



PRESS RELEASE

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Ethics Council discussed triage decisions under pandemic conditions

During a public online event on 24 March 2021, the German Ethics Council debated with invited experts on the prioritisation of life-sustaining medical treatment resources in the Covid-19 pandemic. The focus was particularly on the fundamental ethical and legal conflicts that arise in triage situations.

“In March 2020, the German Ethics Council provided an initial assessment of triage in its Ad hoc Recommendation on the Corona pandemic,” emphasised Alena Buyx, Chair of the German Ethics Council, in her welcome address. The ongoing debate on the ethical, legal and practical issues related to triage has prompted the Ethics Council to examine the current state of discussion together with experts.

In his introduction, Council member Franz-Josef Bormann referred to the historical origins of the concept of triage and its adoption in emergency and disaster medicine. He also addressed some of the related ethical and jurisprudential issues, such as the typology of relevant clinical decision-making situations (ex-ante and ex-post triage), the normative plausibility of different prioritisation criteria and their suitability for medical decision-making processes.

In the first presentation, philosopher and bioethicist Christoph Rehmann-Sutter defined triage as a procedure for deciding in conflict situations how scarce life-sustaining resources can be allocated as fairly as possible. The tragedy lies in the fact that every possible course of action is associated with injustice – triage therefore is in fact a method of damage limitation. Rehmann-Sutter outlined two important points of conflict – on the one hand, the relevance of expected life-years saved and, on the other hand, the question of covert forms of discrimination, for example of people with chronic illnesses or disabilities, associated with the criterion of estimated treatment success.

Tatjana Hörnle, a scholar of criminal law and legal philosophy, stated that there is no legal certainty for medical decision-makers, especially in the case of ex-post triage, i.e. when a treatment already initiated for patient A is terminated in order to provide care for patient B. She pleaded for a triage law to clarify that even ex-post triage should not be liable to prosecution provided that it is based on appropriate selection criteria. The legislator is not obliged to define positive triage criteria, but may do so.

The medical lawyer, journalist and author Oliver Tolmein called above all for a legal regulation of triage. He opposed making estimations of treatment success the decisive criterion in the allocation of life-saving medical resources. According to Tolmein, decisions on intensive care prioritisation in the context of the pandemic ultimately do raise the question of how a welfare state whose social life is shaped by the

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principles of equality and non-discrimination reacts to an imminent public health emergency and who is responsible for this reaction.

The following panel discussion focused particularly on practical aspects of triage. In addition to the speakers already mentioned, among the participants were also Corinna Ruffer, Member of the German Bundestag and spokesperson for disability policy of the parliamentary group Bündnis 90/Die Grünen, and Markus Wehler, who is a gastroenterologist, internist and emergency physician.

Looking back on the course of the Corona pandemic until now, Corinna Ruffer voiced her impression that age and disability had indeed reduced the chances of access to the health care system. In fact, especially elderly people and people with disabilities feared being forgotten in the pandemic.

Markus Wehler pointed out that medical treatment decisions aim at saving as many lives as possible and making the best possible use of available resources. In addition, there are standardised, validated prognosis systems enabling documented, comprehensible and thus transparent decisions. Nowadays, these decisions are no longer made by individual physicians, but always by a team.

The discussion, which included questions from the audience, focused on issues of hidden triage, i.e. preclinical prioritisation decisions regulating access to the intensive care system. Such decisions are suspected of being non-transparent and thus prone to abuse. Moreover, the large proportion of patients who died outside of intensive care units due to or with Covid-19 deserves public attention.

The panel agreed, however, that avoiding triage situations must remain the highest priority also in the future. A comprehensive documentation of the event (video recording, transcription, presentations, all in German) will be available at <https://www.ethikrat.org/forum-bioethik/triage-priorisierung-intensivmedizinischer-ressourcen-unter-pandemiebedingungen/>.