

# Universities and Profits: Investigative Commission Report

**It is surprising to see an investigative commission of the Chamber of Deputies to exceed the limits of legality and constitutionality. The report, which criticizes the private system and openly accuses a specific group of universities of not complying with the law that forbids them to make profits, has at least three regulatory irregularities.**

The final report prepared by an investigative commission of the Chamber of Deputies, headed by Alejandra Sepúlveda of the *Partido Regionalista Independiente* (PRI), was published this week; the report was approved in the Education Commission of the Chamber by only 7 votes against 6. This report has caused considerable polemic, since it does not only criticize the whole private system, but also openly accuses a specific group of universities of not complying with the law that forbids them to make profits. According to the document, although they have been legally established as non-profit corporations or foundations, higher education

institutions might be sidestepping the law, and their owners are allegedly taking large surpluses; however, no data is given to support these accusations.

### **Unconstitutionality and Illegality of the Report**

In the first place, it is surprising to see an investigative commission of the Chamber of Deputies to exceed the limits of legality and constitutionality. The commission's report contains at least three regulatory irregularities:

1. Article 53 of the Constitutional Organic Law of the Congress states that the Chamber of Deputies may create special investigative commissions with the purpose of collecting information concerning specific government acts. These commissions, even when relying on the unanimity of its members, cannot extend their task to take cognizance of

matters that are not included in the objective or purpose considered in the agreement that created them. In this particular case, the investigative commission's<sup>1</sup> purpose was "financing of public universities, rendering of accounts in relation to the money contributed by the Chilean State, and their overall operation". The truth is that the report tangentially names the institutions which are the purpose of investigation, and instead dedicates most of the text to private universities, thus largely exceeding the frame of the agreement that created it, and clearly violating Article 53 of this Organic Law.

2. In Article 52, the Constitution stipulates that the Chamber has the exclusive authority to investigate the acts of government, that is, the acts derived from the Central Administration of the State, to which private universities do not belong. This must be understood within the purview of Article 7 subparagraph 2 of the Constitutional text, which indicates that State bodies cannot ascribe themselves, not even on the pretext of extraordinary circumstances, an authority or right that it is not expressly vested in the terms of the Constitution or the laws. Since the State bodies can perform only that which is expressly allowed – and the Constitution only allows them to investigate government acts -, when investigating private institutions they exceed the frame stipulated by the own Corporation and the constitutional constraint.
3. In Chile, as in every modern democracy, the investigation and examination of eventual crimes or non-compliance with the law by individuals are derived to specialized, independent and impartial bodies, that is, the Public Ministry and the Courts, under Article 83 and 76 respectively, and never to a political assembly. So, there has been an unauthorized assumption of rights, since a state power has annulled the competence scope of another state power, thus violating the principle of power separation and that of constitutional supremacy and constitutional state contained in Articles 6 and 7 of the Constitution, granted that the state bodies shall submit their action to the Constitution and the rules dictated in accordance to it.

Finally, and considering the above, the investigative commission has become a truly special commission as described in Article 19 Nr 3, subparagraph 4, thus infringing the rule which forbids judgment by this type of bodies.

In conclusion, and in accordance with the aforementioned regulations, the discussed report is subject to illegality and unconstitutionality, because it violates articles 52 of the Constitution and 53 of the Organic Law of the National Congress and, consequently, Articles 6 and 7 of the Political Constitution.

### **Structure and Content of the Report**

After reading the entire report, it is equally serious to confirm that these accusations were not based on an investigation, but only on opinions of people invited to declare at the sessions of the Congress, and none of them presented concrete and conclusive evidence. It is a matter of concern that a parliament work results in a report with such little precision.

Additionally, the document lacks the logical order and basic structure of an investigation. Transcriptions of the statements were simply pasted, several of them more than once throughout the almost 400 pages, and there was not even the concern for correctly writing the text. We would have expected a synthesis of the information collected from the statements, from which it was possible to take the relevant ideas concerning the established objective, and take conclusions thereof. Nevertheless, the documents starts detailing a list of “backgrounds”, which instead of proven facts to become the basis of the investigation, are just judgments on the aspects that are supposed to be determined from the work itself.

Among these backgrounds, it is indicated that the law stipulates that “non-public higher education institutions shall constitute private non-profit corporations...However, we have observed that this regulation has actually become dead letter”. And further on, “the owners of higher education institutions have managed to sidestep the regulation by means of legal subterfuges”. Later it is stated that “in violation of the law, the universities have become real companies, with huge profits, expenses on advertisement higher than those of the rest of the market, and draconian dealings with their students-customers”. If these were real backgrounds for the investigation, then there would be nothing to investigate. Worse yet, although nothing of the former is confirmed in the document, it is still being maintained in the conclusions.

Concerning state universities, the report declares that there is a “State detachment”, and that they have to “set up businesses, charge high interests, sell knowledge, create consortia with private companies, and search for external financing to keep their facilities and teachers”. They are shown as victims of the system, from which private institutions are obviously the villains. In other words, both are accused of taking the same kind of actions, but for one group – public ones – it is legal and understandable, while for the others it is not. This distinction is completely arbitrary, considering also that public universities are the ones that get most of the fiscal resources and, of course, the best students.

Following these “backgrounds”, the document describes the main student movements in Chile, clearly with a political bias, and the main legislative breakthrough. Then follows the statements of the exponents invited to the process, which are repeated more than once, sometimes under different headings, and at the end, the conclusions, and even worse, recommendations that are completely independent from the former. These are again based on personal appraisals and offer no justification.

One of the conclusions indicates that “this Commission fully performed its obligation, even though it could not obtain all the required information” and “it is concluded that higher education makes profit”. In other words, they recognized that they did not have enough information available, but still they do not admit that the proposed objectives were not fulfilled. Worse yet, conclusions without enough grounds are set forth. According to the report, the ways of infringing the non-profit requirement are: paying high salaries to the members of the board, outsourcing relevant services, getting fixed assets through different companies that lease it to university, incorporating family members that receive remunerations, and indiscriminately increasing enrolment fees, which together with the monthly fees’ growth, allow making profits. It calls our attention that none of these points constitutes in itself a violation of the law, since the problem of earnings withdrawal is not implicit in any of the alleged practices, which, by the way, were not demonstrated. Furthermore, there is no evidence that allows concluding that these conducts are developed in the universities accused of making profits in a different way as those universities that the report acquits.

There is also a judgment of value: “profit in education would constitute a sort of defrauding to students, the public treasury and

the society, and the person incurring in this conduct cannot continue to deliver a social good, which is education, because it causes irreparable harm or injury to the society". Again, there is a lack of precision and objectivity in the appraisal.

Additionally, the State is accused of failing to comply with its responsibility: "in 30 years (...) no control, audit, or simple inspection has been made in order to determine the existence of profit in any of the private institutions that have made profits through millionaire sales nor have they revealed how profitable the higher education business is".

Finally, the report indicates that "the consequences of the model and its implementation have become evident", they have produced "an increasing number of young people and families in debt, with university degrees (when they manage to finish) that have a very low value in the labor market, not compensating the effort they made". Once again we wonder what the basis is for all this, since there is no data in the document that supports the alleged failure of students who have finished their studies, and the truth is that it does not seem right to reduce the higher education system to isolated cases.

Lastly, the commission ascribed itself the authority to make recommendations. Among them, it requires the Ministry of Education to audit the group of institutions in which they believe there is profit-making<sup>2</sup>, and worst, it requires suspending the legislative proceeding of higher-education-related bills until they obtain accreditation. On the first point, we already mentioned the illegality of the suggestion, and on the second point, it is completely out of place. It is improper that the parliament refuses to evaluate and discuss the bill introduced for proceeding.

In brief...

### **REGULATORY IRREGULARITIES OF THE REPORT:**

- The report dedicates most of the text to private universities, thus largely exceeding the frame of the agreement that created it, and openly violating Article 53 of this Organic Law.
- Since the State bodies can perform only that which is expressly allowed, when investigating private institution they exceed the frame stipulated by the own Corporation and the constitutional constraint.
- In Chile, as in every modern democracy, the investigation and examination of eventual crimes or non-compliance with the law by individuals are derived to specialized, independent and impartial bodies, (Public Ministry and Courts). So, there is an unauthorized assumption of rights.
- The investigative commission has become a truly special commission as described in Article 19 Nr 3, subparagraph 4, infringing also this rule which forbids to be judged by this type of bodies.

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<sup>1</sup> Approved by 52 deputies, that is, more than the two fifths required by the mentioned article.

<sup>2</sup> Universidad de las Américas, Instituto Profesional AIEP, Universidad Andrés Bello, Universidad del Mar, Universidad Central, Universidad Finis Terrae, Universidad Autónoma, Universidad Santo Tomás, Universidad del Desarrollo.