THE CONSTITUTION AND THE FIGHT AGAINST CORRUPTION IN CHILE

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SUMMARY: I. *Preliminary*. II. *Historical-Legal Background*. III. *Political-legal dimension*. IV. *Prospectives*. V. *Conclusions*.

I. PRELIMINARY

The Spanish legal scholar Francisco Murillo Ferrol recalled in his Political Theory classes more than three decades ago a more than thousand-year-old Chinese writing known under the title of "Mandarin Commandments", which read: "Only the corrupt endures". Certainly, that evocation of the teacher Murillo Ferrol, typical of his anarchist spirit, incites skeptical curiosity, since the link to political power and the state machine room of the binomial corruption - probity is a recurring theme.

We must also keep in mind that the logic of political power, of quantitative increase, leads us to accept as a corrector the predicament, sometimes misunderstood and vulgarized, of Lord Acton, who in a well-known epigram of his booklet "Liberty and Power" he maintains that "power corrupts and absolute power tends to corrupt itself absolutely".[1] In Acton's logic, what is corrupted is precisely that tendency to excess in power, which justifies in contemporary history the conformation of the State as a Rule of Law.

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[1] Dalberg-Acton, John, *Ensayos sobre la Libertad y el Poder*, Madrid, IEP, 1961.

Consequently, for the purposes of our work, the general framework for analyzing corruption is the State and the public function (although the subject exceeds the State), since in the ethical-political component of the modern State, thanks to liberal constitutionalism and social, imposes techniques of restriction and limitation of political power, such as the principle of legality and subjective public rights. The German legal scholar K. Loewenstein is probably right when he points out, regarding the cratology or science of power, that power is one of the three incentives of individual and collective action of man, along with faith and love.[2] Then, it is not an exaggeration to affirm an "erotics of power", which in the logic of power (increase), has a bitter fruit in corruption.

From the foregoing, it follows that the corruption-probity binomial is a thematic field of public law, of the science of politics and administration, scientific disciplines that apprehend a part of the studied reality.

For public law, the binomial corruption - probity is related to the public function, especially administrative, and therefore with the statutory regimes of said function, with official criminal legislation and disciplinary legislation. For the science of administration, the binomial corruption - probity refers to behaviors framed in the theory of organization and bureaucracy.[3] Finally, for political science, the corruption-probity binomial is linked to bureaucracy and the intermediation of interests in the subsystem of political parties and in the subsystem of pressure groups.[4]

In this vein, the French political scientist J. M. Denquin points out that corruption is a means of action of pressure groups in pluralist democracies, within the framework of direct strategies (information, agreement and participation, open threat and hidden action) and indirect strategies (action of groups in public opinion through propaganda, strike and public disorder).[5] To conclude, the German political scientist K. Von Beyme links the strategies of pressure groups in terms of their means, to the work of the "lobby" and "lobbyists", who, in the mediation of interests and obtaining public decisions, use as medium corruption.[6] This last approach of political science

[2] Loewenstein, Karl, *Teoría de la Constitución*, Transl. A. Gallego, Barcelona, Ariel S. A, 1983, pp. 23 et seg.

[3] Baena del Alcazar, Mariano, *Curso de ciencia de la Administración*, 4th Ed., Spain, Tecnos, 2000.

[4] Manuel Pastor *et al.*, *Ciencia Política*, Madrid, Mc. Graw-Hill, 1989, pp. 222 et seq.

[5] Denquin, Jean-Marie, *Sciencie Politique*, Paris, PUF, 1985.

[6] Beyme, Klaus Von, *La clase política en el Estado de los partidos*, Madrid, Alianza Editorial S.A, 1995, pp. 194 et seq., and *Los grupos de presión en la democracia*, Argentina, Belgrano, 1986, pp. 266 et seq.

has the advantage of enriching the formal legal analysis of public law, to introduce a dynamic component in political systems, in which corruption is the result of the activity of parties and private pressure groups against the State and its bureaucracy. Only from this perspective can we adequately understand corruption in its active and passive face.

On the other hand, we must specify that corruption in its ethical-political dimension must necessarily be linked to the public function and the State, which leads to differentiating corruption from opportunism. The Italian political scientist G. Pasquino, differentiating these concepts, notes that in both there is a search for benefits in the public activity without consideration of ideal and moral principles, but corruption is characterized by favoring the particular interests of a group or faction more than personal interests, the latter purpose of opportunism in politics.[7]

From a democratic point of view and considering the regulations, Warren points to the regulation of normative institutions to define corruption, starting from the basis that people must have the power to participate at the institutional level and influence collective decisions on equal terms. of conditions and have equal opportunities to influence public judgment, where corruption affects people by excluding people from decisions, in order to obtain profits or advantages to the detriment of the community, specifically a deceptive exclusion or fraudulent.[8]

In the etymological and lexical investigation of the concept of corruption; the Dictionary of the Royal Academy of Language indicates that its root is Latin: *corruptio*, *corruptionis*, that in the meaning that interests us indicates the action and effect of corrupting or corrupting oneself, it matters "altering and disrupting the shape of something", "spoiling", "bribing or bribing the judge or any person, with gifts or in another way ", among other meanings. H. Capitant also illustrates us in his "Vocabulario Jurídico" with a legal-formal definition of corruption, namely:

> Crime consisting of an official of the administrative or judicial order, or an agent or employee of an administrative department, accepting offers or promises or receiving donations or presents, to carry out an act of your function or employment, even if it is correct, but for which you do not have to receive

[7] Norberto, Bobbio *et al.*, *Diccionario de política*, Mexico, Siglo XXI, 1995.

[8] Warren, Mark, "What does corruption mean in a democracy?", American Journal of Political Science, Vol. 48, No. 2, 2004, pp. 328-343, on Aguiló, Pedro and Nash, Claudio, *Corrupción y Derechos Humanos: una mirada desde la jurisprudencia de la Corte Interamericana de Derechos Humanos*, Santiago de Chile, Human Rights Center of the Faculty of Law of the University of Chile, 2014, pp. 18 and 19.

> remuneration; or also for refraining from carrying out an act that fell within the scope of his duties (Cód. Penal, art. 117, paras. 1 and 2) (passive corruption). Crime consisting of any person obtaining or trying to obtain, by means of promises, offers, donations or gifts or also by means of deeds or threats, from a public official, agent or employee of a public department, whether it is a favorable opinion, or summaries, statements, certificates or assessments contrary to the truth, or places, jobs, awards, companies or any other benefits, or any other act that corresponds to the position of the official, agent or employee, or in short, the abstention of an own act of the exercise of their duties (Criminal Code, art. 117, par. 1) (active corruption)".[9]

Also Joaquín Escriche in the "Diccionario Razonado de Legislación y Jurisprudencia" defines the concept of corruption as the crime of which those who, being clothed in some public authority, succumb to seduction, are guilty; as well as the crime committed by those who try to corrupt them; of luck that corruption can considered as active and passive: active on the part of the corrupters, and passive on the part of the corrupted.[10]

II. Historical-Legal Background

It should be noted that the first source or the first antecedents on the probity or honesty that public officials must have, as such, is found in the masterpiece of Common Law in Spain: "el Código de las Siete Partidas", by Alfonso X, the Wise, whose writing was carried out approximately in the year 1256, officially entering into force in the year 1348.

The obligations of the royal officials can be found in the Second Partida; where the political and administrative law of the Kingdom of Castile is included. It gives an "exact and philosophical idea" of the nature of the monarchy and the authority of monarchs; their rights and prerogatives are defined: their obligations are established, as well as those of the different classes of the State, public persons, political magistrates, chiefs, and military officers, most of which are found in Title IX, comprising 30 laws (M.T. Quirke and another).[11]

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[9] Capitant, Henri, *Vocabulario Jurídico*, Transl. Ariadna Guaglionone, Buenos Aires, Depalma, 1981.

[10] Escriche, Joaquin, *Diccionario razonado de legislación y jurisprudencia*, Paris-Mexico, Librería de la Viuda de Ch. Bouret, 1911.

[11] Quirke, María Teresa *et al.*, *Implicancias jurídicas sobre la corrupción*, XXV Jornadas de Derecho Público, Valparaíso, Edeval, 1995, Vol. III, pp. 121 et seq.

In republican public law, the Treasury and Public Administration Plan (1820) stands out in Chile, a concern for official probity, proposing the creation of a Court of Accounts that judges the accounts that the accountant must give and that "energetically represents the superiority is any excess, waste or disorganization…", judgment that is not limited to the simple examination of the number" but limits to the "veracity and justice of each item, to the effect that public funds are never wasted" (art. 95). Likewise, the Constitution of 1818, in its chapter I, art. 13, enshrines a finalist principle for the state civil service (L. Valencia A. "Anales de la República").

On the other hand, the Moralist Constitution of 1823 has peculiar characteristics, whose drafting corresponded to the publicist Juan Egaña, and which reflects confusion in its political-constitutional ideas and a concern for public morality, which extends to the public function. In this way, the Constitution in its title XI establishes the qualification and censorship of officials, as control mechanisms for the fulfillment of the duties of those who perform public functions, power of censorship that corresponds to the National and Provincial Electoral Assemblies and the Departmental Councils. Corollary of the above is Title XII on "National Morality", providing article 249 that

> In the legislation of the State, the code that details the duties of the citizen in all the times of his age and in all the states of the social life will be formed, forming habits, exercises, duties, public instructions, rituals and pleasures that transform laws into customs and customs into civic and moral virtues.

Of the aforementioned early constitutional antecedents of the 19th century in Chile, we observe little after the establishment of the national State in which, together with the republican ethos, such central institutions as the Council of State and the Court of Accounts stand out, which must exist until 1925. From the Political Constitution of 1925 and its reform of 1943, the Comptroller General of the Republic is an institution of control of legality of the Administration which will have as its basic function the safeguard of probity.

With the democratic transition from 1990, probity and administrative modernization become a central concern. Subsequently, in 1994, faced with the multiplication of cases of corruption, which assumed various forms of administrative, civil and criminal offenses, the Government created a National Commission of Public Ethics, which delivered a report entitled "Ética pública: probidad, transparencia y responsabilidad al servicio de los ciu-

dadanos". This Commission was made up of prominent public figures. As a result of the work of said Commission, various bills were presented, including constitutional reform, recognition of the principle of civil servant probity and transparency, and sanctions and disregard for corruption and other deviant or dysfunctional civil servant conduct, which will not come to prosper. This experience resulted in a legislative package whose maximum expression is the "Law on Integrity" from 1999.

The aforementioned report accepts that the phenomenon of corruption, in a sense, concerns the public function, and the infraction of legal or regulatory norms that regulate them. Likewise, the aforementioned report adopts a functional conception of public corruption, recognizing it when

> a public agent in the exercise of his functions attributed to him by current legislation, and through them obtains a private benefit. In corrupt behavior there is a deviation from normal obligations that includes a public function and the violation of the norms that regulate it, with the purpose of satisfying a private interest.

As a result, the Commission proposed the strengthening of public ethics by giving constitutional status to the principles of public probity, responsibility, transparency and disclosure of heritage, and legislative development through a Code of Public Probity.

Likewise, the National Public Ethics Commission makes a set of lege ferenda proposals in its report, namely:

a. A statute of the public function that ensures the impartiality and independence of public agents, especially in the face of conflicts of interest between private parties or between the private and the public.
b. Refinement and deepening of control tools or instruments to prevent corruption: such as the Investigation Commissions.
c. Regulation of state contracts and tenders. Even in comparative law, we can find model legislation, in its technical perfection in this matter, such as the recent Spanish one.
d. Improvement of the criminal system to account for the phenomenon of corruption, now included in the Criminal Code as prevarication or bribery (art. 223, 248-250 of the Criminal Code), including the crime of incompatible negotiation and influence peddling, since our legislation is outdated and insufficient in this field.
e. Financing of political activity, whether of political parties or their campaigns, and also regulating their income and expenses with transparency. At that time, the Commission paid special attention

to the high cost of political campaigns in our country as a potential source of corruption, since the contributions or donations come from pressure and interest groups or simply from nominated businessmen or bankers.

f. Social control and prevention of corruption that ultimately involves forming public opinion about the ethical-public principles of the public function.

In compliance with what was proposed by said Commission, various legal modifications arose, among them, Law No. 19,653 on Administrative Integrity of 1999, which incorporated modifications to several regulations, and Law No. 19,645 of 1999, which modified the Penal Code in relation to crimes of public officials.

Later in 2006, various proposals were delivered by the Working Group on Integrity and Transparency leading to favor efficiency, objectivity, public responsibility, and professional quality of State management. Although they do not refer directly to corruption, without a doubt the matters dealt with are aimed at strengthening citizen confidence in the public function and were measures that contributed to anti-corruption, the most important:

1. Access to public information to improve transparency and probity in public management, favoring social control. In this, public initiative is privileged, expressed in the duty of States to make relevant information available to the public, as well as greater precision through a special law to make effective the citizen's right of access to public information.
2. Creation of an autonomous body, with constitutional rank, for access to public information with competence that reaches all State bodies, based on the constitutional principle of publicity as part of the Bases of Institutionality.
3. Reforms to the senior public management system, improving public tender procedures and incorporating new bodies and services into said system.
4. On the financing of campaigns and political parties, reinforce transparency in the relationship between money and politics, fine-tune illicit and electoral law sanctions, improve electoral oversight and greater control of private and anonymous contributions.
5. Strengthen the State control system, redefining the functions of control and review of the organization and control procedures of the Office of the Comptroller General of the Republic.

6. A system of protection for whistleblowers in good faith, ethics commissions or good parliamentary practices, regulation of lobbying and improvement of purchases and public contracting.

That same year, 2006, the United Nations Convention against Corruption was enacted in our country, which, although it does not include an express definition of said term, does contain behaviors and measures that are proposed to combat "more effectively and efficiently corruption", among them, preventive measures such as the formulation and application of coordinated and effective policies against corruption "that promote the participation of society and reflect the principles of the rule of law, the proper management of public affairs and public goods, the integrity, transparency and the obligation of accountability" (article 5) with the establishment of bodies that apply said measures and that have the necessary independence to carry out their functions without any undue influence (article 6).

Other proposed measures are related to the public sector and systems for summoning, hiring, retaining, promoting and retiring officials based on principles of efficiency, transparency, with adequate remuneration, training, responsibility and disciplinary system, public hiring, among others.

Likewise, measures are considered to increase transparency in the Administration, in the organization, operation and decision-making processes of the State (article 11), among others:

1. The establishment of procedures that allow the public to obtain information from the Public Administration and the decision-making processes;
2. Simplification of administrative procedures where appropriate in order to facilitate public access to decision-making authorities;
3. The publication of information, which may include periodic reports on the risks of corruption in the Administration.

Finally, we highlight the measures that are recommended for the participation of civil society in relation to the prevention and fight against corruption, as well as to make public opinion aware of its existence and seriousness, measures such as:

1. Increase transparency and promote citizen input in decision-making processes;
2. Guarantee access to information;
3. Carry out public information activities to encourage intransigence with corruption;

4. Respect, promote and protect the freedom to seek, receive, publish and disseminate information related to corruption.

It is obvious that these measures cannot be included in the Constitution, but they can be included in the basic principles from which they can be specifically regulated in other laws.

Finally, as the most recent experience in working groups on corruption, we cannot fail to mention the Presidential Advisory Council against conflicts of interest, influence peddling and corruption, from 2015 (also known as the "Engel Commission"), starting of the diagnosis of President Michelle Bachelet who stated that

> we have seen how some use the power of their money to influence the decisions of democracy, that is, to influence the decisions that affect us all. And we have also seen how some use the influence granted by democratic and public positions, which are there to serve all citizens, to obtain personal advantages.[12]

This Council recommended numerous proposals regarding the following topics: *a)* Corruption Prevention; *b)* Regulation of conflicts of interest; *c)* Financing of politics to strengthen democracy; *d)* Confidence in the markets, y *e)* Integrity, ethics and citizen rights.

III. Political-legal dimension

Comparative experience makes it possible to establish certain areas of the public function that are more susceptible or exposed to corruption, where conflicts of interest between the public and the private are poorly, insufficiently, or inadequately regulated and controlled. This uncertainty induces or facilitates bribery, and the bribery associated with contracts, tenders, foreign trade operations, customs franchises, public credits, judicial processes, social policy benefits, among others, and that contributes to the illegitimate transfer, misuse and appropriation misuse of state assets and public funds, nepotism, patronage, and bad electoral practices. These corrupt practices contribute to political instability, anomie, illicit enrichment of public agents, demoralization, among other factors that paint a worrying picture that is repugnant to the idea of a rule of law and a stable democracy.

[12] Presidential Advisory Council against conflicts of interest, influence peddling and corruption, Final Report, April 24, 2015, Santiago, Chile, p. 28.

In our case, we can say that there has been progress in transparency, access to public information and accountability that are fundamental in the fight against corruption, however, the deterioration of the citizen's perception of probity in the public function is has been seriously affected by the corruption cases known in the last period, in which various situations of individual (or group) use have been revealed, mostly economic.

The regulations that currently deal with the fight against corruption in our legal system can be found mainly in our Constitution, established as principles. But outside the Fundamental Charter there are also other regulations that are directly or indirectly related to corruption, among them, the Criminal Code on crimes against public faith (forgery of public and private instruments), crimes that can be committed by officials (prevarication, embezzlement of public funds, fraud, illegal exactions, unjustified enrichment and bribery); in special laws, such as Law No. 18,575, Organic Constitutional General Bases of State Administration, Law No. 20,285 of 2008 on access to public information, Law No. 19,863 of 2003, on remuneration of government authorities and critical positions of the Public Administration and gives rules on reserved expenses, Law No. 19,653 on administrative probity applicable to the organs of the State Administration, Law No. 20,205 that protects the official who reports irregularities and lack of probity, Law No. 20,730 that regulates lobbying and the procedures that represent private interests before authorities and officials, among others.

For its part, the national Constitution reformed in 2005 and 2010 contains transcendental norms in the fight against corruption, particularly article 8 on the principle of probity in the exercise of public functions, the principle of publicity of the acts and resolutions of State bodies —incorporated with the constitutional reform of 2005— and the obligation of certain authorities to declare their interests and assets publicly after a reform in 2010 through Law No. 20,414. The article points out:

> Article 8o. The exercise of public functions obliges their holders to strictly comply with the principle of probity in all their actions.
>
> The acts and resolutions of the organs of the State, as well as their foundations and the procedures they use, are public. However, only a law of qualified quorum may establish the reserve or secrecy of those or of these, when the publicity affects the due fulfillment of the functions of said organs, the rights of the people, the security of the Nation or the national interest.
>
> The President of the Republic, the Ministers of State, the deputies and senators, and the other authorities and officials que a constitutional organic law indicates, they must declare their interests and assets publicly.

> Said law will determine the cases and the conditions in which those authorities will delegate to third parties the administration of those goods and obligations that suppose a conflict of interest in the exercise of their public function. Likewise, it may consider other appropriate measures to resolve them and, in qualified situations, order the alienation of all or part of those assets.

Integrity is an ethical-political principle that applies to the public function and that refers to integrity in the fulfillment of the obligations and duties of public office. Correlative of probity is the principle of responsibility that allows associating the public inspection of the activity of the public agent and the sanction of this against the infraction of the law or regulations. The principle of transparency or publicity includes the agent, management and public acts, so it is particularly important in the field of contracting for the Administration, administrative contracts and concessions. Lastly, publicizing the assets and interests of public agents is an imperative of probity.

Other constitutional norms that contain specific principles and tools related to the corruption-probity binomial, and responsibility and control systems are:

1. Article 1, fourth paragraph of the Constitution, which enshrines a personalist conception of the State, in such a way that it as a system of powers and its resources are at the service of the human person, its groups and civil society as a whole.
2. Article 52 of the Constitution, which enshrines the function of political control of the Chamber of Deputies, which is verified through various instruments of inspection and information of the acts of Government, whether they are political acts or of the Administration.
3. Articles 58, 59 and 60 of the Constitution that establishes incompatibilities and inabilities in the parliamentary position.
4. Likewise, article 79 that establishes the responsibility and sanctions for bribery and prevarication of judges.
5. Article 98 of the Constitution establishes the Office of the Comptroller General of the Republic as a court of accounts and assigns the function of ensuring the integrity of public assets (Law No. 10,336).
6. Article 38, first paragraph of the Constitution that refers to the Constitutional Organic Law on the organization of the State Administration and the principles of the administrative public function (Law No. 18,575 and Law No. 18,834) that explicitly enshrine rules on probity and certain obligations, prohibitions, and incompatibilities.

From the foregoing we can infer a conjectural reflection: the corruption-probity binomial in the current responsibility and control system has a complete regulation in the *lege lata* that has been improved by various special laws that we have already had the opportunity to mention, so It is necessary to adjust and print political decision in the prevention and punishment of corruption in the public function. The proposals put forward by the Advisory Council are valuable and the progress of the 62%[13] of them, but they are of no use if the instruments and controls provided for in the current system do not operate, so that they do not become "rusty swords" of a Rule of Law incapable of making effective the basic ethical-public principles such as probity, transparency, responsibility and publicity of the public function.

Perhaps the political class suffers from a certain complacency in the face of the phenomenon of corruption, accepting as true that the international ranking of transparency, on the scale of 10 a 100[14] Chile appears in 2016 with 66 (Transparency International), dangerous complacency that leads to indolence, which is the beginning of the generalization of the phenomenon and which is evidenced in the constant decline of the index, demonstrating that the level of corruption increases year after year.

IV. Prospectives

In the last decade, illegal financing of politics, corruption, bribery, conflict of interest, influence peddling, tax evasion, collusion, misappropriation, and improper use of privileged information are all terms that abound in the media today and that have become part of the language in use and the institutional landscape.

The above is inserted in the box that is the "sociedad de la desconfianza"[15] and a certain "electoral anomie", made visible in the deterioration of citizen confidence in politics, the elites, and the ruling class. Indeed, the percentage of people who say they have a lot or a lot of trust in the Government, the National Congress, political parties, and businessmen, respectively, has fallen by half in the last fifteen years (CEP survey).

[13] Figure provided by the Smart Citizen and Public Space Anti-Corruption Observatory.

[14] From 1996 to 2011 the maximum score is 10, with 1 being the highest risk of corruption and 10 the lowest risk of corruption. Since 2012 the methodology has changed and the maximum score is 100, with 10 being the highest risk of corruption and 100 the lowest risk of corruption.

[15] Rosanvallon, Pierre, "*La contrademocracia: la política en la era de la desconfianza*", Buenos Aires, Manantial, 2008.

The table briefly described forced a political response: the creation of the Presidential Advisory Council Against Conflicts of Interest, Influence Trafficking and Corruption. The work of the Council was permeated by the idea that these problems are closely related to weaknesses in our institutions, and by the idea that the crisis had to be used to set in motion a comprehensive probity agenda that spanned politics and business.

The Council proposed more than 200 measures in the following areas: prevention of corruption, regulation of conflicts of interest, separation between the financing of politics and business, strengthening of the tools for a better functioning of the markets, and other ideas directed towards greater integrity and ethics in our society.

Three groups of proposals stand out in the Commission's report for greater probity in business that I would like to highlight in this space: better regulation of the "revolving door", greater powers so that the inspection agencies can carry out their work effectively, and the strengthening of corporate governance of companies.

The "revolving door" refers to the back and forth of people between legislative or regulatory positions and private for-profit and non-profit companies operating in the regulated sector. Door that is complementary to the "musical chairs" that operate within the State. One director is a parliamentarian, a high-ranking government or administration official, or a supervisory entity who leaves the public sector to take up a relevant position (director, manager, investor, consultant or "lobbyist") in the sector that he or she has regulated. In the opposite direction, it is a high-level executive or manager of a regulated company who takes a position in the Government, the Administration, the National Congress or in a supervisory entity. A "revolving door" that turns without guards allows to benefit a former or a potential employee, and to use sensitive information that was obtained in the position. Thus, it allows obtaining private advantages for the fact of having held a public office and is not different from receiving a prize or emolument.

The biggest challenge of "revolving door" regulation is to strike a balance between attracting highly-skilled people to the state – while also protecting freedom of labor – and preventing conflicts of interest so that public agents act impartially and independently.

The Council also proposed expanding the set of agents subject to incompatibilities after performing public employment, defining a "cooling off" period in which a certain position cannot be taken in the private sector nor can property or entrepreneurship be maintained in the area; everything associated with compensation and sanctions; plus a monitoring or inspec-

tion system. As for the auditing entities, the Council considered it necessary to provide them with more effective tools for the examination of compliance with regulations. Without oversight and monitoring, deterrence and effective sanctions are difficult to implement. In essence, the report proposes to give new powers to the agencies that monitor and prosecute illicit. They must go hand in hand with greater independence, which is why modifications to their corporate governance and the way in which their authorities are appointed and/or removed were also suggested.

New powers are allowing these audit entities to share sensitive information quickly and effectively, and to have intrusive powers and greater regulatory strength.

In the field of business and the economy, it was proposed to strengthen the compensated denunciation and protection programs for informants to promote complaints and self-reports, tools that have been recognized internationally as effective in the arrest and prosecution of crimes; and together with this increase the fines or pecuniary sanctions.

To conclude, the Council proposed a series of measures to strengthen the effectiveness of companies' corporate governance, self-regulatory mechanisms, and internal and external audit processes to prevent illicit conduct from occurring, and to detect fraud and corruption by inside companies. Among the proposals is the definition of standards and regulations on transactions or operations related and unusual transactions with donations, and the remuneration policy and incentives for executives, including the forms of payment.

In short, it seeks to recover the confidence of citizens in the institutions and organizations that support our democracy, and the economic development model, and in this way, the probity agenda goes beyond the confines of the state to enter the economy and society. It is a complex agenda because it covers a wide variety of issues. But it is also important because it means demanding higher standards of probity and transparency than the current ones, and more importantly, it implies giving up power and privileges.

The recent legislation on conflicts of interest, lobbying, blind trust, among others, in the State and its relationship with the public private or on the institutionality of regulated markets (securities, insurance, banking, finance) that assesses the creation of the The Financial Market Commission, which will replace the Superintendencies of Securities and Insurance and in the future the Superintendency of Banks and Financial Institutions, is based in its design on the ideas of the Engel Commission that we have summarily collected before.

V. Conclusions

Corruption as a phenomenon has been common in several countries in the region, and in recent years in our country it has hit hard the trust in politics of public opinion and citizenship, seriously affecting the democratic system in a kind of disenchantment with the power, institutions and the political class. The notorious cases of Penta, Milicogate Caval, Soquimich, and the fraud in Carabineros have affected the level of confidence of the citizenry, even more so when it comes to the relationship between politics and economic issues.

In addition to this, the problem of corruption generates concern beyond the economy and politics due to the effects it has on the functioning of the democratic political system and especially on the enjoyment of rights, which can occur massively when it comes to of a structural barrier or individual, affectation that in any case can be clearly seen when it comes to economic, social and cultural rights.

Concern about the issue of corruption is now happening not only at the most central political level, but also in direct relation to citizens, which is evidenced when 22% of the population claims to have paid a bribe or given a gift to an official to obtain a service or document or when 80% say that corruption has increased in the country.[16] Contemporary democracy must face the challenge of recovering citizen trust, dealing with corruption and putting an end to the problems it generates in the rule of law, which must be considered a priority given the urgency of low political participation in our country and inequality in Chilean society.

Progress must be made not only in the prevention of cases of corruption, but also in the capacity to prosecute crimes associated with this phenomenon. Indeed, in our country the penalties for crimes against probity are low compared to those established by other countries and to the recommendations and standards set by international organizations, with legal gaps, weaknesses in oversight and a lack of specialized personnel in the police and Public ministry. There is also no monitoring of the incidence of corruption crimes.[17]

The current national debate is undoubtedly permeated by the various conflicts of interest and cases of corruption that have come to light, for which various voices have advocated the repair of institutions and the cor-

[16] Transparency International, "People and corruption: Latin America and the Caribbean", *https://www.transparency.org/whatwedo/publication/las_personas_y_la_corrupcion_america_latina_y_el_caribe*.

[17] Presidential Advisory Council against conflicts of interest, influence peddling and corruption, *cit.*, p. 46.

rection or inclusion of those regulations that allow a greater correspondence with public probity. However, it should not be forgotten that as a fundamental norm the Constitution establishes the basic rules of the political system and of social coexistence, the protection and guarantees of fundamental rights (which, as we have seen, can be affected by acts of corruption) and, therefore, , may contain principles such as probity, access to public information and transparency in the actions of the Administration bodies and the correct exercise of public functions that are the basis for the fight against corruption, abandoning the legacy of the regime authoritarian that still weighs on our system.

The constitutional and legal reception of a panoply of norms and institutions that ensure probity and allow combating corruption must be accompanied by solid citizen participation in political life and the recovery of trust, as well as full respect and guarantee of fundamental rights, encouraging a culture of accountability, of social control of political power by public opinion, of a vigilant citizenry that can denounce in a protected manner in a full democracy beyond political representation. In this sense, the proposal for an Ombudsman's Office is gaining strength again (*Ombudsman)* as an autonomous body, considering the violation or facilitation of violation of rights that occurs with corruption, acting as a promoter of rights and exercising actions in their defense. In this, it is important to add as a measure that the media must become a truthful and objective collaborator in the task of responsibly denouncing acts of corruption.

In addition, a solid employee ethic must be cultivated that emphasizes the basic principles of public service: honesty, fidelity, veracity and integrity, as well as modifying the control procedures that already exist, in order to achieve with them brevity, impartiality and promptness in the establishment of responsibilities and sanctions.

In a structure faithful to the values and principles of constitutional democracy, the phenomenon of corruption must be linked to the structural principles of the rule of law. Indeed, the rule of law based on the principles of rule of law, legality, separation of powers and protection of fundamental rights, a legal-political formula is chosen to impose limitations and guarantees on political power and set a dam to the process of quantitative and qualitative increase of power, in short, a dam to the corruption of power and institutions in a broad sense, and in a strict sense, a dam to corruption in the state public function. As Bielsa reminds us: "The republic is the legal, institutional structure, the moral concretion of citizenship".[18]

[18] Bielsa, Rafael, "Democracia y República", Buenos Aires, DePalma, 1985, p. 129.

From the perspective of pluralist democracy, it should be noted that the phenomenon of corruption leaves its mark on the activity of political parties and pressure and interest groups; that is to say, since corruption is a phenomenon with two faces, active and passive, there will always be a corrupt person and a corrupter, a public agent and a private agent, in the plot of deviant conduct that violates the principles of probity, responsibility, transparency and advertising. The downsizing of the State, from a business and services State to a regulatory State, imposes new challenges in the face of the phenomenon of corruption, since there is a strong dialectic of what is public and what is private in the current organization of power.

Thus, from the Constitution, a State is promoted that, from its structure, tends its interest towards the public and social, to the vicariate in the exercise of power, to public service, to the common good and not to the individual, which discourages corrupt or deviant conduct. officials and the Administration, overcoming the crisis of legitimacy and the relationship between money and politics, involving all the country's actors in this national task in a kind of "republican patriotism".