

CONFERENCES AND REPORTS

Report from the international online conference “Legal Liability for Allocation of Scarce Resources in Health Care in the Covid-19 Pandemic”

On 15 April 2021, the international online conference “Legal Liability for Allocation of Scarce Resources in Health Care in the Covid-19 Pandemic” took place. Many health systems all around the world, rich and poor, have been facing similar challenges during the current pandemic. Oftentimes, there have not been enough scarce health resources – health professionals, medical devices (such as ventilators), medicines etc. – to be provided to all the patients who need them. As a result, health professionals and hospitals have been forced to prioritise patients or, in other words, to perform what can be called patient triage (the term otherwise known mainly from war and disaster medicine). The idea to organise such a conference arose from discussions among lawyers from several countries who found out that the approaches to allocation of scarce health resources as well as legal liability for unlawful conduct differ in each country. These differences are usually not striking at first sight, but they can greatly impact medical and legal practice. For this reason, it is not easy to fully understand the differences and similarities among national regulation, of patient prioritisation in their complexity.

The conference was jointly organised by the Centre for Medical Law at the Faculty of Law at the Charles University (**Josef Salač**, **Petr Šustek**, **Tomáš Holčapek**, and **Martin Šolc**) and the Faculty of Law at the University of Bergamo (**Roberto Pucella** and **Massimo Foglia**). Since both countries faced some of the world's worst Covid-19 pandemic waves, the organisers have decided to share their experience and learn from the valuable ideas and observations of colleagues from several continents. The conference was divided into six sections. Five of them were dedicated to the sum of fourteen national reports from five continents. The remaining section consisted of special guests (intensive care experts and a bioethicist). The sections were moderated by **Massimo Foglia**, **Tomáš Holčapek**, **Marija Karanikić Mirić**, **Martin Šolc**, and **Petr Šustek**.

The first panel started with national reports from the organising universities, namely with Italian (**Massimo Foglia**, **Roberto Pucella**) and Czech (**Petr Šustek**, **Tomáš Holčapek**, **Martin Šolc**) contributions. Furthermore, there were reports from Australia (**Fiona McDonald**, Queensland University of Technology) and South Africa (**Bernard Wessel**, Stellenbosch University). The second panel encompassed several other Slavic countries: Poland (**Nina Baranowska**, University of Wrocław), Serbia (**Marija Karanikić Mirić**, University of Belgrade), and Croatia (**Hano Ernst** and **Sunčana Roksandić Vidlička**, University of Zagreb). The third section shifted the focus to the German-speaking countries of Austria (**Karl Stöger**, University of Vienna) and Switzerland (**Inesa Fausch**, Swiss Institute for Comparative Law).

Fourth in the line, the special guests' section brought personal testimonies and interesting ideas of several experts from the fields of medicine and bioethics. **Lorenzo Grazioli** (intensive care department of the Hospital Pope John XXIII in Bergamo) recalled the peak of the Covid-19 epidemic in Bergamo. **Vladimír Černý** (Charles University Faculty of Medicine in Hradec Králové; Department of Health of the Czech Republic) presented his thoughts on medical and political issues related to the pandemic from the Czech perspective. **Craig Spencer** (Columbia University Vagelos College of Physicians and Surgeons; Mailman School of Public Health; New York Presbyterian Hospital) shared his personal experience and reflections of the Covid-19 epidemic in New York as well as the Ebola outbreak in West Africa. **Arthur Caplan** (New York University Langone Health, The Hastings Center), one of the world's most cited bioethicists, contemplated several pandemic-related questions such as emergency use authorisation for Covid-19 vaccines and other medicines or the so-called Covid passports for vaccinated persons.

In the fifth section, there were national reports from France (**Maxime Lassalle**, Max Planck Institute for the Study of Crime, Security and Law; Paris Nanterre University), Spain (**Albert Ruda Gonzáles**, dean of the Faculty of Law of the University of Girona), and Portugal (**Carla Barbosa**, University of Coimbra). The final sixth section focused on the Americas with the national reports from the USA (**Lance Gable**, Wayne State University) and Brazil (**Marcelo Chiavassa** and **Flávia Siqueira Cambraia**, Mackenzie Presbyterian University).

Based on the conference, it can be noted that there are various approaches to patient prioritisation and legal liability for it, but we can identify certain common features and issues. For example, in most countries, it is not permissible to exclude a patient from intensive care solely because of age (while age is typically used as one of the criteria for assessing the severity of the patient's health condition and prognosis). Nevertheless, clinical decision-making is regulated in relatively great detail in some countries, while in others, the normative frame is very vague or untransparent. Unfortunately, a very common feature worldwide is a high level of legal uncertainty regarding patient prioritisation. Way too often, health professionals and health services providers can hardly be sure that they are not breaking the law while conducting Covid-19-related triage. This problem will need to be resolved by the case law, legal scholars, and perhaps also legislators in the months and years to come.

A post-conference publication is being prepared. It will contain structured national reports as well as the special guests' essays. The whole conference was recorded and is available at request. Readers interested in the post-conference publication or recordings of the conference can contact the organisers either directly or at the conference email: rationingconference@gmail.com.

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