

## **Who to Rescue During a Pandemic? Ethical and Criminal Aspects of Triage**

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A drastic increase in the number of patients due to a sudden outbreak and rapid spread of infectious disease can overwhelm health care systems. A shortage of medical staff and equipment may force physicians to face tragic choices, in which some patients receive lifesaving treatments or priority treatment, and some do not. The (medical) ethics seeks answers to this dilemma. Another question is should any "wrong" decisions give rise to criminal responsibility? In the first part of our paper, we examine recommendations published by the Slovenian and foreign ethics councils and professional medical associations. The recommendations differ, in particular, in terms of decision-making criteria in life-against-life situations. In the second part, we discuss the potential legal consequences for breaching or disregarding those recommendations. When describing the process of triaging, we present our view on the classical ethical problem that the pandemic has once-again brought to the forefront: should we distinguish between situations in which patients have already been placed on mechanical ventilation and situations where two or more patients require mechanical ventilation, but only one ventilator is available? We agree that ex ante collisions of duties cannot be treated in the same way as ex post collisions of duties, but for different reasons than the authors usually suggest.

**Keywords:** triage, conflict of duties, ethics, pandemic, resource allocation in healthcare, respirator, criminal law, criminal responsibility

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