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HCJ 2936/02
HCJ 2941/02

HCJ 2936/02

Physicians for Human Rights

v.

The Commander of the IDF Forces in the West Bank

HCJ 2941/02

Badia Ra'ik Suabuta

v.

The Commander of the IDF Forces in the West Bank

The Supreme Court sitting as the High Court of Justice

[April 8, 2002]

Before Justices D. Dorner, A. Proccacia, 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.") Petitioners claim that the IDF violated international law by firing upon

medical teams, preventing the evacuation of the wounded and the sick to hospitals, preventing the removal of bodies for the purposes of burial, and preventing the supply of medical equipment to hospitals. Respondents reply that, during the course of warfare, it became clear that incidents had occurred during which explosives had been transported in ambulances, and wanted terrorists had found shelter in hospitals. However, respondents asserted, the IDF sees itself as bound to its obligations under humanitarian law, not only because this is their duty under international law, but also due to moral and even utilitarian considerations. Combat forces had been instructed to operate according to humanitarian law, and the IDF has dedicated personnel and resources to provide humanitarian aid was reaching combat areas.

Held: The Supreme Court held that combat forces must fulfill the rules of humanitarian law pertaining to the care of the wounded, the sick and the removal and burial of bodies. 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.

For the petitioners in HCJ 2936/02—Andara Rosenthal

For the petitioners in HCJ 2941/02—Jamal Dkoar, Hanan Hatib, Hasan Jubran

For the respondent—Anar Helman

Judgment

Justice D. Dorner

The petitions before us were filed yesterday and today, during the height of IDF combat activities in the areas of the Palestinian Authority, in the context of “Operation Defensive Wall.” The petitions concern a number of specific events regarding shootings by IDF forces at Red Cross and Red Crescent medical teams working out of ambulances and in hospitals. The petitions are also directed against the prevention of the evacuation of the wounded and ill to hospitals to receive medical care.

They are also directed against the prevention of the evacuation of bodies, so that they may be buried by the families. Petitioners also argue against the lack of provision of medical supplies to besieged hospitals. According to petitioners, these incidents are in violation of international law.

In response, the State explained that, in light of the brief period at its disposal to prepare a response, and especially in light of the fact that combat continues even as the petitions are being heard, it was not possible to investigate petitioner's claims regarding these specific events. Substantively, the State agrees that the situation regarding the care of the ill, the wounded, and the bodies of the dead, is not free of complications. The State claims, however, that this situation is the result of the fighting itself, in the context of which it became clear that in a number of cases explosives were transported via ambulances and wanted terrorists found shelter in hospitals. Nonetheless, the State emphasized that the IDF sees itself as bound by the rules of humanitarian law, not only because these rules are binding under international law, but also because they are required by morality itself, and even due to utilitarian reasons. The State declared that the combat forces have been instructed to act according to these rules, and that the IDF has allocated forces and resources for the purpose of liaison and humanitarian aid in zones of combat.

Though we are unable to express a position regarding the specific events mentioned in the petition, which are, on the face of things, severe, we 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 petitions requested an order requiring explanations from the State. The explanation having been given, wherein it was clarified that IDF soldiers have been instructed to act according to humanitarian law, and that they are indeed so acting, the petition is rejected.

April 8, 2002