Crimes in the irregular application of vaccines against COVID-19

By Antonio Peña Jumpa*

The scandal that occurred in Peru, whereby a group of people (politicians "invited" with relatives or friends from their "close environment", doctors with relatives and friends, businessmen, and public and private officials) have benefited from vaccines that allowed them to be immunized against COVID-19, before any other vulnerable person, has produced outrage and concern in the current context of pandemic and health emergency. How to reflect on this situation of indignation in the social and legal order of a country? Was there a crime committed and, therefore, the application of a criminal sanction for these people?

The origin of the scandal lies in the 3,200 "extra" doses of vaccines sent by a foreign laboratory to Peru after the clinical trials of this vaccine under the direction of a Peruvian university. Of this total, a number of vaccines were destined to the aforementioned group of people, immunizing a total of 487 people (public information as of 17-02-2021).

Apart from the doubts generated by the shipment of the 3,200 vaccines and their distribution in Peru, the scandal occurs because the group of 487 immunized people includes politicians, businessmen, public and private officials, and people close to the environment of the previous ones, which were not part of the clinical trials and were not in the order of preference due to their vulnerability condition. But the list also includes doctors, university authorities, clinical trial...
personnel and family members or people around them who were not part of the trial sample and were not in a vulnerable condition.

People benefited from immunization incur ethical and moral conflicts as no one in the country had achieved immunization (except people who were part of the sample of clinical trials of the same vaccine). But the problem goes beyond the ethical and moral, becoming rather illicit or unlawful in the current context of pandemic or health emergency. The actions of irregularly immunized people violate, due to their profoundly serious effects related to diseases and deaths, the social and legal order of the people who should be immunized as a priority: adults over 75 years of age, medical and paramedical personnel who treat cases of COVID-19, and people registered as vulnerable.

Considering these facts, known from Peru, it is convenient to reflect on how to classify and punish the conduct of the people involved to prevent their situation from being repeated in the same country or in some other part of the world.

In the first place, it is convenient to be clear about the basis of the legal nature that typifies and penalizes the actions of irregular immunizations of the group of people involved. This legal nature allows us to analyze that in these actions there is a high degree of LESIVITY or TRANSGRESSION (high exposure in danger of legal assets protected in society by the Constitution and the laws), by affecting the health and lives of hundreds or thousands of people in the country, and indirectly in the world, in the current context of the COVID-19 pandemic.

Secondly, with this support of criminal legal origin, we can go on to identify the criminal offenses regulated by the Peruvian legal system. The main source is found in the Penal Code, but we cannot leave aside the Political Constitution, nor the special norms on sanitary emergency or disasters, given the pandemic context.

A first approximation of the applicable criminal types leads us to locate the acts of the 487 persons involved in crimes against life and health. The closest criminal offenses are homicide and injuries (serious or minor), which may be intentional or negligent (without intention, but with fault), given that, by irregular immunization, which is prohibited by administrative and legal provisions in the context of the pandemic, the life and/or health of infected persons who should have been immunized as a priority were affected.

A second approach to the applicable criminal offenses corresponds especially to the officials or public servants involved. The applicable criminal offenses range from abuse of authority (an arbitrary act was carried out), concussion (a person was induced to give or promise a good for himself or for another), aggravated collusion (he intervenes by reason of his position in the contracting and acquisitions of goods through agreement with the interested parties), corruption due to own and improper passive bribery (a benefit is received for breaching or omitting an act of function, or to fulfill its act of function), up to incompatible negotiation (for improperly taking advantage of the position).

A third approximation on the applicable criminal offenses is related in a special way to the doctors and the people who irregularly disposed of the vaccines to immunize the favored group. The applicable criminal offenses are generic active bribery (benefits are offered or promised to an official to perform or omit functional acts) or influence peddling (donation or benefit is given or promised to intercede with a public official or servant).

Finally, with the support of legal origin and the approximation of the applicable criminal types, we can refer to the sanction that would correspond to apply. This depends on the criminal type, but it also depends on the condition of the person involved and the degree of responsibility of each of the 487 persons who intervened in the irregular immunization.

Just to approximate an answer on the applicable sanction, distinguishing the three groups of criminal types for the case in question, we can identify the following sanctions: in the first group of crimes related to life and health, the penalties would be imprisonment from 1 to 8 years, with the possibility of changing the lesser penalties to community service days; in the second group, of special crimes of public officials or public servants, the penalties are imprisonment from 3 to 15 years, including
disqualification from office and the payment of hundreds of days-fines; and in the third group, of special crimes of the doctors and persons who disposed of the vaccines, the sanctions would be imprisonment from 4 to 8 years, including disqualification and the payment of day-fines.

What to do? Will the acts of irregularly immunized people go unpunished?

This will depend on the justice system. The Judges and Prosecutors have in their functions the great work of constructing a legal and just solution.

(Lima, February 17, 18 and 19, 2021).

---

* Antonio Peña Juma is professor at the Pontificia Universidad Católica del Perú and the Universidad Nacional Mayor de San Marcos. Lawyer, master’s in social sciences and PhD. in Laws.

**Tags relacionados:** Antonio Peña Juma [1]
vacunas VIP [2]

**Valoración:** 0

---

**Source URL:** https://www.servindi.org/actualidad-articles-english/20/02/2021/crimes-irregular-application-vaccines-against-covid-19

**Links**
[1] https://www.servindi.org/etiqueta/antonio-pe%C3%B1a-jumpa