Extract from:

UNITED NATIONS
JURIDICAL YEARBOOK

1978

Part Three. Judicial decisions on questions relating to the United Nations and related intergovernmental organizations

Chapter VIII. Decisions of national tribunals

CONTENTS (*continued*)

Chapter VIII

DECISIONS OF NATIONAL TRIBUNALS

1. Sweden

NOTE DATED 23 JULY 1979 FROM THE PERMANENT MISSION OF SWEDEN TO THE UNITED NATIONS

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The Swedish court of accounts has dealt with a couple of cases regarding taxation of Swedish citizens in the service of the United Nations peace-keeping operations in Cyprus and the Middle East. These cases have been primarily concerned with such questions as tax deduction for costs incurred to the person in question as a consequence of his service and have not dealt with the issue of whether a Swedish citizen in the service of a United Nations peace-keeping operation should be taxed in Sweden. Swedish taxation legislation has been deemed applicable. Below follows a resumé of relevant considerations.

1. Swedish citizens in the service of United Nations peace-keeping operations are employed through an agreement with a representative of the State of Sweden. They are consequently to be taxed in Sweden whether or not they are to be considered as living in the realm in accordance with Swedish legislation (article 53 para. 1 (*a*)) of the municipal taxation law, and article 6 para 1 (*a*)) of the state income tax law).

2. The so-called one-year rule (article 54 (*h*)), meaning that Swedish citizens working abroad in certain cases shall not be considered Swedish tax subjects, does not apply to employees of the State of Sweden.

3. International agreements to which Sweden is a party concerning immunities and privileges of representatives of the United Nations and other organizations do not apply to the above-mentioned category of employees.

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2. United States of America

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

PERLITA DIZA WINTHAL AND NATIVIDAD DIZA *v.* RUBEN MENDEZ, MRS. RUBEN MENDEZ, I.G. PATEL AND MRS. I. G. PATEL: DECISION OF 18 APRIL 1978[1]

Action instituted by household employees of United Nations officials, admitted in the United States under a G-5 visa—Question whether local minimum wage law should be deemed to apply to such non-immigrant aliens—Differentiation made by the United States Congress with respect to employment of non-immigrant aliens between diplomatic or semi-diplomatic and non-diplomatic employers—Question whether all aliens are entitled to enjoy all the advantages of citizenship.

The plaintiffs, both citizens of the Philippines, were household employees of the Mendezes and Patels, respectively. Both had come to the United States under a special temporary visa ("G-5")

[1] In connexion with this case see *Juridical Yearbook*, 1976, p. 230.

which permitted their entry solely for the purpose of such employment. They *inter alia* alleged that the conditions under which they worked violated the New York State Minimum Wage Act and that they had been denied the same rights to sell personal property and to make and enforce contracts as are enjoyed by white United States citizens, in violation of the thirteenth amendment and title 42 of the United States Code, §1981.

The Court granted an application to dismiss the action as to defendants I. G. Patel and Mrs. Patel. It noted that I. G. Patel was Deputy Administrator of the United Nations Development Programme, which rank was equivalent to an Under-Secretary-General of the United Nations, and that he and his wife had been granted on 21 February 1973 diplomatic privileges and immunities by the United States Department of State. The Court accordingly declared service upon them as void pursuant to 22 U.S.C. § 252.

The Court examined the question whether, although they were non-immigrant aliens in the United States on special temporary visas, the plaintiffs came within the protection afforded by New York's Minimum Wage Act. It referred in this connexion to a recent decision of a Maryland state court (*Torres-Monterroso* v. *Blanco*, Cir. Ct. Montgomery County, Md. 27 Sept. 1977) in which the Court had held that "Congress has accorded to foreign diplomatic or semi-diplomatic officials . . . the privilege of bringing into and employing in this country non-immigrant aliens who are attendants, servants and personal employees, free of any minimum wage requirements". The Court further pointed out that once the United States Congress had regulated in a certain area, States were no longer free to legislate as if they were writing on a clean slate. It recalled that while pursuant to 8 U.S.C. § 1101 (*a*) (15) (H) (ii), non-diplomatic employers were allowed to employ non-immigrant aliens in the United States only if unemployed persons capable of performing such service or labour could not be found locally, no such proviso obtained to the employment of non-immigrant aliens by foreign diplomatic or semi-diplomatic officials (See 8 U.S.C. § 1101 (*a*) (15) (G) (v). Since the United States Congress had clearly differentiated the conditions under which diplomatic employers on the one hand, and non-diplomatic employers, on the other hand, were allowed to employ non-immigrant aliens in the United States, New York State could not create its own limitations on the employment by United Nations officials of persons such as the plaintiffs.

With respect to the claim that the conditions under which the plaintiffs had performed their services had deprived them of the same rights enjoyed by white United States citizens, the Court referred to a decision of the United States Supreme Court (*Mathews* v. *Diza*, 426 U.S. 67, 78 (1976)) which rejected the notion "that all aliens are entitled to enjoy all the advantages of citizenship . . ." pointing out that

"Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat nor the illegal entrant can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and *some* of its guests. The decision to share that bounty with our guests may take into account the character of the relationship between the alien and this country: Congress may decide that as the alien's tie grows stronger, so does the strength of his claim to an equal share of that munificence."

The Court noted that the plaintiffs' relationship to the United States was minimal: they had been admitted to that country on special temporary visas that permitted them to remain there throughout the duration of their employment and they were in the United States solely for that employment with no expectation of future residency or citizenship. The Court therefore held that the plaintiffs' rights had not been violated by New York's failure to afford them the protection of its minimum wage laws.[2]

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[2] The dismissal of the plaintiffs' federal claims mandated the dismissal of the claims based on New York's Minimum Wage Act so that even if it had been accepted that the plaintiffs were included within the protection of the New York statute, the claim could not have been raised in this court.