LEX LOCALIS-JOURNAL OF LOCAL SELF-GOVERNMENT
ISSN:1581-5374 E-ISSN:1855-363X
VOL. 23, NO. S6(2025)

TENSIONS AND SYNERGIES BETWEEN FREE COMPETITION AND THE RIGHT TO HEALTH DURING THE PANDEMIC: AN ANALYSIS IN THE PERUVIAN CONTEXT

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ABSTRACT
The Covid-19 pandemic exposed the tensions between free competition and the right to health within the framework of the social market economy model in Peru, particularly in Lima. This article analyzes the measures implemented by the government during the health emergency, such as the regulation of the medicinal oxygen market, vaccination strategies, and socioeconomic mitigation policies. Through a qualitative approach based on documentary analysis, case studies, and international comparison, this study examines regulatory challenges, market dynamics, and structural inequalities that impacted equity in access to essential services.
The findings highlight the inadequacy of the regulatory framework to prevent speculative practices and ensure equitable distribution of healthcare resources. Additionally, opportunities for synergy between the market and the State are identified, such as public-private collaboration in the provision of essential goods. Finally, recommendations are proposed to strengthen regulatory capacities and achieve a balance between economic efficiency and social justice in future health crises.

Key words: Healthcare regulation, social market economy, public policies, structural inequality.

INTRODUCTION

Contextualization of the problem: impact of Covid-19 in Peru

The arrival of the COVID-19 pandemic revealed the deep structural flaws in Peru's health, economic and governance systems, highlighting its inability to deal with health emergencies of this scale. Despite the fact that, since March 2020, the country declared a health emergency, and measures such as border closures, social isolation and economic restrictions were implemented, which sought to contain the impacts of the spread of the virus, these were not enough to prevent the breakdown of the health system and the socioeconomic fabric.

At that time, the Peruvian health system faced extreme challenges. As the study by Quiroz (2022) shows, in 2020 the availability of beds in hospitals was only 1.6 per 100

inhabitants; added to a shortage of access to oxygen, which skyrocketed its demand due to the critical increase in people infected by the virus. This situation was especially serious in rural regions, where the rate of doctors barely reached 7.1 doctors per 10,000 inhabitants. In addition, as reported by Cuenca et al. (2020), 79.5% of the population never received state subsidies or vouchers to face this crisis, while 57.3% of the population reported severe economic difficulties in accessing basic necessities.

On the other hand, from the economic profile, as shown by the study by the International Labor Organization [ILO] (2020), Peru's GDP suffered one of the highest contractions in the region in 2020, which was 11.1%. This was evidenced by the loss of 2.3 million formal jobs, and the informality rate exceeded 76.8%, which further limited access to health and social benefits during the pandemic.

However, there was another phenomenon that cast doubt on the guarantee of the fundamental rights prescribed in the Political Constitution of Peru, which produced a collision between the right to health and the right to free competition. This phenomenon was even evident at the international level, as Horna et al. (2024) highlight, the private sector accounted for around 70% of the initially available vaccines, while only 18.2% of the population of low-income countries, such as Peru, received both doses during their first year of mass vaccination. This situation revealed not only distribution problems, but also the weakness of states as regulators of market failures of this magnitude.

Importance of protecting free competition and guaranteeing the right to health

The protection of the rights to health and free competition are fundamental pillars for developing resilient and equitable societies, especially strong in contexts such as the pandemic. In Peru, however, this health emergency highlighted the consequences of having deregulated markets in critical sectors, incapable of balancing public welfare with economic interests. Proof of this, according to Horna et al. (2024), these failures led sectors such as pharmaceuticals or private health to establish abusive practices such as exponential increases in the costs of ICU beds, and essential medicines, thus aggravating access to necessary treatments for the country's most vulnerable population. For this author, one of the determining causes for the generation of this situation in that country has been market concentration, since it allowed abusive practices, such as price speculation in essential resources such as medical oxygen and price fixing.

It is in this sense that the role of the state should not only be to promote efficiency, but also to ensure that the actors operating in its market act fairly in situations of high demand such as the pandemic. Otherwise, the effectiveness of public policies aimed at universalizing access to essential treatments will be minimal. It should be remembered that the right to health, a right constitutionally recognized by the Political Constitution of Peru, obliges the State to guarantee equitable and universal access to health services. However, during the pandemic, this right was greatly limited by structural failures in the Peruvian health system.

In addition, weak coordination between the public and private sectors in the country led to unfair competition in the provision of services. As Quiroz (2022) relates, the prices of essential supplies such as medical oxygen increased by up to 300% on the black market, while public hospitals had severe shortages of this input. Therefore, these events show the imperative need to strengthen the regulatory capacities of the State to ensure that the laws of the market do not violate the rights enshrined in the Constitution.

However, it is also important to understand that guaranteeing the right to health and free competition are not necessarily conflicting goals, but rather complementary goals. For Horna et al. (2024), the promotion of strategic public procurement and the regulation of maximum prices under certain specific contexts are measures that can allow the harmonization of these two principles, especially in times of crisis.

According to Abramovich and Pautassi (2008), the judicialization of the right to health has been an alternative to reduce inequalities in its access, however, it also poses challenges and burdens for public health systems. Similarly, Ainslie et al. (2020) highlighted how intervention by the State can minimize negative market impacts, as long as the measures taken are well coordinated and timely.

Universal access to health, as Alcántara (2008) argues, must be synchronized with the principles of social justice and equity, taking into account that unregulated competition can exacerbate inequalities. For the Peruvian context, Restrepo and Rodríguez (2005) mention that regulatory systems must be strengthened to ensure not only the efficiency of the market, but also the protection of fundamental rights, such as health. This vision is consistent with the recommendations of the Pan American Health Organization (2016), which advocates for an integrated model of care that focuses on the needs of the most vulnerable communities.

Finally, although the protection of free competition is essential for efficiency in the market and to promote innovation, this must be balanced with public policies that guarantee equity. According to Carpizo (2011), the right to health must be understood as an integral component of human rights, which requires a legal framework that limits the adverse effects of unregulated competition. Likewise, Pavone (2018) stresses the importance of implementing universal access policies that allow the population to benefit from technological and medical advances without economic restrictions.

Presentation of the problem: tension between free competition and the right to health during Covid-19

The Covid-19 pandemic showed that especially in a context of crisis, there is an inherent tension between the principles of the fundamental right to health and free competition. This fact was evident in the overwhelming increase in the prices of medicines, supplies and services for the fight against Covid-19, the unequal distribution of essential resources and the limited capacity of states to coordinate effectively with the private sector. In the Peruvian context, this tension was even greater due to the structural characteristics of the health system and the disproportionate impact of the pandemic on vulnerable populations.

Free competition, when it operates in a deregulated manner, can cause market dynamics that favor social exclusion and economic concentration. For Horna et al. (2024), during the pandemic, Latin American markets experienced hoarding and excessive prices, prohibiting access to medicines and treatments for the most vulnerable populations. Likewise, authors such as Luzuriaga (2023) mention that the progressive privatization of health systems has decreased the capacity of states to intervene at the most critical moments. For the Peruvian context, this excessive privatization resulted in a significant dependence on the private sector for the provision of essential services, which placed Peru in a disadvantageous position when it wanted to operate and manage access to essential inputs and consequently the assurance of the right to health in a pandemic context.

For Quiroz (2020), the right to health, enshrined in the Peruvian Constitution and international treaties, was one of the most violated rights during the time of the pandemic. He points out that about 60% of the Peruvian population did not have access to adequate health services, and that it was also rural populations that faced the greatest barriers as a result of the centralization of resources to urban areas. In addition, the availability of ICU beds was one of the lowest in Latin America, with a rate of 1.6 beds per 1000 inhabitants. In addition, the distribution of vaccines against Covid-19 also reflected the tensions between competition and public health. According to an ILO analysis (2021), large private pharmaceutical companies monopolized up to 75% of initial vaccine production, leaving low- and middle-income countries, such as Peru, with insufficient coverage of 56.35% by the end of 2021. This inequity exacerbated pre-existing disparities and delayed mass immunization efforts.

The Peruvian government faced great difficulties in implementing policies that balanced the protection of free competition with the guarantee of the right to health. As Cuba (2021) pointed out, the measures adopted to regulate the prices of medicines and health services were insufficient, and the public system failed to supply the growing demand. In addition, market incentives in essential sectors prioritized profit over universal access, generating a dual health system that marginalized the most disadvantaged populations.

Authors such as Gutiérrez (2020) have argued that, in emergency contexts, it is essential to establish public-private collaboration mechanisms based on transparency and equity. In Peru, the lack of effective regulation of public-private partnerships limited the state's ability to ensure equitable access to essential goods and services during the health crisis.

Research objectives and questions

The main objective of this study is to analyze the tension between free competition and the right to health in the context of the Covid-19 pandemic in Peru, identifying the main challenges and opportunities to harmonize these principles in the design of public policies that guarantee equitable access to essential services and market sustainability.

Specific objectives

Examine the impact of unfair market practices, such as excessive pricing and hoarding, on Peruvians' access to essential medicines and health resources during the pandemic

To evaluate the role of the Peruvian normative and regulatory framework in the promotion of free competition and its capacity to guarantee the right to health in health emergency situations

Identify public-private collaboration strategies that can mitigate inequalities in the distribution of essential health goods and services.

Propose recommendations for strengthening the health system and regulating markets in crisis contexts, based on previous experiences and international best practices.

The research questions guiding this study seek to comprehensively explore the interaction between free competition and the right to health during the Covid-19 pandemic in Peru. First, it analyzes how market practices, such as speculation and hoarding, affected the accessibility of medicines and vaccines for the Peruvian population, particularly in the most critical moments of the health emergency. It also examines the extent to which the country's policy and regulatory framework was effective in guaranteeing both free

competition and the right to health, and what structural deficiencies were exposed during this period.

In addition, questions are raised about the barriers faced by the public and private sectors to coordinate strategies for the equitable distribution of essential health resources, as well as the lessons that can be drawn from the Peruvian response to Covid-19 to strengthen market regulation in future emergencies. Finally, it investigates what mechanisms could be implemented to balance market demands with the fundamental rights of the population, ensuring a more efficient and equitable response in contexts of high demand such as a pandemic.

NORMATIVE AND THEORETICAL FRAMEWORK

Analysis of the related constitutional and normative principles: free competition, right to health, social market economy

The Covid-19 pandemic evidenced the interaction between free competition, the right to health, and the social market economy in Peru, highlighting the challenges and tensions that arise when implementing these principles in emergency situations. Each of these concepts has a normative foundation in the Peruvian Constitution of 1993, which seeks to balance economic efficiency with social justice and general welfare.

Antitrust: Regulations and Limitations

Article 61 of the Constitution establishes that the State must guarantee free competition and sanction anti-competitive practices, such as monopolies and abuses of dominant position. This principle aims to incentivize dynamic markets that benefit the consumer through cost reduction and innovation. However, as Bullard et al. (2020) point out, Peruvian legislation has shown significant gaps, allowing abusive practices such as collusion in public bidding processes for the acquisition of medical equipment.

For example, the Organization for Economic Cooperation and Development (OECD, 2021) highlighted that, in EsSalud's public procurement, 46.4% of spending was vulnerable to anticompetitive practices, which affected the efficient procurement of medical oxygen and other critical supplies for health care. This reflects the need to improve regulatory mechanisms to ensure fair competition and protect the interests of consumers.

Right to health: a fundamental approach

Article 7 of the Constitution of Peru enshrines the right to health, which obliges the Peruvian State to guarantee equitable and universal access to health services. However, during the pandemic, the Peruvian State was seriously compromised in fulfilling this commitment due to the lack of adequate regulation and insufficient health resources.

According to Padilla (2023), the health system faced critical ethical dilemmas, such as deciding who would receive treatment in a context of hospital saturation. This situation highlighted the absence of an adequate regulatory framework for health emergencies, leaving critical decisions to the discretion of doctors.

In addition, Castañeda (2020) highlighted that inequalities in access to resources such as ICU beds and medical oxygen were exacerbated by the centralization of resources in Lima, which disproportionately affected rural regions. This reality demonstrates the need to strengthen the capacities of the public health system to guarantee equity in access to essential services.

Social market economy and its application in times of crisis

The social market economy, enshrined in Article 58 of the Constitution, seeks to combine economic freedom with social responsibility, promoting general welfare. According to Cairampoma and Fetta (2021), this model establishes that the State must act mainly as a regulator, limiting its direct participation in economic activities except in exceptional cases. However, during the pandemic, this conception of subsidiarity limited the state's ability to intervene directly in the production and distribution of critical inputs, such as medicines and vaccines.

In this context, the OECD (2021) underscored the need to strengthen public-private collaboration to ensure the efficient and equitable provision of essential goods. For example, the implementation of strategic alliances could have mitigated disparities in vaccine distribution, which at the end of the first year of the pandemic only reached 56.35% of the Peruvian population with full coverage.

Applicable economic and social theories

The analysis of the interaction between free competition, the right to health, and the social market economy during the Covid-19 pandemic in Peru requires a solid theoretical foundation. Various economic and social theories offer useful perspectives to understand the challenges and tensions present in this context, providing a conceptual framework that guides the interpretation and design of public policies.

Theory of the social market economy

The social market economy, established in Article 58 of the Peruvian Constitution, is based on a combination of economic freedoms and principles of social justice. This model seeks to balance private initiative and state intervention to guarantee general welfare. According to Cairampoma and Fetta (2021), the social market economy not only promotes economic efficiency through free competition, but also recognizes the role of the State as a guarantor of access to essential services, such as health and education.

This theory finds its roots in ordoliberalism, a current of thought developed in Germany in the mid-twentieth century. Authors such as Walter Eucken and Alfred Müller-Armack proposed that the State should establish a regulatory framework that allows the efficient functioning of markets while ensuring social cohesion. In the Peruvian context, this perspective has been adopted to guide interaction between the public and private sectors, although the pandemic showed weaknesses in the implementation of this model, especially in the health sector.

Theory of subsidiarity

Subsidiarity, another key principle of the social market economy, states that the state should intervene only in cases where private initiative cannot adequately meet social needs. According to Bullard et al. (2020), this principle seeks to avoid excessive state intervention, promoting a dynamic and efficient economy. However, during the pandemic, the rigid application of this principle limited the state's ability to intervene directly in the production and distribution of essential goods, such as vaccines and medicines.

The analysis of subsidiarity in the context of the pandemic reveals that, while this principle is useful to avoid distortions in markets, it can also generate regulatory gaps in strategic sectors. In this sense, Cairampoma and Fetta (2021) argue that a more flexible

interpretation of subsidiarity would allow the State to assume a more active role in the protection of fundamental rights during health emergencies.

Social welfare theory

Social welfare theory, developed by economists such as Kenneth Arrow and Amartya Sen, holds that public policies should maximize collective well-being, considering both economic efficiency and social equity. This perspective is particularly relevant in contexts of health crisis, where resource allocation decisions have significant ethical implications. According to Padilla (2023), unequal access to health resources during the pandemic, such as ICU beds and medical oxygen, demonstrates the need to integrate equity criteria into market regulation.

Amartya Sen, in particular, underlines the importance of human capacities as indicators of development and well-being. In the Peruvian context, guaranteeing universal access to health is not only an ethical imperative, but also a condition for strengthening the individual and collective capacities necessary to overcome the crisis.

Theory of social justice

Social justice theory, developed by John Rawls, offers a normative framework for addressing structural inequalities in resource distribution. Rawls proposes the principle of difference, according to which inequalities are acceptable only if they benefit the most disadvantaged. In the context of the pandemic, this perspective highlights the importance of prioritizing care for the most vulnerable populations, a challenge that the Peruvian health system failed to address effectively. Castañeda (2020) highlights that rural regions and indigenous communities faced significant barriers to accessing essential services, reflecting a lack of equity in the allocation of health resources.

METHODOLOGY

Description of the methodological approach used

This study adopts a qualitative approach of an exploratory and descriptive nature, designed to analyze the interaction between free competition, the right to health and the social market economy in the context of the Covid-19 pandemic in Peru. This approach allows us to deepen our understanding of the tensions between these constitutional and normative principles, highlighting how they manifested themselves during the health crisis. Likewise, the critical interpretation of the relevant normative and theoretical frameworks is used, complemented by the analysis of specific cases documented in the literature.

Sources of information and selection criteria

Sources of information include scientific articles, specialized books, and national and international regulatory documents that address the principles of free competition, the right to health, and the social market economy, with a particular focus on the Peruvian context. The selection of sources was made under the following criteria:

Thematic relevance: Priority was given to studies and regulations directly related to the issues of free competition, economic regulation, the right to health, and public policies in contexts of health emergency.
Topicality: Publications from the last eight years were included to ensure the validity of the analysis, with emphasis on research carried out during or after the Covid-19 pandemic.

Academic rigor: Only sources published in indexed journals, books edited by recognized academic institutions, and official normative documents were selected.
Geographical relevance: Literature that addresses the Peruvian case or comparative experiences in Latin America was prioritized, with the aim of contextualizing the findings.
Methods of analysis
The analysis was based on three main methods:

Documentary analysis: Relevant legal, normative and doctrinal texts were examined, such as the Peruvian Constitution of 1993, legislation related to free competition and the right to health, and technical documents issued by national and international organizations, such as the OECD and the WHO. This analysis made it possible to identify the main applicable rules and principles, as well as their practical implications during the pandemic.

Literature review: A systematic review of the selected scientific articles and academic texts was carried out, with the aim of identifying the most relevant theoretical and empirical approaches for the study. This included a comparison of applicable economic and social theories, as well as the evaluation of case studies illustrating the tensions between the principles studied.

Case studies: Specific situations documented during the pandemic in Peru were analyzed, such as the medical oxygen crisis and disparities in the distribution of health resources between urban and rural areas. These cases were selected for their ability to illustrate in a concrete way the interactions and tensions between free competition and the right to health.

This comprehensive methodological approach allowed not only to explore the normative and practical tensions between the principles analyzed, but also to propose evidence-based recommendations to improve the regulatory and public policy framework in crisis contexts.

DEVELOPMENT AND DISCUSSION

Evaluation of the concrete measures taken by the State during Covid-19 in Lima

The response of the Peruvian State during the Covid-19 pandemic in Lima was mediated by the constant tension between the principle of the free market and the fundamental right to health. This interaction underscored the challenges that arise when trying to balance economic efficiency with equity in the provision of essential services in a context of crisis.

Declaration of a state of emergency and restrictions
The declaration of the state of emergency through Supreme Decree No. 044-2020-PCM marked the beginning of a series of restrictive measures that limited rights such as freedom of movement and assembly.
Although these restrictions were necessary to contain the spread of the virus, their implementation in Lima revealed the structural inequalities of the labor market and the weaknesses of the social protection system. In an economy where more than 57% of the working population depends on the informal sector, restrictions on economic activity came into direct conflict with the need for survival of the most vulnerable families, exposing the limits of an approach focused on regulating mobility.

Access to health resources and market competition

One of the most emblematic cases of this tension was the medical oxygen crisis, which became a scarce and highly speculated commodity in the market. The lack of effective regulation allowed private actors to take advantage of high demand to inflate prices by up to 300%, limiting poorer patients' access to this essential resource
. While the free market sought to maximize profits, the right to health of many citizens was compromised, reflecting a lack of balance between the two principles.

The state responded by increasing oxygen production and distribution through mobile plants and agreements with the private sector. However, state intervention came late and insufficiently to counteract abusive market practices. This case underscores the need for a more robust regulatory framework that allows the State to intervene in a timely manner in essential markets during emergencies.

Vaccination strategies and unequal distribution

The implementation of the vaccination program also reflected the tension between the free market and the right to health. Although the state led vaccine purchases through bilateral agreements, the initial negotiations were marked by international competition, where high-income countries monopolized the available doses. According to Luzuriaga (2023), this global market dynamic limited Peru's ability to acquire vaccines in a timely manner, delaying the immunization of the population in Lima.

In addition, the centralization of vaccination points in better-connected districts evidenced inequalities within the capital. While inhabitants of central districts had faster access, peripheral populations faced significant barriers, such as the lack of efficient public transport. This situation highlighted how the dynamics of the free market and the inadequacy of state planning affected equity in access to health.

Conflicts between free competition and the right to health

One of the most obvious conflicts was over access to essential medicines and medical supplies, such as medical oxygen. According to the OECD (2021), the lack of effective regulation in the markets allowed private companies to speculate on prices, increasing them by up to 300% on the black market. This disproportionate market dynamic restricted access to oxygen, severely affecting the most vulnerable communities and highlighting the inability of the free competition model to ensure fairness in situations of high demand.

In addition, the conflict extended to the field of vaccines against Covid-19. Global competition for limited doses favored countries with greater economic resources, while Peru, facing budget constraints, struggled to acquire vaccines on time. According to Luzuriaga (2023), this global dynamic directly impacted the right to health in the country, delaying the immunization of the population and exposing the limitations of the free market to address critical health needs in contexts of inequality.

At the national level, the centralization of health resources in Lima exacerbated regional inequalities, reflecting how the competitive approach to resource allocation favored wealthier urban areas. Peripheral and rural districts were left at a disadvantage, facing higher mortality rates due to lack of access to ICU beds and oxygen.

Synergies between free competition and the right to health

Despite the conflicts, synergies have also emerged between free competition and the right to health, particularly in innovation and the provision of essential goods. For example, the involvement of the private sector in vaccine production and distribution was instrumental in increasing supply and accelerating immunization. According to Cairampoma and Fetta (2021), the social market economy model allowed the State to collaborate with private companies to expand its response capacity to the health crisis.

Likewise, free competition encouraged innovation in the production of medical equipment. During the pandemic, Peruvian companies adapted their production lines to manufacture respirators and masks, showing how market dynamics can complement state efforts in emergency situations.

Another important synergy was the implementation of competitive public procurement, which allowed the State to acquire medical supplies at lower prices in certain cases. These strategies showed the potential of using competition principles to optimize resources and ensure greater coverage.

The conflicts and synergies identified during the pandemic underscore the importance of a regulatory framework that effectively integrates the principles of free competition and the right to health. While competition can foster efficiency and innovation, it is essential that it be accompanied by regulations that ensure equity and universal access to essential services. Peru's experience during the pandemic highlights the need to strengthen the State's capacity to intervene in critical markets, especially in emergency situations, ensuring that the benefits of competition do not translate into structural inequalities.

Comparison with other international contexts

Access to medicines and health resources: Peru vs. Spain and the United Kingdom

During the pandemic, countries such as Spain and the United Kingdom implemented clear strategies to ensure equitable access to essential medicines and health resources, in contrast to the dynamics observed in Peru. According to Padilla (2023), well-defined ethical and clinical protocols were established in these countries to prioritize access to ICU beds and ventilators, guaranteeing transparency and equity in the allocation. However, in Peru, the lack of an adequate regulatory framework left these decisions to the judgment of doctors, leading to significant inequalities in access to health services.

In the case of medical oxygen, Spain implemented price controls and centralized distributions through the public health system, preventing speculation. In Peru, the OECD (2021) highlighted that the absence of effective controls allowed collusion and speculation, with price increases of up to 300%, which restricted the access of the most vulnerable populations to this essential resource.

Vaccination: Peru vs. Chile and Germany

In terms of vaccination strategies, Chile stood out for its early and diversified acquisition of vaccines, reaching coverage of more than 80% in the first year of the pandemic. In contrast, Peru faced significant delays in negotiations and limited supplier diversification, reaching only 56.35% full coverage by the end of 2021. According to Luzuriaga (2023), this difference reflected Peru's disadvantage in a highly competitive global market, where countries with greater purchasing power secured much of the supply.

In Germany, the decentralized approach to vaccine distribution allowed for greater adaptation to local needs. This strategy contrasted with the centralization in Lima of vaccination points in Peru, which limited access for peripheral populations, especially those without access to efficient transportation. This problem highlighted how deficiencies in state planning exacerbated structural inequalities.

Social Market Economy Models: Germany and Peru

The social market economy model implemented in Germany seeks to balance economic efficiency with social equity through active regulation in strategic sectors, such as health. According to Cairampoma and Fetta (2021), this model includes state intervention in areas where the market fails, ensuring equitable access to essential resources. In Peru, although it shares the theoretical framework of the social market economy model, the application of the principle of subsidiarity limited the capacity of the State to intervene in economic activities, leaving private markets as the main suppliers during the pandemic.

Comparison with other international contexts highlights that countries that managed to combine free competition with robust state regulation and strategic planning had more equitable and effective responses to the pandemic. In contrast, the Peruvian case showed that the deregulation of strategic sectors can intensify inequalities and limit universal access to fundamental rights such as health. Learning from these international models is crucial to strengthening state intervention capacities in Peru, especially in emergency situations.

Reflection on the balance of economic and social policies during the pandemic

The balance between economic and social policies is a constant challenge in any context, but it becomes particularly critical during health emergencies such as the Covid-19 pandemic. The Peruvian experience highlighted the inherent tensions between the search for economic efficiency, promoted through free competition, and the need to guarantee fundamental social rights, such as access to health. This section reflects on how these dynamics manifested themselves and the lessons that can be derived to strengthen future responses.

Challenges in the economic-social balance

The pandemic showed how free competition, without adequate regulation, can exacerbate inequalities in access to essential resources. According to the OECD (2021), the lack of effective controls allowed speculative practices in the medical oxygen market, generating a price increase that marginalized the most vulnerable populations. This phenomenon reflects how economic policies focused exclusively on market dynamics can fail to protect fundamental rights during health emergencies.

In contrast, the principle of the social market economy, as described by Cairampoma and Fetta (2021), seeks to integrate economic freedom with social equity. However, its application in Peru during the pandemic was limited by the restrictive interpretation of the principle of subsidiarity, which reduced the capacity of the State to actively intervene in key sectors. This allowed the private sector to dominate critical areas, such as the provision of medicines and vaccines, resulting in significant inequalities in the distribution of health resources.

Lessons from international experience

Comparison with other international contexts shows that a more effective balance between economic and social policies requires active state regulation. In countries such as Germany, the State assumed a central role in coordinating the health response, implementing policies that balanced competition in the market with the guarantee of universal access to essential services. This model demonstrated that free competition can coexist with social equity if adequate regulatory measures are implemented to prevent market abuses.

On the other hand, in countries such as Chile, the diversification of vaccine suppliers and the adoption of decentralized distribution strategies were examples of how economic policies can be adapted to respond equitably to a health crisis. These international experiences reinforce the need for a flexible and proactive approach that allows the State to act as a regulator and guarantor of social welfare.

Need for a balanced regulatory framework

The Peruvian case highlights the importance of designing a regulatory framework that allows the State to balance economic and social objectives in crisis situations. According to Luzuriaga (2023), this balance must consider both the protection of competitive market dynamics and state intervention in strategic sectors to guarantee equitable access to essential resources. During the pandemic, public policies in Peru were marked by a disconnect between social needs and economic dynamics, which amplified structural inequalities.

Peru's experience during the Covid-19 pandemic underscores the need to rethink the balance between economic and social policies in health emergencies. Guaranteeing the right to health and other fundamental rights requires a flexible regulatory framework that allows the State to intervene actively in markets when necessary, without distorting the benefits of free competition. This comprehensive approach is essential to building more resilient and equitable systems that can respond effectively to future crises.

CONCLUSION

The Covid-19 pandemic highlighted the inherent tensions between free competition and the right to health in the context of the social market economy model adopted by Peru. This article, guided by the objective of analyzing these interactions during the health emergency, allowed us to identify key challenges and propose reflections for a more balanced regulatory framework.

First, it was evident that free competition, without adequate regulation, allowed abusive practices in strategic sectors, such as speculation with medical oxygen and centralization in the provision of health resources. These market dynamics, far from promoting collective well-being, exacerbated structural inequalities and limited equitable access to essential goods. This phenomenon underscores the need for a more robust regulatory framework that sanctions anti-competitive practices and ensures that markets operate in the public interest.

On the other hand, the analysis highlighted that the right to health, although constitutionally recognized, faced significant limitations in its implementation. The lack of state planning, insufficient health resources, and the centralization of services in Lima revealed significant gaps in the health system's capacity to respond equitably to the crisis.

This context reinforces the importance of prioritizing equity in public policies, ensuring that vulnerable populations are not marginalized in situations of high demand.

Likewise, the comparison with international contexts showed that the most effective responses to the pandemic integrated free market dynamics with active state intervention. Countries such as Germany and Chile managed to balance these principles through clear regulations and equitable distribution strategies, highlighting the need for a flexible approach that allows the State to act promptly and effectively in health emergencies.

Finally, the social market economy model, which theoretically seeks to balance economic freedom with social justice, must be adapted to ensure greater resilience in the face of shocks. This implies not only strengthening the regulatory capacities of the State, but also promoting public-private collaboration under principles of transparency, equity and efficiency. The Peruvian experience during the pandemic offers valuable lessons that can guide the reform of the regulatory framework and the formulation of more inclusive and effective public policies in the future.

In conclusion, ensuring a balance between free competition and the right to health is essential to build a system that not only responds to market demands, but also protects the fundamental rights of the entire population, especially in times of crisis. This article provides reflections and recommendations that can contribute to this objective, promoting a comprehensive and equitable approach in the governance of health emergencies.

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