

Physicians for Human Rights

v.

The Commander of the IDF Forces in the West Bank

The Commander of the IDF Forces in Gaza

The Supreme Court sitting as the High Court of Justice

[April 28, 2002]

Before Justices D. Dorner, D. Beinisch, and E. Levy

Petition to the Supreme Court sitting as the High Court of Justice.

Facts: This petition was submitted during IDF operations against the terrorist infrastructure in the areas of the Palestinian Authority. (“Operation Defensive Wall.”) Petitioner requested explanations from the State regarding accounts of IDF fire on ambulances and injuries caused to the medical teams traveling in them. Petitioners requested that respondents be ordered to cease such activities. The State responded that these incidents were the result of the Palestinian’s use of ambulances for the transport of explosives. Even so, the State held firm in its obligation to fulfill its duties under international law. The State asserted that combat forces had been instructed to act in accordance with the rules of international law.

Held: The Supreme Court held that international law provides protection for medical stations and personnel against attack by combat forces. Article 19 of the First Geneva Convention forbids, under all circumstances, attack of stations and mobile medical units of the “Medical Service,” that is to say, hospitals, medical warehouses, evacuation points for the wounded and sick, and ambulances. However, the “Medical Service” has the right to full protection only when it is exclusively engaged in the search, collection, transport and treatment of the wounded or sick. Moreover, Article 21 of the First Geneva Convention provides that the protection of medical establishments shall cease if they are being “used

to commit, outside their humanitarian duties, acts harmful to the enemy”, on condition that “a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.”

Treaties Cited:

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, §§ 19, 21, 24, 26

Israeli Supreme Court Cases Cited:

[1] HCJ 2936/02 *Physicians for Human Rights v. The Commander of the IDF Forces in the West Bank*, IsrSC 56(3) 3

Israeli Books Cited:

[2] Y. Dinstein, *The Laws of War* (1983)

Motion denied.

For the petitioners—Andara Rosenthal

For the respondent—Shai Nitzan

Judgment

Justice D. Dorner

1. The petition before us was filed by the society known as Physicians for Human Rights, on March 8, 2002, at the start of the IDF combat operations in areas of the Palestinian Authority. The petition was directed against specific events during which IDF soldiers allegedly fired on ambulances of the Red Crescent, and wounded medical teams traveling in them. We were asked to order the State to explain these shootings, and to order that they be stopped.

During the oral arguments of March 14, 2002, we asked petitioner to substantiate its claims with affidavits that would reference specific

events, and also asked the State to investigate petitioner's claims and respond to them. Subsequently, during the height of combat operations, two identical petitions were filed, one by petitioner. *See* HCJ 2936/02 and HCJ 2941/02 [1]. These petitions were heard immediately after they were submitted, and we handed down our decisions on the same day.

In the meantime, petitioner submitted the required affidavits. As a result of the relatively short time at its disposal, and especially due to the ongoing combat activities, which made a full investigation difficult, the State responded only partially to the content of petitioner's affidavits. The State obligated itself to continue its inquiry. Substantively, the State based its arguments on the decision of this Court in HCJ 2936/02, and restated its position in that case, in which it agreed that the situation regarding the medical treatment of the wounded was not simple, and that, as stated in one of the affidavits, shots had even been fired at a Palestinian ambulance. However, according to the State, this was a direct result of the behavior of Palestinians who had, on a number of occasions, transported explosives in ambulances. Nonetheless, the State reemphasized the obligation of the IDF to uphold the rules of international law, as required by law, morality, and even by utilitarian considerations. The State also declared that the combat forces had been, and were being, instructed to act according to those rules.

The petition before us is prospective; it deals with the future. We were not asked to grant relief regarding specific events. The incidents mentioned in the petition were only meant to provide a factual picture. The State obligated itself to complete its investigations regarding those events, and the petitioner reserved the right to petition this Court again, if not satisfied by the results of this investigation.

As to the crux of the matter, international law provides protection for medical stations and personnel against attack by combat forces. Article 19 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of Aug. 12, 1949 [hereinafter The First Geneva Convention] forbids, under all

circumstances, attack of stations and mobile medical units of the “Medical Service,” that is to say, hospitals, medical warehouses, evacuation points for the wounded and sick, and ambulances. *See* Y. Dinstein, *The Law of War* 144-45 (1983) [2].

However, the “Medical Service” has the right to full protection only when it is *exclusively* engaged in the search, collection, transport and treatment of the wounded or sick. Note the provisions of Articles 24 of the First Geneva Convention as well as the provisions of article 26, which expands this protection to include the Red Cross and similar voluntary aid societies. *See also* Dinstein, [2] at 153.

Moreover, Article 21 of the First Geneva Convention provides that the protection of medical establishments shall cease if they are being “used to commit, outside their humanitarian duties, acts harmful to the enemy”, on condition that “a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.” *See also* Dinstein, [2] at 145.

Against this legal background, we recall our words from our decision in HCJ 2936/02 [1]:

[W]e see fit to emphasize that our combat forces are required to abide by the rules of humanitarian law regarding the care of the wounded, the ill, and bodies of the deceased. The fact that medical personnel have abused their position in hospitals and in ambulances has made it necessary for the IDF to act in order to prevent such activities but does not, in and of itself, justify sweeping breaches of humanitarian rules. Indeed, this is also the position of the State. This stance is required, not only under the rules of international law on which the petitioners have based their arguments here, but also in light of the values of the State of Israel as a Jewish and democratic state.

The IDF shall once again instruct the combat forces, down

to the level of the lone soldier in the field, of this commitment by our forces based on law and morality—and, according to the State, even on utilitarian considerations—through concrete instructions which will prevent, to the extent possible, and even in severe situations, incidents which are inconsistent with the rules of humanitarian law.

The instructions which are to be given to soldiers should deal with, among other things, the reasonable and fair warnings which should be given to medical teams. These guidelines should be subject to the circumstances, and should be carried out by the IDF in a way that balances the threat of Palestinian fighters camouflaged as medical teams against the legal and moral obligation to uphold humanitarian rules regarding the treatment of the sick and wounded. Such a balance should take into consideration, among other things, the imminence and severity of any threat.

So we decided in H CJ 2936/02 [1] and so we decide, once again, in this petition.

April 28, 2002