dy, WHO Regional Director for the Western Pacific with station in Manila, Secretary of Foreign Affairs Carlos P. Romulo, personally wired on the same date respondent judge advising that "Dr. Verstuyft is entitled to immunity from search in respect of his personal baggage as accorded to members of diplomatic missions" pursuant to the Host Agreement and requesting suspension of the search warrant order "pending clarification of the matter from the ASAC."

Respondent judge set the Foreign Secretary's request for hearing and heard the same on March 16, 1972, but notwithstanding the official plea of diplomatic immunity interposed by a duly authorized representative of the Department of Foreign Affairs who furnished the respondent judge with a list of the articles brought in by petitioner Verstuyft, respondent judge issued his order of the same date maintaining the effectivity of the search warrant issued by him, unless restrained by a higher court.[4]

Petitioner Verstuyft's special appearance on March 24, 1972 for the limited purpose of pleading his diplomatic immunity and motion to quash search warrant of April 12, 1972 failed to move respondent judge.

At the hearing thereof held on May 8, 1972, the Office of the Solicitor General appeared and filed an extended comment stating the official position of the executive branch of the Philippine Government that petitioner Verstuyft is entitled to diplomatic immunity, he did not abuse his diplomatic immunity,[5] and that court proceedings in the receiving or host State are not the proper remedy in the case of abuse of diplomatic immunity.[6]

The Solicitor General accordingly joined petitioner Verstuyft's prayer for the quashal of the search warrant. Respondent judge nevertheless summarily denied quashal of the search warrant per his order of May 9, 1972 "for the same reasons already stated in (his) aforesaid order of March 16, 1972" disregarding Foreign Secretary Romulo's plea of diplomatic immunity on behalf of Dr. Verstuyft.

Hence, the petition at bar. Petitioner Verstuyft has in this Court been joined by the World Health Organization (WHO) itself in full assertion of petitioner Verstuyft's being entitled "to all privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law" under section 24 of the Host Agreement.

The writs of certiorari and prohibition should issue as prayed for.

1. The executive branch of the Philippine Government has expressly recognized that petitioner Verstuyft is entitled to diplomatic immunity, pursuant to the provisions of the Host Agreement. The Department of Foreign Affairs formally advised respondent judge of the Philippine Government's official position that accordingly "Dr. Verstuyft cannot be the subject of a Philippine court summons without violating an obligation in international law of the Philippine Government" and asked for the quashal of the search warrant, since his personal effects and baggages after having been allowed free entry from all customs duties and taxes, may not be baselessly claimed to have been "unlawfully imported" in violation of the tariff and customs code as claimed by respondents COSAC officers. The Solicitor-General, as principal law officer of the Government,[7] likewise expressly affirmed said petitioner's right to diplomatic immunity and asked for the quashal of the search warrant.

It is a recognized principle of international law and under our system of separation of powers that diplomatic immunity is essentially a political question and courts should refuse to look beyond a determination by the executive branch of the government,[8] and where the plea of diplomatic immunity is recognized and affirmed by the executive branch of the government as in the case at bar, it is then the duty of the courts to accept the claim of immunity upon appropriate suggestion by the principal law officer of the government,

the Solicitor General in this case, or other officer acting under his direction.[9] Hence, in adherence to the settled principle that courts may not so exercise their jurisdiction by seizure and detention of property, as to embarrass the executive arm of the government in conducting foreign relations, it is accepted doctrine that "in such cases the judicial department of (this) government follows the action of the political branch and will not embarrass the latter by assuming an antagonistic jurisdiction."[10]

2. The unfortunate fact that respondent judge chose to rely on the suspicion of respondents COSAC officers "that the other remaining crates unopened contain contraband items"[11] rather than on the categorical assurance of the Solicitor-General that petitioner Verstuyft did not abuse his diplomatic immunity,[12] which was based in turn on the official positions taken by the highest executive officials with competence and authority to act on the matter, namely, the Secretaries of Foreign Affairs and of Finance, could not justify respondent judge's denial of the quashal of the search warrant.

As already stated above, and brought to respondent court's attention,[13] the Philippine Government is bound by the procedure laid down in Article VII of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations[14] for consultations between the Host State and the United Nations agency concerned to determine, in the first instance the fact of occurrence of the abuse alleged, and if so, to ensure that no repetition occurs and for other recourses. This is a treaty commitment voluntarily assumed by the Philippine Government and as such, has the force and effect of law.

Hence, even assuming arguendo as against the categorical assurance of the executive branch of government that respondent judge had some ground to prefer respondents COSAC officers' suspicion that there had been an abuse of diplomatic immunity, the continuation of the search warrant proceedings before him was not the proper remedy. He should, nevertheless, in deference to the exclusive competence and jurisdiction of the executive branch of government to act on the matter, have acceded to the quashal of the search warrant, and forwarded his findings or grounds to believe that there had been such abuse of diplomatic immunity to the Department of Foreign

Affairs for it to deal with, in accordance with the aforementioned Convention, if so warranted.

3. Finally, the Court has noted with concern the apparent lack of coordination between the various departments involved in the subject-matter of the case at bar, which made it possible for a small unit, the COSAC, to which respondents officers belong, seemingly to disregard and go against the authoritative determination and pronouncements of both the Secretaries of Foreign Affairs and of Finance that petitioner Verstuyft is entitled to diplomatic immunity, as confirmed by the Solicitor-General as the principal law officer of the Government. Such executive determination properly implemented should have normally constrained respondents officers themselves to obtain the quashal of the search warrant secured by them rather than oppose such quashal up to this Court, to the embarrassment of said department heads, if not of the Philippine Government itself vis a vis the petitioners.[15]

The seriousness of the matter is underscored when the provisions of Republic Act 75 enacted since October 21, 1946 to safeguard the jurisdictional immunity of diplomatic officials in the Philippines are taken into account. Said Act declares as null and void writs or processes sued out or prosecuted whereby inter alia the person of an ambassador or public minister is arrested or imprisoned or his goods or chattels are seized or attached and makes it a penal offense for "every person by whom the same is obtained or prosecuted, whether as party or as attorney, and every officer concerned in executing it" to obtain or enforce such writ or process.[16]

The Court, therefore, holds that respondent judge acted without jurisdiction and with grave abuse of discretion in not ordering the quashal of the search warrant issued by him in disregard of the diplomatic immunity of petitioner Verstuyft.

ACCORDINGLY, the writs of certiorari and prohibition prayed for are hereby granted, and the temporary restraining order heretofore issued against execution or enforcement of the questioned search warrant, which is hereby declared null and void, is hereby made permanent. The respondent court is hereby commanded to desist

from further proceedings in the matter. No costs, none having been prayed for.

The clerk of court is hereby directed to furnish a copy of this decision to the Secretary of Justice for such action as he may find appropriate with regard to the matters mentioned in paragraph 3 hereof. So ordered.

Concepcion, *C. J.*, Makalintal, Zaldivar, Fernando, Barredo, Makasiar, Antonio and Esguerra, *JJ.*, concur.
Castro, *J.*, reserves his vote.

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[1] Respondents' Answer, Rollo, p. 138.

[2] Citygram of March 6, 1972 of Secretary of Foreign Affairs Carlos P. Romulo to respondent judge, Annex D, petition.

[3] This penal provision of the tariff & customs code imposes a penalty of a fine of not less than P600.00 nor more than P5000.00 and imprisonment for not less than 6 months nor more than two years for unlawful importation and illegal possession of goods imported contrary to law, upon "Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law," and states that "(W)hen, upon trial for a violation of this section, the defendant is shown to have or to have had possession of the article in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court."

[4] Respondent judge's justification in his said order reads in part as follows:
"From the reply submitted by Captains Pedro S. Navarro and Antonio G. Relleve of the COSAC, it appears that the articles contained in the two baggages allegedly belonging to Dr. Verstuyft so far opened by them are 120 bottles of assorted foreign wine and 15 tins of PX goods which are said to be dutiable under the Customs and Tariff Code of the Philippines. The two COSAC officers further manifested that they positively believe that there are more contraband items in the nine other huge crates which are still unopened. The articles so far found in the two crates opened by Capt. Navarro and Relleve are not mentioned in the list of articles brought in by Dr. Verstuyft and are highly dutiable under the Customs and Tariff Code and according to said officers they have strong reasons to believe that the other remaining crates unopened contain contraband items. The Court is certain that the World Health Organization would not tolerate violations of local laws by its officials and/or representatives under a claim of immunity

granted to them by the host agreement. Since the right of immunity invoked by the Department of Foreign Affairs is admittedly relative and not absolute, and there are strong and positive indications of violation of local laws, the Court declines to suspend the effectivity of the search warrant issued in the case at bar."

[5] Aside from the Foreign Affairs Department's certification that the importation of 120 bottles of wine is "ordinary in diplomatic practice," the Solicitor General took pains to inform the lower court that the packing of Dr. Verstuyft's baggages and personal effects was done "by a packing company in Taipei (and) Dr. Verstuyft had no hand in the preparation of the packing list of his personal effects which has been assailed by ASAC agents. Also implicit from the foregoing is the fact that Dr. Verstuyft had no intention to violate Philippine laws by selling the 120 bottles of foreign wine and 15 tins of PX goods in the Philippines. Otherwise, he need not have stored the same at the Eternit Corporation where they may be subject to the probing eyes of government agents."

[6] The Solicitor General cites that the Convention on the Privileges and Immunities of the Specialized Agencies of the U.N. adopted on Nov. 21, 1947, and made applicable by ratification to the WHO contains Article VII on abuse of privilege, calling for consultations between the Host State and the U.S. agency concerned and in case no satisfactory result is reached for submittal to the International Court of Justice for determination whether "such an abuse has occurred," and providing for the customary procedure of requiring the offending official's departure in certain instances.

[7] Section 1661, Rev. Administrative Code.

[8] See Trost vs. Tompkins, 44A. 2b 226.

[9] See Ins. Co., 24 N.E. 2d 81, 281 N.Y. 362, reversing 5 N.Y.S. 2d 295, 254 App. Div. 511, reargument denied 26 N.E. 2d 808, 282 N.Y. 676, motion denied 29 N.E. 2d 939, 284 N.Y. 638 (27-5th D-1127).

[10] See, United States vs. Lee, 106 U.S. 196, 209, 1 S. Ct. 240, 27 L. Ed. 171; Ex parte Republic of Peru, 318 U.S. 578, 68 S. CT. 793, 87 L. Ed. 1014; Republic of Mexico vs. Hoffman, 324, U.S. 30, 35, 65 S. Ct. 530, 89 L. Ed. 729; Welleman vs. Chase Manhattan Bank 192 N.Y.S. 2d 469.

[11] Supra, fn. 4.

[12] Supra, fn. 5.

[13] Supra, fn. 6.

[14] This Convention was adopted by the U.N. General Assembly on Nov. 21, 1947; it was concurred in by the Philippine Senate under Sen. Resolution No. 21, May 17, 1949; and the Philippine Instrument of Ratification was signed by the President of the Republic on Feb. 21, 1959 applying the Convention to the WHO. See 45 O.G. 3187 (1949) and Vol. I, Phil. Treaty Series, p. 621.

[15] In their answer to petition, respondents COSAC officers insist on their "belief and contention" that the 120 bottles of foreign wine found by them "are far in excess, considered by any reasonable standard of taste and elegance in the diplomatic world of the official mission and needs of a diplomat, much more of the status of (petitioner), hence, they should be

taxed" and on their "conviction that the articles and effects are not in fact and in truth personal effects so as to be comprehended within the privileges and immunities accorded representatives of (WHO)." Rollo, pp. 138-139.

[16] The pertinent section of Rep. Act 75, entitled "An act to penalize acts which would impair the proper observance by the Republic and inhabitants of the Philippines of the immunities, rights and privileges of duly accredited foreign diplomatic and consular agents in the Philippines," reads: "Any writ or process sued out or prosecuted by any person in any court of the Republic of the Philippines, or by any judge or justice, whereby the person of any ambassador or public minister of any foreign State, authorized and received as such by the President, or any domestic or domestic servant of any such ambassador or minister is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, shall be deemed void, and every person by whom the same is obtained or prosecuted, whether as party or as attorney, and every officer concerned in executing it, shall upon conviction, be punished by imprisonment for not more than three years and a fine of not exceeding two hundred pesos in the discretion of the court." (Section 4, italics supplied) As to whether this Act may be invoked on behalf of petitioner (who does not pertain to the foreign diplomatic corps), quaere.