YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**PIKUACH NEFESH**

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**Shiur #19: Who Decides Halakhot Pertaining to the Army )3( – Danger and Uncertain Danger: Where are the limits?**

**Introduction**

The last three *shiurim* (16, 17, and 18) dealt with the question of who is qualified to define a particular situation as one of *pikuach nefesh.* In this *shiur*,we will move on to an even more basic question, namely, what is *pikuach nefesh*?

I have so far presented almost twenty *shiurim*, addressing many of the halakhic details pertaining to *pikuach nefesh*, on the assumption that *pikuach nefesh* involves a life-threatening danger to a Jew. This assumption is, indeed, obvious, but there are many situations in which a certain danger exists but it is not clear and unequivocal. A clearer definition is, therefore, required for the question of what degree of danger is considered *pikuach nefesh*.

We will examine this issue in this *shiur* and the next, and our conclusions will serve as an introduction to the concept of "communal *pikuach nefesh*," which will be the subject of the *shiurim* that follow.

**Uncertain *Pikuach Nefesh***

Ostensibly, the question does not require an answer, for the established *halakha* is that even a remote fear of danger to life permits desecration of Shabbat. The Mishna states:

If debris fell on someone, and it is uncertain whether or not he is there, or whether he is alive or dead, or whether he is a Jew or a non-Jew, one should open [even on Shabbat] the heap of debris for his sake. (*Yoma* 83a)

In other words, even if the chance of finding life under the rubble is slim, it is permissible to desecrate Shabbat.

The Gemara there explains:

Rav Yosef said in the name of Rav Yehuda, who said in the name of Shmuel: In a case of danger to life, [the Sages] did not follow the [rule of] majority. (*Yoma* 84b)

This statement was made with regard to a situation in which a group of people is in danger and we do not know whether or not there are Jews among them. In practice, all halakhic authorities have agreed for hundreds of years already that Shabbat is desecrated for all people, Jew and non-Jew alike – but the important principle for our purposes is that even though we follow the majority for all other halakhic matters, with respect to the laws of *pikuach nefesh*,we take even a small minority into consideration, and based on that, it is permissible to desecrate Shabbat.

The *Tosafot* (ad loc.) explain that this expansive *halakha*, which dictates desecration of Shabbat even when the danger to the life of a Jew is remote, stems from the fundamental principle of "he shall live by them" (*Vayikra* 18:5), which we discussed in our opening *shiurim*:

The Ri says: The reason that in matters of *pikuach nefesh* one does not follow the majority is that it is written: "He shall live by them" – and not die by them – that it must not lead in any way to the death of a Jew. (*Tosafot*, *Yoma* 85a, s.v. *u-le-fakei'ach*)

Even if the chance of danger is low, one must be concerned about it and desecrate Shabbat in order to preserve human life. This accords well with Rashi's formulation (*Yoma* 82b, s.v. *mai chazit*), also discussed in the first two *shiurim*: "The reason [there] is that Jewish lives are more precious to God than [observance of] the *mitzvot*."

The *Shulchan Arukh* summarizes:

If debris fell on someone, and it is uncertain whether he is alive or dead, or whether he is there or not, and even if you say he is there, it is uncertain whether he is a non-Jew or a Jew – one should open [even on Shabbat] the heap of debris for his sake, **even though there are several uncertainties**. (*Shulchan Arukh Orach Chayim* 329:3)

Even in the case of multiple uncertainties, it is obligatory to desecrate Shabbat.

It is important to emphasize that this is true both regarding a remote danger to life and regarding a slim chance of rescue. Meaning, even in a case where the danger is certain but there is significant uncertainty as to whether the rescue operation will prove to be beneficial, it is permissible to desecrate Shabbat. It is true that the *Magen Avraham* (208, no. 1) writes that Shabbat is desecrated only to utilize "a known medicine," but the *Peri Megadim* (*Eshel Avraham*, ad loc., no. 1) disagrees and clarifies that one may desecrate Shabbat even for the sake of administering an experimental drug. The *Shemirat Shabbat ke-Hilkhata* rules that Shabbat may be desecrated for any medication or treatment for which there is professional basis to think it may be beneficial, even if the benefit is in doubt.[[1]](#footnote-1)

**“One in a Thousand”**

The obvious question is whether there is any limit to the expansive definition that even a remote uncertainty, and even "several uncertainties," should be regarded as situations of *pikuach nefesh.* On the one hand, we must ensure that the circumstances "not lead in any way to the death of a Jew," as stated by the *Tosafot*. On the other hand, reason dictates that when the fear of danger to life is exceedingly remote, there is no real justification for desecrating Shabbat.

This question is complex, and the answer to it is unclear. Rabbi Shlomo Zalman Auerbach writes:

And regarding the main issue, what is considered uncertain *pikuach nefesh*, and what is not, and what is the limit, I too have great doubts about it. (*Responsa Minchat Shlomo*, second series, no. 37)

We will deal at length with Rabbi Auerbach's answer in the next *shiur*, but it is important already at this point to note his difficulty with providing even the most basic definition.

To explain the confusion, I will mention one "statistical definition," which the halakhic authorities have interpreted in two opposite ways.

In discussing the tasks of *pikuach nefesh* that are performed in an altered way (with a *shinnui*; *shiur* no. 11), I cited the *Maggid Mishneh*, who argued that the obligation to perform the forbidden labor in an altered way applies only to a woman giving birth, not to other sick people whose lives are in danger. The *Maggid Mishneh* explains:

The reason for this seems to be that the birthing woman's labor pains are natural for her, and not **one in a thousand** women dies in childbirth. Therefore, they were stringent and required a *shinnui* wherever possible, but they were not stringent about a [dangerously sick] person. (*Maggid Mishneh*, *Hilkhot Shabbat* 2:11)

The *Maggid Mishneh* starts from the premise that the incidence of life-threatening birth complications is less than "one in a thousand."[[2]](#footnote-2) On the one hand, he believes that this fact requires doing what is necessary for the mother in an altered form. But on the other hand, despite the low risk, he does not question the very idea that a birthing woman is in mortal danger, and that it is permissible to desecrate Shabbat for her sake! It must be done with a *shinnui* wherever possible, but the situation itself is defined as one of *pikuach nefesh,* despite the remoteness of the danger.

The *Magen Avraham* also uses the phrase "one in a thousand," though his conclusion is the opposite of that of the *Maggid Mishneh*. The *Magen Avraham* relates to a situation that is not so familiar to us: it was popularly believed that if a certain type of lizard (gecko) fell into food, one who ate from that food would be in mortal danger. Apparently, there was a view that took this concern of danger seriously enough to permit killing a gecko on Shabbat. The *Magen Avraham* rejects this completely:

And those people who kill geckos… it seems to me that this is absolutely forbidden, for it is not harmful. Even though one should be concerned that it will fall into food, nevertheless, this is a rare occurrence, and one can cover the food, and also in [only] one in a thousand cases is it dangerous in food. Therefore, one should protest against them. (*Magen Avraham* 316, no. 23)

According to the *Magen Avraham*, a probability of danger of "one in a thousand" is not defined as a situation of *pikuach nefesh*, and does not permit hunting or killing a gecko on Shabbat.[[3]](#footnote-3) The *Maggid Mishneh* argued that the danger in childbirth is less than one in a thousand, but it is nevertheless permissible to desecrate Shabbat (with a *shinnui*) for a birthing mother, whereas the *Magen Avraham* concedes that there is a one in a thousand danger in the case of a gecko, but this does not define the situation as one of *pikuach nefesh*.[[4]](#footnote-4)

**Anticipating Danger**

To the best of my knowledge, the *Rishonim* hardly dealt with our question, and did not expand on the definition of *pikuach nefesh*. However, a short sentence written by Rabbeinu Yerucham served as an opening for the basic definitions established by the *Acharonim*:

There is someone who has written that for anything that does not pose a present danger, even though it could lead to danger, we may only violate a Rabbinic prohibition, but not a Torah prohibition. (Rabbeinu Yerucham, *Toledot Adam ve-Chava*, *netiv* 12, part 9)

Rabbeinu Yerucham distinguishes between a present danger, regarding which expansive definitions were established that permit desecration of Shabbat even if the danger is small, and future danger, which permits desecration of Shabbat only with respect to Rabbinic prohibitions.

These words of Rabbeinu Yerucham were copied verbatim in the *Beit Yosef* (*Orach Chayim* 328:5) but were not codified in the *Shulchan Arukh*.[[5]](#footnote-5) However, some of the leading *Acharonim* maintain that this is indeed the principal definition of *pikuach nefesh*.

A fundamental source on this matter is a responsum by the *Noda Bi-Yehuda*, Rabbi Yechezkel Landau, about autopsies that are necessary for medical purposes but that involve the Torah prohibitions of disfiguring the dead,[[6]](#footnote-6) humiliating the dead, and benefitting from the dead.

A man in London had fallen ill with an internal disease; he had an operation but died on the operating table. The doctors wished to perform an autopsy in order to better understand the disease from which he had suffered, and thus improve treatment methods for the future. One rabbi ruled that this is permissible as a matter of *pikuach nefesh*: there is a chance that in the near or distant future, there will be a patient who will suffer from the same disease, and the post-mortem will help to treat him more successfully. Another rabbi disagreed, stating that preparing for the provision of improved medical care in the future is not considered a situation of *pikuach nefesh* and does not permit Torah prohibitions. The dispute was brought before the *Noda Bi-Yehuda.*

The question of autopsies for the purpose of enhancing medical science, and with an emphasis on medical schools, requires an independent discussion, and this is not the place for it.[[7]](#footnote-7) What pertains to our discussion is the *Noda Bi-Yehuda's* resolute decision that such a situation cannot be defined as one of *pikuach nefesh*:

But I am puzzled! If this is called even uncertain *pikuach nefesh*, then why all the discussion? This is an explicit law that even uncertain *pikuach nefesh* sets aside the grave prohibitions of Shabbat… However, this is only when there is a case of uncertain *pikuach nefesh* before us, like a sick person or the falling of debris…

But in the matter under discussion, there is no patient who needs this, and they merely wish to learn this wisdom, should a patient who needs it come before them. We certainly do not set aside because of this light concern any Torah prohibition, or even Rabbinic prohibition. For if you call this concern uncertain *pikuach nefesh*, then all medical practices – grinding and cooking medicines, preparing knives for leeching – should be permitted on Shabbat, for perhaps today or tonight there will be a patient who needs this. And it is difficult to distinguish between concern about the near future and concern about the distant future. And heaven forbid that we permit this. (*Responsa Noda Bi-Yehuda*, second series, *Yoreh De'a*, no. 210)

The *Noda Bi-Yehuda* clearly distinguishes between *pikuach nefesh* in the present and *pikuach nefesh* in the future. When the danger is "before us," e.g., when the building has already collapsed and we are unsure whether anybody is alive under the rubble, one may do everything necessary on Shabbat, even if the chances of rescuing somebody are low. But when the danger is in the future, and at this stage there is no need for rescue, there is no allowance to transgress prohibitions – neither Torah prohibitions nor even Rabbinic prohibitions.

In *Responsa Chatam Sofer* (*Yoreh De'a*, no. 336), Rabbi Moshe Sofer discusses the question of a person who wishes "to donate his body to science," arguing that this is a matter of *pikuach nefesh* and saving the lives of others. The *Chatam Sofer* cites the responsum of the *Noda Bi-Yehuda* and agrees with it: *pikuach nefesh* is only in the present, not in the future. The later halakhic authorities accepted this distinction between present *pikuach nefesh* and future *pikuach nefesh*; the *Pitchei Teshuva* (*Yoreh De'a* 363, no. 5) cites the two responsa – of the *Noda Bi-Yehuda*,and the *Chatam Sofer* in his wake.

The *Chazon Ish* sought to further refine these definitions:

The *Pitchei Teshuva* [writes], in the name of the *Noda Bi-Yehuda* and the *Chatam Sofer*, that if there is a sick person before us, it is permitted to disfigure [a corpse] for the sake of *pikuach nefesh*, but if there is no sick person before us, this is forbidden. The distinction is not between before us and not before us, but whether it is common… for we do not make weapons in a time of peace, for if not, you have cancelled all the *mitzvot*!

Rather, uncertain *pikuach nefesh* does not apply to future matters that do not exist in the present. In truth, we are not experts about the future, and sometimes that which we thought would be a rescue turns out to be the opposite, and therefore we do not consider the distant future. (*Chazon Ish*, *Yoreh De'a*, 208, no. 17)

On the one hand, the *Chazon Ish* tries to establish that the distinction is not between the present and the future, but between a "common" fear and an uncommon one. That is, a distant and clearly uncommon danger is not considered a situation of *pikuach nefesh.* On the other hand, he then seems to give great weight to the distinction between the present and the future, and clarifies that when the concern relates to a future danger, it should not be seen as a situation of *pikuach nefesh* because "we are not experts about the future."

**Summary – The Responsum of the *Tzitz Eliezer***

In the previous generation, we were blessed with several leading halakhic authorities who focused on medical issues and the laws of *pikuach nefesh.* One of the authorities who dealt with these issues was Rabbi Eliezer Yehuda Waldenberg, author of *Responsa Tzitz Eliezer,* who for many years delivered regular Torah *shiurim* to the doctors of the Shaare Zedek Medical Center and thus clarified many important issues in matters of Halakha and medicine.

In *Kuntrus Meshivat Nefesh*, printed in volume 8 of *Responsa Tzitz Eliezer*, Rabbi Waldenberg conducts a comprehensive exposition of some of the basic *halakhot* of *pikuach nefesh*, and dedicates chapter 7 of his discussion to our question:

The purpose of our inquiry into this matter is to determine the limit, what minority and remote uncertainty falls into the category of *pikuach nefesh* for the sake of which we may desecrate Shabbat. (*Responsa Tzitz Eliezer*, VIII, no. 15, chapter 7)

After citing many and varied sources in his customary manner, the *Tzitz Eliezer* summarizes as follows:

According to what has been said, we can define and say: When do we not apply to the law of *pikuach nefesh* the principle that we follow the majority? When the danger is before us in a tangible manner, and also before us is the body of the Jew who is in danger and for whom there is the obligation to desecrate Shabbat in order to save him. But whenever one of these two conditions is missing, the law of *pikuach nefesh* is no different than the rest of the laws of the Torah, that we follow the majority and are not concerned about the minority, which is considered as non-existent. (Ibid.)

That is to say, when the danger and the person in danger are both present – this is a case of *pikuach nefesh*, even if the danger is remote. But when the danger is not before us, we must consider the case in terms of majority and minority: if there is a high chance of danger, we may desecrate Shabbat, even if the danger is only a future danger. This can be explained as follows: It is true that "we are not experts about the future," as argued by the *Chazon Ish*, but for a future danger that is likely to occur, we are certainly concerned. When the fear is remote, however, and there is no current danger, there is no allowance to desecrate Shabbat or to violate any other prohibition for this purpose.

Even though the *Noda Bi-Yehuda*, the *Chatam Sofer*, and the *Chazon Ish* did not mention it, Rabbi Waldenberg clarifies that the foundation of their position is in the words of Rabbeinu Yerucham cited above:

It seems that this was Rabbeinu Yerucham's intention in *netiv* 12, cited by the *Beit Yosef…* This is what he wrote: "it could lead [to danger]" – that is, according to concern for the minority case [even so, we may only violate a Rabbinic prohibition]. Therefore, since the matter that could endanger is not currently before us, and since in the majority of cases, it will not come, the minority in which there is room for concern is cancelled by the majority, and it is like it does not exist. (Ibid.)

In this context, it is interesting to mention that in *Responsa Mishpetei Uziel* (vol. 2, *Yoreh De'a*, no. 20), Rabbi Ben Zion Uziel argues that the other *Rishonim* disagree with Rabbeinu Yerucham and are indeed concerned about future dangers. Rabbi Uziel tries to prove this from a close reading of the *Shulchan Arukh* (*Yoreh De'a* 155:3, based on the Rambam), who permits transgressing prohibitions "in a place of danger," and not just "in a time of danger"; according to Rabbi Uziel, this means that even if right now there is no danger, if the situation is liable to develop into one of danger, one is permitted to violate prohibitions and desecrate Shabbat. It seems, however, that this does not set aside the very principle established by the *Noda Bi-Yehuda* and the other *Acharonim*, for even Rabbi Uziel himself explicitly states that it is regarding "a close danger of death." As stated above, all agree about this, that when the danger is clear and close, even if it is not here right now but will develop later – this is a situation of *pikuach nefesh.* As stated, in contrast to Rabbi Uziel, the *Tzitz Eliezer* maintains that the future danger of which Rabbeinu Yerucham speaks is a very remote danger.

After Rabbi Waldenberg establishes this fundamental definition, he presents several practical examples, three of which I will mention here:

1. It is forbidden on Shabbat to turn on a light in a dark place for fear that an elderly person will pass by and stumble and fall. Admittedly, such a theoretical possibility exists, but since there is currently nobody there, and the fear is a remote concern involving an event that may occur in the future – this is prohibited.

2. A person who suffers from a mild cold and a low fever[[8]](#footnote-8) is not considered to be dangerously ill, and there is no allowance to violate Shabbat and transgress Torah prohibitions for his sake. Admittedly, sometimes a mild cold develops into more serious lung diseases, but this concern is future and remote, and does not permit Shabbat desecration.

3. When a phone rings at a doctor's house on Shabbat, he is only permitted to answer if he knows that most of the inquiries on Shabbat are for matters of *pikuach nefesh*. But if he knows that most of the inquiries are about non-urgent matters, he should not be concerned about the minority of urgent calls, and he should not answer the phone on Shabbat.[[9]](#footnote-9)

**Conclusion**

I cited a short sentence above in which Rabbi Shlomo Zalman Auerbach expressed his difficulty with defining the parameters of *pikuach nefesh.* He also had significant reservations about the responsum of the *Tzitz Eliezer* that we reviewed in detail in the previous section.

Fortunately for us, these two great authorities corresponded extensively on the subject, so that it is possible to clarify their positions and perspectives on the question of defining *pikuach nefesh* in general, and in particular, on the question of whether regular weekday activity constitutes a sufficient standard for the question of defining *pikuach nefesh* that sets aside the prohibitions of Shabbat. The next *shiur* will be dedicated to this issue.

(Translated by David Strauss)

1. For a comprehensive summary of this issue, see *Responsa Tzitz Eliezer*, vol. 8, no. 15, chap. 8, especially no. 4. [↑](#footnote-ref-1)
2. His assumption is surprising, for unfortunately, the mortality rate in childbirth is higher than this even in developed countries. See Rabbi Dr. Mordechai Halperin, *Refu'a*, *Metzi'ut ve-Halakha*, no. 6, chap 3; and *Nishmat Avraham*, no. 330, no. 1. [↑](#footnote-ref-2)
3. [Editor's note: Regardless of the fundamental discussion about the ambiguity regarding the fear of remote uncertainties, it seems that the *Magen Avraham* must be understood in a slightly different way, because before the reference to "one in a thousand," he notes two additional things: a. "this is a rare occurrence" for the gecko to fall into the food; b. "one can cover the food." Only on top of these two arguments does he add: c. "and also in [only] one in a thousand cases is it dangerous in food." That is to say, it is not common for the gecko to fall into food, he can avoid the entire problem by covering the food, and besides that, should it fall into the food, "it is dangerous in food" in only "one in a thousand cases" – and because of the combination of these three factors, it is not considered a situation of *pikuach nefesh* that permits the desecration of Shabbat. Thus, it is not at all clear that we can infer from here that in a case where we have only one of these factors (e.g., if the geckos get into food containers all the time, and there is no way of preventing that, but the risk of poisoning is still only "one in a thousand"), we would not be concerned about *pikuach nefesh*, for the *Magen Avraham* relates only to a combination of the three factors. In addition, it should be noted that we need not understand the phrase "one in a thousand" in its plain sense both in the words of the *Maggid Mishneh* and in the words of the *Magen Avraham*; thus, they are not necessarily talking about the same level of risk, and do not necessarily disagree; A.B.] [↑](#footnote-ref-3)
4. So too in *Responsa Rabbi Akiva Eiger* (first series, no. 60), we find that he uses the expression "one in a thousand" for a matter which, in his opinion, is not defined as a danger or even an uncertain danger. (He deals there with a medical device placed in a woman's cervix, and the question arose whether it is considered a *chatzitza* (barrier) with respect to ritual immersion. Rabbi Akiva Eiger is uncertain whether it must be considered a matter of *pikuach nefesh* in order not to be considered a *chatzitza*, or whether even if its removal involves great discomfort, it is not considered a *chatzitza*.) [Editor’s note: He does mention the possiblity that even with only a one in a thousand chance of danger, the term “danger” might still be relevant; S.R.] [↑](#footnote-ref-4)
5. The *Acharonim* debated whether it may be concluded from the words of the *Shulchan Arukh* in *Hilkhot Shabbat* (328:5) or in *Hilkhot Yom ha-Kippurim* (618:1) that he accepted or rejected the words of Rabbeinu Yerucham. See *Magen Avraham* (328, no. 5) and *Machatzit ha-Shekel* and *Peri Megadim* there. [↑](#footnote-ref-5)
6. [Editor's note: Regarding the matter of setting aside the prohibition of disfiguring the dead for the sake of *pikuach nefesh*, see *Be-Hitmodedutam shel Gedolei Yisrael im Gezerat Halanat ha-Met* ("*Mei-Shulchano shel Yechiel Goldhaber*," *Parashat Mishpatim* 5774); A.B.] [↑](#footnote-ref-6)
7. See about this the instructive article of Rabbi Yechiel Yaakov Weinberg, author of *Responsa Seridei Eish*, "*Nituchei Meitim bi-Medinat Yisrael*" (in: *Techumin* 12), and at great length in *Encyclopedia Hilkhatit Refu'it*, s.v. "*nituchei meitim*."

The significance of this issue with respect to the laws of communal *pikuach nefesh* will be discussed in the future. [↑](#footnote-ref-7)
8. The Gemara in *Avoda Zara* (28a, and similarly in *Pesachim* 25b) states that "inflammatory fever" is a dangerous illness. Contemporary authorities have tried to define in numbers what fever is considered dangerous and permits the desecration of Shabbat. *Responsa Iggerot Mosheh* (*Orach Chayim*, vol. 1, no. 129) deals with the issue, and Rabbi Waldenberg in that same responsum strongly rejects his position, arguing that he is overly lenient, considering even a relatively low fever as a dangerous illness (see also *Shemirat Shabbat ke-Hilkhata*, chapter 32, par. 11; and *Orchot Shabbat*, 20, note 64; and elsewhere).

Of course, a "numerical" determination on such issues is almost impossible, and in light of what we saw in previous *shiurim*, there is no alternative but to consult a doctor in each individual case. When there is no doctor available and the question arises as to whether to violate Shabbat by going to him or by contacting him, this is certainly a situation of uncertain *pikuach nefesh* and he may be contacted. [↑](#footnote-ref-8)
9. Rabbi Waldenberg is referring to telephones that were common in his day, whose use involved the Torah prohibition of lighting an incandescent bulb at the switchboard. His words suggest that when the action involves only the violation of a Rabbinic prohibition, one may be lenient and answer calls in a fairly sweeping manner, and this is the ruling that is generally accepted today. [↑](#footnote-ref-9)