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COVID 19 FAQs regarding CRIMINAL LAW AND AUTHORIZATIONS in Peru

What is the situation of the citizens who are intervened because they went out on the streets without any type of authorization and failed to comply with the devices set forth in the Supreme Decree 044-2020-PCM?

Those persons who are intervened for having infringed the rules established in the aforementioned decree declared a state of national emergency, will be taken to the police station in the sector to perform the police identity check. In this police unit, the person involved has the right to communicate with a family member or person of their choice and may not to be held for more than four hours; at the end of that period, they shall be released, in accordance with the provisions of Article 205 of the Code of Criminal Procedure.

And in the case of a citizen who is a reoffender, what could be their legal status?

Firstly, the National Police must keep a record book in which they record the proceedings, identification of persons, as well as the reason for and duration of such identification, having determined the repetition of the intervened. The latter may be arrested as the alleged perpetrator of the crime of violation of health measures, provided for in article 292 of the Criminal Code. Art. 292: Whoever violates the measures imposed by law or by the authority for introduction into the country or spread of a disease or epidemic shall be punishable by imprisonment for a term of not less than 6 months or more than 3 years and with 90 to 180 day-fines.

Do the limitations on freedom of transit apply to foreign personnel?

These limitations do not apply to foreign personnel duly accredited in Peru from diplomatic missions, consular posts and representations of international organizations, provided that they transit in the exercise of their duties

What are the criminal consequences a person could incur if they obtain a special transit pass (PET) with information different from the activity which they perform?

In accordance with the provisions of the Ministerial Resolution 304-2020-IN, the PET has the character of an affidavit, so a person who inserts information other than the activity they are performing would incur the offence of falsehood. The generic nature of the offence is set out in article 438 of the Criminal Code. Similarly, such conduct would violate the presumption of truthfulness, as the police presume that the information inserted is true, so that the crime of falsehood would also be incurred declaration in administrative proceedings provided for and sanctioned in article 411 of the Criminal Code.

What about citizens, national, regional and local authorities who do not comply with, collaborate and obstruct the work of police and military authorities in the exercise of their functions?



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In this case, such natural persons or their due representatives could be denounced by the crime of disobedience and resistance to authority provided for and sanctioned in article 368 of the Criminal Code.

What is the alternative solution proposed by the Government when a citizen cannot process the PET?

If a person is unable to process the PET via the website, they may go to the nearest police station in their sector to apply for authorization. It should be noted that the PET is valid for 15 calendar days.

What can a person do if they are caught in flagrant offence under Supreme Decree 044-2020? PCM?

In principle, given that the right of defense is a constitutional right, any person who is detained has the right to a phone call, and to be connected and advised by a lawyer of his/her choice, for which said lawyer in these circumstances only has to take and show his lawyer's card to the authority that requests it, and tell him that he is going to a certain police station or prosecutor's office to give advice according to law.

What can happen if I transit without being authorized to do so according to the cases of Article 4 of the Supreme Decree 44-2020-PCM?

The Armed Forces and the National Police are authorized to detain the person and conduct him/her to the police station in the area, in case he/she is intervened in transit without being covered by an exception.

How can I prove that I am entitled to transit in accordance with the cases of Article 4 of the Supreme Decree 44-2020-PCM?

To date, the people who can transit under the exception cases have been doing so with their photo identifications or documents proving their participation in the cases of exception. To date, no safe passage has been regulated, but it is possible that the Ministry of the Interior will dictate to the measures promptly.

Can criminal proceedings be brought for failure to comply with emergency measures issued by the Peruvian State?

According to Article 368 of the Penal Code, disobeying or resisting an order given by a public official in the exercise of his powers, shall be punished by a sentence of not more than two years. It should be noted that the rule exempts this sanction in case of resistance against "the detention itself". However, resistance or contempt for the order issued by supreme decree or derived rules must not be confused with resistance to the detention measure.

What to do in case of infringement of property owned by my company? The Penal Code punishes the crimes of damages, theft and disturbances in its articles 188, 205 and 315; if they occur, they must be reported immediately to the police station in the area and to the prosecutors on duty that are in operation. In which cases does the criminal judge have the authority to decide in the period of the state of national emergency?

It is only empowered to deal with cases of detained, requisitioned, determination of freedom, habeas corpus and matters of urgent concern. This in accordance with the Administrative Resolution 115-2020-CEPJ dated March 16 of this year. In cases of family violence and actions of protection, jurisdiction will fall with civil or mixed courts.



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When a person is considered to be aggrieved by a crime, where can they turn to file a complaint in this period of national emergency?

In this type of situation, the National Prosecutor's Office has ordered that shift and post shift prosecutors work in all fiscal districts, in order to receive and process criminal complaints. In addition, it has also been arranged that prosecutors of crime prevention and the specialized prosecution for crimes of domestic violence work.

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