Netherlands, In re Pilz

[**Source**: *AD*, vol. 17, 1950, pp. 391-392, original report in *NJ*, No. 681, 1950]

PUNISHMENT OF WAR CRIMES

In re PILZ

Holland, District Court of The Hague (Special Criminal Chamber)

December 21, 1949

Special Court of Cassation. July 5, 1950

THE FACTS. In occupied Holland a young Dutchman who had enlisted in the German army attempted to escape from his unit and was fired on while so doing. The accused, a German military doctor, was prosecuted after the war for having refused to allow German personnel to give the wounded man medical attention and for having abused his authority by ordering, or at least permitting, a subordinate to shoot him. In its judgment of December 21, 1949, the Special Criminal Chamber of the District Court of The Hague held that it had no jurisdiction to take cognizance of a case of this nature. On appeal by the Public Prosecutor,

Held (by the Special Court of Cassation): that the appeal must be dismissed. The Court of Cassation agreed with the Court below that the Netherlands courts would have jurisdiction in this case only if the German doctor had committed a war crime, and that, therefore, it was necessary to enquire whether the acts for which he was prosecuted constituted a violation of the laws of war. The Hague Regulations of 1907 concerning the laws and customs of war had not, however, been violated, since the object of the Regulations, and in particular of Article 46, was to protect the inhabitants of an enemy-occupied country and not members of the occupying forces. The legal position of the latter was regulated not by international convention, but by the military law of the occupying Power. As the Court below had established as a fact, the wounded person belonged to the occupying army. Under these conditions his nationality, or former nationality, was irrelevant, since by his enlistment in the Occupant's army he had forfeited the protection of the law of nations and had voluntarily submitted himself to the laws of the occupying Power. Nor did the Geneva Convention of July 27, 1929, for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field apply, since this Convention only protected members of an army against acts by members of the opposing army. Denial of medical aid to the wounded soldier in this case and permitting his murder were, if proved, abominable crimes on the part of a military doctor, contrary to all humanitarian principles and to the calling of a physician. They did not, however, constitute war crimes, but were crimes in the domestic sphere of German military law and jurisdiction. Nor were the acts for which the German doctor was prosecuted in Holland crimes against humanity in the sense of the Charter of the International Military Tribunal, since the victim no longer belonged to the civilian population of occupied territory, and the acts committed against him could not be considered as forming part of a system of "persecutions on political, racial or religious grounds".

Discussion

Please assume, for the purpose of this discussion, that the Geneva Conventions and

Protocol I apply.

1. Does Geneva Convention I only apply to treatment by the enemy? Does Protocol I? Does an enemy national voluntarily joining the armed forces of the power in whose hands he is lose protected person status? (GC I-IV, Arts 7 [1]/7 [2]/7 [3]/8 [4] respectively; P I, Arts 10 [5], 11 [6] and 75 [7]) Is it a violation of IHL to refuse medical attention to such a person? To summarily execute such a person? (E.g., GC I-IV, Arts 50 [8]/51 [9]/ 130 [10]/147 [11] respectively; GC IV, Art. 5(3) [12]; P I, Arts 10 [5] and 75 [7])
2. Is denial of medical attention a grave breach of IHL? Even in this case? (GC I-IV, Arts 50 [8]/51 [9]/130 [10]/147 [11] respectively; GC III, Art. 13 [13]; P I, Art. 11(1) [6] and (4) [6])
3. Does an officer permitting a subordinate to shoot at a deserter who is hors de combat violate IHL? (GC I-IV, Art. 3 [14]; P I, Arts 75 [7] and 85(3)(e) [15])

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