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Report of the Online Seminar on Military Personnel's Right to Health

Organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Geneva Centre for Security Sector Governance (DCAF) and the European Organisation of Military Associations and Trade Unions (EUROMIL) on 28 May 2020

Introduction

This report provides a detailed summary of the main issues discussed during the web-based seminar on the topic of "COVID-19 and the Military Personnel's Right to Health", organised by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Geneva Centre for Security Sector Governance (DCAF) and the European Organisation of Military Associations and Trade Unions (EUROMIL) on 28 May 2020, from 13h30 to 14h30 CET via Zoom.

As a pre-launch event to the new edition of the ODIHR-DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, this webinar addressed the right of armed forces personnel to both physical and mental health during and after health emergencies, including different implications of measures for men and women in the armed forces.

The discussion was introduced and moderated by Jonna Naumanen, Human Rights Officer, Gender and Security at OSCE/ODIHR. The panel was composed of Emmanuel Jacob, President of EUROMIL, Carlos Carrion-Crespo, Specialist, Sectoral Policies Department, International Labour Organization, Tamar Gabiani, Head of the Department of Human Rights Defense in Georgia, Public Defenders Office of Georgia and Gerry Waldron, retired Medical Officer, Founder and Director of the Irish National Security Summit Slándáil. William McDermott, Project Officer, Policy and Research Division at DCAF, concluded the debate.

Distinguished panellists discussed the application of international standards in the context of the current health crisis. They outlined challenges and good practices emerging from different States as regards the protection and promotion of the right to health for military personnel. They addressed the role of oversight bodies in this regard and finally presented concrete examples of the handling of the current pandemic in different armed forces.

The event was recorded. The video can be viewed here.

OSCE Commitments

OSCE commitments in the field of human rights are extensive, and among others, express dedication to achieving full realization of everyone to their economic and social rights, (Helsinki 1975; Madrid 1983; Vienna 1989; Paris 1990) with health

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highlighted as one of areas in relation to which States would pay special attention. (Vienna 1989) In Bonn (1990) the OSCE participating States undertook to achieve or maintain, i.a. "policies that promote social justice and improve living and working conditions".

In addition, OSCE participating States have undertaken specific commitments related to the rights of men and women in the armed forces. These commitments oblige participating States, inter alia, to ensure the enjoyment and exercise of human rights by members of the armed forces, including through appropriate legal and administrative procedures to protect their rights. (Budapest 1994)

Background

Military has been called up to supplement civilian health emergency response measures across the OSCE during the past months. In many of the participating States its armed forces have transported medical supplies and set up intermediate infrastructure and field hospitals. Some defence forces have provided medical equipment and staff, and in some cases the government have requested soldiers to support with enforcing lockdown measures and maintenance of domestic order. It is not uncommon for military personnel to be called to support civilian crises response. However, the scale and nature of many of the military tasks related to COVID-19 response have been unprecedented, and unaligned with traditional military training and preparedness for this kind of task. This includes for example deployments to transport bodies of those killed by the coronavirus, which can raise the risk of PTSD and other mental health conditions if not properly addressed.

The ongoing global pandemic has revealed challenges respective to States' ability to safeguard their soldiers' right to healthcare and to guarantee good and safe working conditions. Owing to the nature of the armed forces, from the aircraft carriers to military barracks, the defence forces across the world have had to devise new strategies and practices to protect the health of their soldiers while maintaining the deterrence and in some cases force employment capabilities. Access to healthcare and swift evacuations for soldiers, as well as access for oversight bodies to conduct the needed evaluations have become few of the critical elements in applying the rights to health of armed forces personnel in this new context.

The right to healthy working conditions and the highest attainable standard of physical and mental health are provided by international human rights instruments, most notably the International Covenant on Economic, Social and Cultural Rights (Art 7 and Art 12) which does not limit the enjoyment of these rights in the interest of national security or for members of the armed forces. The European Social Charter similarly includes many relevant social and economic rights discussed, including the right to safe and healthy working conditions (Art 3) and protection of health (Art 11). These rights have been reaffirmed in ILO conventions on occupational safety and health, and at the EU level by the Art 35 of the Charter of Fundamental Rights. For what concerns military personnel

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specifically, these rights are foreseen in the Council of Europe's Recommendation CM/Rec(2010)4 on human rights of members of armed forces.

Aim

This webinar discussed the right of armed forces personnel to both physical and mental health during and after health emergencies, including different implications of measures to men and women in the armed forces. The experts discussed the application of international standards in this context, and outlined good practices emerging from different States. As such, this seminar also served as a lead up event to the upcoming launch of the new edition of the ODIHR-DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel.

Panel discussion

Jonna Naumanen, Human Rights Officer, Gender and Security at OSCE/ODIHR, opened the discussion by highlighting that human rights and labour rights continue to apply for everyone in times of crisis. However, the COVID-19 pandemic showed that members of the armed forces are often treated differently, including for what concerns their right to health. The discussion thus focused on the application of the right to health for armed forces personnel in practice.

Emmanuel Jacob, President of EUROMIL, presented the views and experiences of EUROMIL member associations and their affiliates on the topic in question.

Emmanuel Jacob listed challenges. No country or association was named to avoid naming and shaming.

Overall, EUROMIL member associations reported about the lack of individual or collective protective measures, for deployed staff during the health crisis, particularly for those sent to the frontline to support public health services and other ones. In some countries there was also shortages of doctors and nurses, which especially affected those where members of the armed forces do exclusively have access to military healthcare systems.

The lack of data and information about the health condition of the staff and the environment in which they needed to operate was often highlighted. In some countries, personnel at risk (because of their age, chronic disease or else) were not systematically discharged from service. People, even when deployed, were often not tested against COVID-19.

Some countries considered the state of emergency declared for containing the spread of COVID-19 as a combat situation, which was used an excuse to limit the enjoyment of human rights and lower social standards of military personnel.

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Other main issued addressed by EUROMIL member associations were long working hours, with no right to rest, the lack of recognition of family life and work-life balance, the obligation to stay in barracks and the lack of protective measures in accommodation. Military infrastructures are anyway a problem in some countries. In one of the countries where things are generally doing fine, military personnel could not stay in barracks and had to go to hotels because there were problems with the facilities due to the crisis.

Information Technology was also a problem where individual and collective trainings had to be conducted via IT means. In these circumstances, how to deliver proper training for deployment is a challenge that deserves further attention.

In most countries, non-medical personnel were generally not trained or prepared for performing tasks they were requested to undertake in support of civilian authorities.

For the future, discussions are ongoing on the need for compensation and recognition of COVID-19 as an occupational disease. Frontline workers, including military and police personnel, who have been deployed in the fight against COVID-19, and who develop the disease as a result of their deployment, should have the right to seek compensation for an occupational disease.

Best practices in relation to the right to health in the military during the COVID-19 pandemic were also highlighted.

Countries where armed forces best managed the COVID-19 pandemic were countries where social dialogue is in place and where military personnel are able to make their voice heard and discuss or negotiate their social and working conditions. Communication between political and military authorities and military associations is key!

Consequently, negotiations led to best practices which consisted in testing and providing necessary protective equipment to the staff. In several countries, members of the armed forces were sent home and kept their regular wages. Sick personnel were put in quarantine and treated separately by the armed forces. Shift work and telework were also encouraged and regulated by negotiations.

This also led in some countries to the establishment of specific task forces with new HQs to respond to the crisis, successfully supporting health civilian authorities.

In some other countries, staff were thankfully accompanied during the crisis, also psychologically, for instance with psychological intervention modules. Phone lines and physical meetings were foreseen for those in need. Stress management tools were also provided. During but also after this mission, there will be a need for mental healthcare.

In conclusion, Emmanuel Jacob explained that EUROMIL member associations agreed that there is a need to draw lessons from the current pandemic and get prepared for the next wave of COVID-19 or future pandemics. EUROMIL and its

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member associations also decided to use the occasion to highlight what worked and what did not work and suggest improvement to authorities to improve the functioning of the armed forces while protecting the health of its members in times of crisis and beyond. Finally, the panellist recalled once again mental health as a critical issue.

Carlos Carrion-Crespo, Specialist, Sectoral Policies Department, International Labour Organization, insisted that ILO Conventions continue to apply during the pandemic.

In 2017, there were 27.5 million members of armed forces in the world, of which 19.7% served in high income countries; 11.7% in low-income countries; and 68.7% in middle-income countries. Members of the armed forces play a double role in this crisis: firstly, they must continue their defensive roles where there is conflict and secondly, they are increasingly used for emergency response duties more commonly seen for civilian personnel.

Training camp environments and close living spaces, as found on ships, may contribute to outbreaks of acute respiratory and other infectious diseases. They are always on duty, have difficult schedules, and fatigue and sleep deprivation are common during intense training. They are often transported across time zones and work immediately upon arrival. There is considerable pressure to maintain effective coordination and communication to reduce the risk of accidents. Stress is increased if operations result in long family separations, or if the possibility of hostile action exists.

As frontline workers, members of the armed forces can come into close physical contact with carriers of the virus, and they cannot leave the scene. But the equipment they need is expensive and time-consuming to produce, which can be difficult for some governments, and it may take time to reach their offices. They may also be discriminated against, such as exclusion from access to other essential services. The keys to address these challenges are to provide access to the full range of social protection and a comprehensive monitoring of the risks.

Members of the armed forces are covered by ILO instruments, particularly No. 155 on safety and health, unless specifically excluded or if the government excludes them from its application, in part or in whole, limited categories of workers in respect of which there are particular difficulties - based on consultations with workers' and employers' organizations, and explaining the reasons for excluding them to the ILO when ratifying. The goal is to phase out these exclusions. Armed forces personnel will be covered by the conventions. The ILO Committee of Experts has made repeated exhortations to governments to extend the coverage of relevant Conventions to members of the armed forces or establish dedicated mechanisms, and to protect them against discrimination in law and in practice. Convention No. 155 promotes coherent policies to minimize hazards, inspection regimes, and dispute resolution on safety and health concerns, at the national and workplace levels.

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The ILO Guidelines on decent work in public emergency services (2018) compiled these recommendations. The armed forces "should provide sufficient financial and human resources to effectively identify and prevent occupational hazards and implement existing [international] instruments and guides." They must never be forced to take excessive risks and even be entitled to remove themselves from situations involving imminent and serious danger to life or health without fear of reprisals.

Measures should also seek to reduce the negative impact of stressors and their consequences, including mental health conditions such as anxiety, depression and suicidal thoughts, the incidence of "burnout" and of violence and harassment against members of the armed forces, and the consequences of critical incidents that lead to post-traumatic stress disorder (PTSD).

During situations like the ongoing pandemic, the Freedom of association and collective bargaining Conventions do not allow derogations or any suspension of their application, based on a plea that an emergency exists. The Guidelines on Decent Work in Public Emergency Services (2018) defines "emergency" as "a sudden and usually unforeseen event that calls for immediate measures to minimize its adverse consequences". It is a managerial term, demanding decision and follow-up in terms of extraordinary measures. A state of emergency should only be declared or imposed by an appropriate authority and for a finite period. Emergency regulations which empower the government to place restrictions on the organization of public meetings and which are applicable not only to public trade union meetings, but also to all public meetings, and which are occasioned by events which the government considered so serious as to call for the declaration of a state of emergency, does not in itself constitute a violation of trade union rights.

The List of ILO documents Carlos Carrion-Crespo referred to is available here.

Tamar Gabiani, Head of the Department of Human Rights Defense in Georgia, Public Defender's Office of Georgia, provided a practical perspective on the role of oversight bodies in protecting the right to health of members of the armed forces during the COVID-19 pandemic.

She explained that the Office of the Georgian Ombuds Institution was actively involved in protecting human rights in relation to the COVID-19 pandemic, including in the defence sector. Its main goal was to observe the right to health in the military and how effective was its protection and the measures in place to protect healthcare. The work of the Public Defender's Office concentrated on monitoring checkpoints since military and police personnel were deployed there, at the frontline. The Ombuds Office analysed how regulations and recommendations were implemented with the aim of minimizing risks.

The cooperation with the Ministry of Defence was effective. Several regulations were issued. People at risk were identified and kept aside, for instance pregnant women or people with disease. A special regime was adopted for barracks, where

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military personnel had no longer contact with the external world. Then specific measures were also adopted at checkpoints, especially in regions where a high range of citizens were infected, in quarantine zones.

In all these places the Ombuds Institution checked protective equipment and if they were sufficient. It also controlled whether the armed forces were respecting their duty, apply regulations and epidemiological recommendations. It monitored their personnel shift time, rest time, whether they were receiving proper nutrition and how military staff was interacting with the population.

Main duties of military personnel during the COVID-19 crisis in Georgia were thermal screening or disinfecting cars. Armed forces personnel were all well-trained. Tents were separately set on the field.

Coming back in military units, ending shifts, armed forces personnel were set in separate buildings. They were provided with sanitizers. Women needs were met, they had separate rooms and their privacy was ensured.

Overall, the assessment made by the Public Defender's Office of the mission is positive. There was no case of infected soldier. At the time of the meeting, the state of emergency had been lifted. During the state of emergency, part of the military was set in emergency and the rest was teleworking. During the barrack regime, soldiers had access to healthcare. In case of emergency cases, they were treated well and brought to military hospitals.

Gerry Waldron, retired Medical Officer, Founder and Director of the Irish National Security Summit Slándáil, finally provided a successful example of the involvement of national armed forces in the COVID-19 crisis protecting, at the same time, the health of their staff.

Gerry Waldron introduced the healthcare system for members of the Irish armed forces. The Military healthcare system has been integrated in the civilian system in the 1970s. Except for primary care, the armed forces thus rely on partners for health matters.

He then presented the involvement of the Irish armed forces in the emergency operation "Fortitude" against COVID-19, which was a positive experience. A joint taskforce HQ was established straight away. Information were transmitted in a fast manner and the HQ was responsive to identified deficiencies. Protective equipment was delivered, contact tracing was put in place, airlift conducted, but the armed forces mostly provided engineering and logistical support to health services. The military did not enforce public order.

In the armed forces, the leadership was quick to use social media to provide guidelines to the staff. Non-essential trainings were cancelled. Flexible working hours, teleworking and desks closer to home were established. There was a change of mindset concerning telework. For what concerns physical health, there was no shortage of protective equipment for the armed forces members. There was no

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outbreak of disease in barracks. Mental health and psychological support was provided. He recognized deficiencies in this domain but explained that there had been no major crisis so far. On the long-term, the need for in-house support may nevertheless be further considered.

Besides, Gerry Waldron addressed innovation and collaboration with universities on projects for improving soldiers' protection, such as ABwipe, a non-toxic solution for removal of biological threats. He also highlighted reservists' employment protection and the quickly adopted compensation regime adopted thanks to negotiations among representative associations, military and political authorities.

Other issues of concern included the situation of some soldiers deployed oversea, who could not come back home as foreseen due to the pandemic, and were therefore separated from their families for an unexpected duration.

The visual presentation of Gerry Waldron is available here.

During the questions and answers session, panelists further addressed the issues of occupational disease, mental health and gender and masculinity.

Emmanuel Jacob noted that trade unions are fighting for COVID-19 to be recognized as an occupational disease for healthcare personnel. This should be extended to military, police personnel and other frontline workers.

Carlos Carrion-Crespo underlined the need to improve occupational safety and health and to establish social dialogue to design and implement measures. Armed forces cannot be denied trade union rights. The participation of soldiers in these discussions is essential for policymakers to know the needs of military personnel, including on issues such as mental health.

The likelihood to determine whether a disease such as COVID-19 is a result of service was further examined, especially in case of death but also invalidity, which might also have an impact on pensions, special disability pensions and the need for long-term support. This led to further questions concerning testing, the role of States and the possibility to prioritize frontline workers.

Finally, **William McDermott**, Project Officer, Policy and Research Division at DCAF, concluded the debate. He highlighted the good civil-military cooperation during the COVID-19 pandemic, underscored the importance of improving mental healthcare and emphasized the need to look forward and continue protecting the rights of military personnel when limitations remain in international or national legal frameworks. The discussion will continue after the release of the revised ODIHR-DCAF Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel in summer 2020.