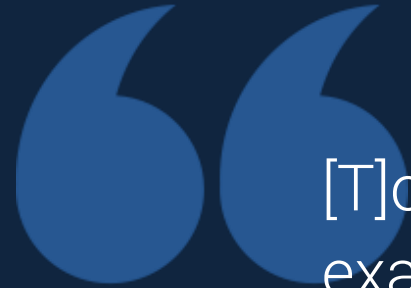


Human Rights in Military Medical Care

Dr Rain Liivoja
University of Melbourne



Involuntary medical examination or treatment – HRC



[T]o subject a person to an order to undergo medical treatment or examination without the consent or against the will of that person constitutes an interference with privacy.”

MG v Germany (Comm no 1428/06)
(HRC, 23 July 2008) ¶ 10.1

Involuntary medical examination or treatment – ECmHR



A compulsory medical intervention, even if it is of minor importance, must be considered an interference with [the right to private life].”

X v Austria (Admissibility) (App no 8278/78)
(ECmHR, 13 December 1979) 18 DR 154, 156

Confidentiality of health data – ECtHR



[T]he protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention."

Z v Finland (App no 22009/93)
(ECtHR, 25 February 1997) ¶ 95

An example of national law – compulsory immunisation



Every person who, on receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.”

National Defence Act 1985 (Canada) s 126

Human rights and “military life”



[T]he Convention **applies in principle** to members of the armed forces and not only to civilians. ...

Nevertheless, when interpreting and applying the rules of the Convention ..., the Court must bear in mind **the particular characteristics of military life** and its effects on the situation of individual members of the armed forces.”

Engel and others v The Netherlands (App nos 5100/71; 5101/71; 5102/71; 5354/72; 5370/72) (ECtHR Plenary, 8 June 1976) ¶ 54

Right to privacy



No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

International Covenant on Civil and Political Rights art 17(1)



1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

European Convention on Human Rights art 8

proportionality
(reasonableness)

suitable

+

necessary

+

proportionate
sensu stricto

legitimacy
(legitimate aim)

public order

public health

public safety

public morals

national
security

rights of
others

legality
(lawfulness)

prescribed by law

Medical examination

- Physical examination
- Pathology testing
 - e.g. blood and urine tests
- Continuous health monitoring
 - wearable and implantable biosensors



Medical interventions

- Prophylaxis
 - including immunisations, LOB-ITs
- Treatment
 - medical/surgical/psychiatric
- Enhancement
 - e.g. nootropics



Health data

- Accessing by non-medical personnel
- Data security



Inhuman treatment



No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

International Covenant on Civil and Political Rights art 7

Inhuman treatment

- Tests or interventions carried out in a cruel, inhuman or humiliating manner
- Medical experimentation *versus* other non-approved uses of drugs or medical devices





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