Members of Medical Personnel sentenced on account of their activities during the War

Automatic Indictment of the Executive Personnel of a National Society

Report
by the International Committee of the Red Cross
(Under Item III of the Agenda of the Legal Commission)

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A. Members of Medical Personnel sentenced on account of their activities during the War

The International Committee received information on a fairly large number of instances where medical personnel of countries occupied during the second World War, joined the German Red Cross or the Medical Service of the German Forces. Upon their return to their own country, these persons were, in many cases, brought before the courts and sometimes convicted for having contracted such an engagement. (Cf. the full statement below, page 3).

The International Committee considers that the XVIIth Conference should examine this question, and this is also the view of several National Societies.

In their opinion, discussion should not be confined to the instance referred to; on the contrary, the debate should be extended to all cases of medical personnel who, as a consequence of the war, may find themselves, individually, threatened on account of the work they performed. The Committee, for its part, has sought a solution which would find the widest possible application to the following categories, especially:

(a) Members of medical personnel who followed a Government into exile. (Norwegians, Dutch, Poles, French and so on);

(b) Members of medical personnel who accepted appointment in the Red Cross or Army Medical Service of the occupying Power to carry on their work in the territory of their own country;

(c) Members of medical personnel who accepted appointment in the Red Cross or Army Medical Service of the occupying Power to carry on work outside the territory of their own country;

(d) Members of the medical personnel who served in a national force which fought on the side of the occupying Power (French Legion of Combatants on the Eastern Front, and so on);

(e) Members of the medical personnel who enlisted for service in the medical units of "partisan" groups;

(f) Members of the medical personnel of a neutral country who enlisted, either individually or collectively, in the medical service of the Red Cross of a belligerent Power which subsequently became an enemy of their country (Article 11, Geneva Convention).
The Geneva Convention does not offer a solution for such cases, at all events in precise terms. Whilst laying it down that the wounded and sick should be cared for, irrespective of nationality, its provisions cover the situation of the medical personnel who care for them, only when they are army medical personnel in regular service attached to the armed forces of a country. The solution should therefore be sought not in Conventions themselves, but in the spirit in which they are framed.

The International Committee notes in the first place, that in general the medical personnel and especially that of National Red Cross Societies receive very little instruction as to the attitude which they must observe in time of war. This fact has doubtless some connection with the difficulties which were experienced.

The Committee therefore consider that in future it would be advisable to fix more clearly what are the duties of members of the medical personnel towards their own country, and what are their possible obligations towards an occupying Power.

In this connection, the International Committee feels it necessary once more to state the principle that the fact of giving care to wounded and sick should never be considered in itself as an unlawful act.

This principle established, attention should be given to framing rules which could be applied to the engagements contracted by the medical personnel in time of war. The Committee proposes in this respect as a basis for discussion the following principles:

1. Members of medical personnel shall not suffer penalty or be threatened in any way when serving in the medical services of their own country, or in the medical service of any unit composed of their own compatriots.

   This rule should apply in the case of (a) members of medical personnel who have joined a unit of partisans; (b) members of the medical personnel enrolled in a national corps fighting on the side of the occupying State, and (c) members of medical personnel who follow their own Government into exile and who serve in the forces which that Government has been able to organize outside the national territory.

2. In an occupied territory, members of the medical personnel who are nationals of the country, may serve in any medical unit carrying on its activities in that territory, even if the unit belongs to the occupying Power; they may take service in a medical unit of the occupying Power working outside the occupied territory only if they are unemployed and have no other means of finding occupation suited to their abilities.
On the subject of conscripting the services of members of medical personnel in occupied countries, reference should be made to Article 47 of the new Convention on the Protection of Civilians in time of war (See Document No 4).

It should be added that the first sentence of principle 2 above, is in conformity with the contents of Article 5 of the Geneva Convention of 1929, stipulating that the military authorities may appeal to the charitable zeal of the inhabitants to collect and afford medical assistance to the wounded and sick, etc.

These principles which, the Committee ventures to submit, aim at bringing the greatest possible assistance to the wounded and sick, at the same time taking account of the allegiance which each individual owes to the State of which he is a national.

The Committee hopes the few regulations given above may be approved by the National Red Cross Societies, and especially by those which had to suffer the hardships of occupation. It is well aware that these regulations may run counter to the feelings of many who had so much to endure from the occupation. Even so, the work of the Red Cross itself, taken as a whole, makes a breach in the hostility which a people feels for its enemy. The Committee considers that it is worth while making the effort to set aside national feelings in this particular respect, in order that the principles may be upheld which alone have enabled the Red Cross to carry out the work which is on record.

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In regard to the individual problem of members of medical personnel who have been prosecuted in their own country for serving in the Red Cross, or Army Medical Corps of the occupying Power, the Committee have asked the Ministries of Justice of the countries concerned to inform them of the general attitude adopted by them in these cases.

Five States have replied to this enquiry.

Of those replies, one merely confirmed that many judgments based on provisions in the Penal Code, had convicted medical officers and auxiliaries who had taken service in medical units of the enemy forces, as well as women who had joined the Red Cross of the occupying country.

Two other replies made clear that to accept service of this kind, even with purely humanitarian motives, favours the enemy and is punishable on those grounds.
According to another reply, however, the authorities were very cautious in taking proceedings against persons who had taken part in Red Cross work for the occupying Power, when their engagement was inspired by humanitarian motives.

A last reply, more precise, stated that service in the Red Cross of the occupying Power was not considered as an offence. The few convictions which had been made of persons who had accepted service in the enemy Red Cross, were not based on the actual fact of that service, but on the grounds that their conduct had been against the interests of the country.

In the new and revised draft Conventions, the Committee has been impelled to submit a recommendation to be introduced into the Final Act of the forthcoming Diplomatic Conference on the position of medical personnel who served in the Army Medical Corps or Red Cross of an occupying country, (1) It considers in any case that the position of these persons can in no wise be compared with that of persons who enlisted in the armed forces of an occupying Power. The Committee also hopes that the National Red Cross Societies will give clear directions to their staff on their duty in time of war. This problem calls for the inclusion of a study of the question in the training syllabus for personnel of National Red Cross Societies, and the Committee would be ready to take part in drawing up recommendations to be circulated to all National Societies.

B. Automatic Indictment of the Executive Personnel of a National Society

In January 1948, the International Committee received a complaint from a former executive member of the German Red Cross alleging that he had been placed by the occupying authorities in the No III Group of responsible persons, as stipulated by Inter-Allied legislation ("lesser offenders"), on the sole grounds that he had belonged to the executive staff of that National Red Cross.

From the information in the hands of the International Committee, it is clear that according to Directive No 38 of the Inter-Allied Control Council in Berlin, dated October 12, 1946, the fact of having belonged to the personnel in charge of the German Red Cross, and more especially to the personnel appointed

(1) Cf. Document No 4
after January 1, 1933, was sufficient to warrant exhaustive screening (Arts. IV and II, Chapter 3).

If there is presumption of guilt against the person charged, that is to say, if he is presumed to have carried on one of the activities proscribed under Arts. IV and I, and II, Chapters 1 and 2, he is considered as a "lesser offender". He is, therefore, included temporarily in Group III of responsible persons, Part II, Art. I ("temporarily left unconfined"). Once placed in a group, the alleged "lesser offender" comes before the courts. It is only if he is held to be guilty, at the time of the judgment, of having engaged in the activities proscribed under Article IV of the Directive, that he suffers penalty.

Article X stipulates that a person placed by judgment of the court in the category of "lesser offenders" may be submitted to a period of probation of from two to three years. The group in which the person is finally placed will depend upon his conduct throughout the period of probation.

The Committee does not in any way contest the legality of the trials against persons who are suspected of crimes or offences, and it is not in a position to pronounce any opinion on the actual facts.

As a general rule however, the Committee considers it regrettable that, a priori, indictments should be made against a category of persons, not by reason of acts committed by them individually or collectively, but on the sole grounds that they belonged to the executive personnel of a National Red Cross Society. It feels that this is a measure which might impair the value and meaning, which in the spirit of the Geneva Conventions and the Statutes of the Red Cross, are connected in all countries with the emblem and name of the Red Cross.