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The sanctity of privacy in banking secrecy

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Abstract

Professional secrecy in general and bank secrecy in particular aims to protect the individual in the context of his private life. Exceptions to the principle of bank secrecy should not be extravagant until they outweigh the original, as this leads to negative effects that will affect individuals and the work performance of construction elements economic, on the one hand. On the other hand, these cases must be precisely defined so as not to infringe the rule of banking secrecy, which is the very foundation of banking transactions and leads to a loss of trust between the bank and the customer.

Key word:Bank secrecy- the individual-private life-economic construction-the bank

1. INTRODUCTION

Banking is based on trust, so one of the main dimensions of the quality of banking is credibility, as the bank must be honest in dealing with customers. The obligation of confidentiality that is binding on professionals is not an absolute concept, but there are nuances between different professional sectors regarding the content and form of confidentiality. These differences are related mainly to the social value of the secret owner and the strength of trust¹.

The secret of the banking profession is different from most professional secrets in terms of its nature. In addition to being financial in nature, it differs from its strength and effects, it's a proportional secret which may be disclosed against public authorities in the case where a legal text grants a particular authority the right to access a secret in order to achieve an interest which the legislator sees that it is more worthy of care than confidentiality.

Customer business and transactions with banks, whatever types of business and transactions, are a secret for these customers, and in order to achieve absolute trust between banks and their customers, they are fully committed not to disclose any special secrets about their business and transactions with them, and this is undoubtedly consistent with the assets of the banking profession and the conditions of highly sensitive banking transactions².

On the basis of the foregoing, bank secrecy can be regarded as a right to privacy, but the problem that arises is: **what extend can the immunity to the right to privacy reach under bank secrecy?**

¹ - MORAIS Claude, Etude comparée sur le secret bancaire (Etats-Unis, Canada), Revue générale de droit, 1997, Vol.28, N°01, p.72.

² - Ahmed Mohamed Ghneim, Bank management, traditional past and electronic future, Modern library of publishing and distribution, Egypt; 2007, p p 43,44.

BELHAJ Hamouda Ajmi, The professional secrecy of the Banker in Tunisian law or for a more strengthened banking secrecy, Revue Tunisienne de droit, Centre d'études de recherches et de publications, Faculté de droit et des sciences politiques et Economiques de Tunis, 1979, N°1, p.12.

To answer the research problem, we have adopted the descriptive and comparative approaches, and our research will be divided into two sections: the principle of sanctity of privacy between the concept and the legal enshrinement, and limits of sanctity of privacy under bank secrecy.

2. The principle of sanctity of privacy between the concept and the legal enshrinement

Maintaining bank secrecy is essentially linked to a human being's right to respect for his or her personal freedom and to protect his or her private life. One of the fundamental human rights is to protect the private life of everyone.

2.1. Conceptual framework for the right to privacy

The right of individuals to their own lives is called the "right to privacy"³, and the right to privacy is defined as the "right not to be prosecuted in one's own life"⁴.

If it is difficult to give a clear and precise definition of private life, this is because the sanctity of private life is a flexible idea with no fixed boundaries, it is not only different by country but also by individual's own age and personality⁵.

Some French jurisprudence has also tried to give a definition to private life in a negative way. It is the individual's private life that corresponds to his or her public life, thanks to this negative definition that it highlights the superiority of private life that prevents any curious and non-silent sponsored intervention, and all the rest is considered of public life⁶.

³ - It's called "right to sanctity of private life", and it's also called "right to confidentiality", "right to familiarity", "quiet", and "right to retain one's individuality", as well as "wall of private life".

⁴ - Ahmed Mohamed Badaoui, Offence of disclosure of secrets and criminal protection of bank confidentiality, Saad Samak Publications, Cairo, 1999, p136.

⁵ - Akli Fadhila, Legal protection of the right to privacy_Comparative study, Phd thesis, faculty of law, Mantouri University, Algeria, 2011/2012, p 76.

⁶ - BADINTER R., Le droit au respect de la vie privée, JCP., 1968, 1, 2136.

Adapted from: Naim Meghabghab, Bank secrecy, study in comparative law between Belgium, France, Luxembourg, Switzerland and Lebanon, 1996, p 85.

If freedom may be defined as the right to be left alone, the right to withdraw temporarily with one's body, mind and secret from social life, as it is related to his/her right to privacy, An individual has the right to exercise his or her own affairs free from interference by others. social organization cannot ignore an individual's psychological and bodily structure, and the confidentiality of his life⁷.

Likewise, the American Legal Institute defines privacy by compromising it "any person who seriously and wrongfully violates the right of another person that his or her affairs not to be informed to others , and whose image is not exposed to the public, and who is accountable to the abuser"⁸.

As regards the sanctity of private life, some Arab jurisprudence argues that "the sanctity of private life is an invaluable part of the human being who cannot be extracted from it, unless it becomes a deaf instrument unable to human creativity. By its nature, man has his personal secrets, subjective feelings and distinctive characteristics. Man can only enjoy these features in an atmosphere that preserves them and paves the way to their existence."⁹

The private life of individuals has also been constitutionally protected in the various constitutions of States¹⁰, as it is of paramount importance to the entity of the individual and society together. The 2020 Algerian constitutional founder

⁷ - Ahmed Mohamed Badaoui, Op cit, p 136.

⁸ - Akli Fadhila, Op Cit, p 89.

⁹ - Ahmed Fethi Srour, Criminal Protection of the Right to Privacy, Ennahda Arab House, Cairo, 1976, p 54, adapted from: Akli Fadhila, Op Cit, p 91.

¹⁰ - The 2014 Egyptian Constitutional Founder protected this right and set up guarantees. Article 99 of the Constitution stipulates that: "Any assault on the personal freedoms or sanctity of the life of citizens, along with other general rights and freedoms guaranteed by the Constitution and the law, is a crime with no statute of limitations for both civil and criminal proceedings. The injured party may file a criminal suit directly. The state guarantees just compensation for those who have been assaulted. The National Council for Human Rights shall inform the prosecutor's office of any violation of these rights, and also possesses the right to enter into an ancillary civil lawsuit on the side of the injured party at its request. This is as specified within the law".

Article 92 of the 2014 Egyptian Constitution stipulates: " Rights and freedoms of individual citizens may not be suspended or reduced. No law that regulates the exercise of rights and freedoms may restrict them in such a way as infringes upon their essence and foundation".

The French legislator also criminalized acts of infringement of the right to privacy after amending the Penal Code by Law N° 92-684 of 22 July 1992 in articles 226/1, 226/2, 226/3, 226/4 and 226/8.

stipulates that: "Everyone has the right to have his private life and honour protected ."

In addition to constitutional and legal protection of the right to privacy, this right has been protected in the international sphere. Article 12 of the Universal Declaration of Human Rights of 1948 provides that: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".

There is also the International Covenant on Civil and Political Rights of 16 December 1966¹¹, article 19 of which provides for the protection of the individual's privacy: "1- No arbitrary or unlawful interference with his honour and reputation shall be permitted.

2- Everyone has the right to the protection of the law against such interference or exposure. "

Regional conventions have also guaranteed the right to privacy, such as the European Convention on Human Rights¹², the American Convention on Human Rights¹³, the International Conference on Human Rights held in Tehran in 1968, the Montreal Conference on Human Rights in 1968 and the International Conference of Experts of UNESCO in 1970, the 1979 Hamburg Conference on the Protection of Human Rights in Criminal Procedure Law.

Undoubtedly, such provisions in international treaties, constitutions and laws related to the protection of this right would greatly enhance confidence in today's and future banking relations. The right to the sanctity of one's private life entitles one to retain one's own conscience and to prevent another from disclosing it when

¹¹ - Algeria acceded to this Convention on 16/05/1989, OJAR N° 20, dated 17/05/1989.

¹² - The European Convention on Human Rights was signed by some European States in the Italian capital, Rome on 04/11/1950.

¹³ - The American Convention on Human Rights was signed in San José, Costa Rica, in November 1969.

one has to confer confidentiality on a trustee by necessity or deal for assistance or service¹⁴.

It is in this spirit that the sanctity of private life requires that human beings have the right to confidentiality in its manifestations and effects. Thus, the right to confidentiality is the opposite aspect of the right to private life and can never be separated. No one has the right to interfere to another person's life and to violate its confidentiality, only with his express permission or in accordance with the law. Confidentiality or the obligation not to violate the secrets of others is only a means of guaranteeing the sanctity of private life¹⁵.

The customer's financial integrity is one of the matters related to his private life and personal freedom, which he is keen not to inform others about, which is considered as an infringement of his financial and commercial entity and a breach of confidence in the financial system, which affects the public interest as credit is one of the pillars of the highest economic interest in society¹⁶.

Therefore, if a third party is a commercial or industrial competitor to the customer, he may take advantage of his knowledge of the customer's financial secrets to promote rumors about him, especially if the customer is in financial distress, and there is a financial deficit. If a third party is a member of his or her family, he or she may know of a donation or monthly payments made to a family member or to an undesirable person for certain reasons, which provokes disputes¹⁷.

¹⁴ - Dana Hamma Baki Abdelkader, Bank secrecy under money laundering legislation, comparative analysis, Legal Books House, Egypt-UAE, 2013, p27.

¹⁵ - Mohammed Abdelwadud Abu Omar, Penal Liability for Disclosure of Bank Secret, Comparative Study, First Edition, Wael Printing and Publishing House, Amman, 1999, pp 30-31.

¹⁶ - Abdelkader Al-Atir, The Secret of the Banking Profession in Jordanian Legislation, Comparative Study, First Edition, Culture House for Publishing and Distribution, Amman, 1996, p 22.

¹⁷ - Zina Ghanem Abdul-Jabbar Safar, Bank Secrets, Comparative Legal Study, Legal Books House, Egypt, 2011, p 75.

2.2. Sanctity of privacy and bank secrecy, a two-sided coin

The basis for banking secrecy is the protection of the personality, so that any breach of this constitutes unlawful conduct, and that the rights necessary for the personality are granted to every natural or moral person the right to respect for his or her private life and to protect his or her secret life¹⁸.

Bank confidentiality is a manifestation of the protection of individuals' personal liberty on the occasion of their economic activity, which is based on legal grounds and is dictated by political, economic and social considerations. An individual is free to engage in his or her legitimate economic activity and to retain his or her financial integrity and details without being subjected to anyone except in accordance with the provisions of the law¹⁹.

The individual's recognition of the right to confidentiality in general was settled as an inherent right of the personality, although some jurisprudence²⁰ held that the interest in confidentiality was merely a licence that did not amount to the right.

Accordingly, in a decision of the Court of Appeal of Paris, the French judiciary²¹ affirmed: "Memories of an individual's private life are an integral part of his or her literary components. No one may publish any material relating thereto without the explicit consent of the author. The public life of the individual is governed by rules different from those relating to private life, which can be dealt with by historians. " It appears from this judgment that he asserts that disclosure of a secret is a breach of an individual's personality.

¹⁸ - RAPPO Aurelia, Les fondements juridiques actuels du secret bancaire, Les enjeux juridiques du secret bancaire, L'harmattan, Paris, 2011, Schulthess Médias juridique, Genève, Zurich, Bale, 2011., P.33 ; En ce sens, VIBRET-HUOT Karine, Les limites du secret bancaire et du secret des assurances, Le bulletin d'information, Association Luxembourgeoise des compliance offices du secteur financier, juin 2007, N°11, p.8.

¹⁹ - Mohammed Abdelwadud Abu Omar, Op Cit, p 31.

²⁰ - Nerson, Non-Financial Rights, Phd Thesis, Leon, 1939, p. 14, adapted from: Hossein Nouri, Op Cit, p 19.

²¹ - Court of Appeal of Paris, 16 March 1955, Dalloz, 1955, p 295, Adapted from: Ahmed Mohamed Badaoui, Op Cit, pp 136-137.

The private sphere also extends to aspects of the economic system, and information protected by banking secrecy is recognized as falling within the private sphere of the individual, thus benefiting from broad protection, and that such information may be disclosed only with the consent of the person concerned, the text of the law or a principal justifiable reason²². The rights inherent in the personality are absolute and therefore invoked against all²³.

Therefore, a person may have to confide in another person, as in the case of recourse to certain professionals for a particular assistance or service, so trust controls need to be protected in order to achieve the assistance or service sought. This justifies the intervention of criminal legislation by obliging certain professionals to keep confidential confidences entrusted to them by necessity, in order to preserve this trust and ensure confidentiality²⁴.

The protection of bank confidentiality is based on political considerations, affirming an individual's personal liberty, and protecting it from increasing influence of public authorities, and reiterating the statement in the National Charter and the Constitution that personal liberty is inviolable, and that the confidentiality of financial status falls on an equal footing with that of matters relating to the health and family interests of the individual²⁵.

The protection of bank confidentiality is also socially considered, as individuals' behavior towards their wealth varies according to social circumstances. Some may boast about their wealth, but at present this behavior has diminished, as economic inequality in modern societies has led to conflict between artistic classes

²² - RAPPO Aurelia, op.cit., p.33.

²³ - RAPPO Aurelia, op.cit., p.33.

²⁴ - Hussein Al-Nouri, Bank Confidentiality, His Assets and Philosophy, Arab Banking Federation Publications, Beirut, 1975, p 30.

²⁵ - Hussein Al-Nouri, Op Cit, p 21.

and other classes. So wealth owners try to avoid the causes of this conflict by hiding their wealth, and keeping banking secrets is the best way to achieve that²⁶.

Economic consideration is also based on the consequence of modern economic progress of the increasing phenomenon of the conversion of wealth from real estate wealth to movable wealth, which is easily concealed. The emergence of large enterprises has led to an increase in moral persons in which shareholders do not appear as owners of the project, and securing bank secrecy is dictated by these economic phenomena²⁷.

The protection of an individual's personal liberty and the confidentiality of his or her private life certainly serves a moral or material interest. Disclosure of bank secrecy is detrimental to the physical and even moral interest of the customer, as bank secrecy is only a legal obligation in which the customer is the creditor and the bank is the debtor, an obligation that the bank exercises its activity within the customer's interest²⁸.

Accordingly, the English judiciary²⁹ has ruled that the bank must be committed to confidentiality in the interests of the customer, and the facts of this case are that "TOURNIER" was a customer of the defendant bank, and in April 1952 his account became owed approximately nine pounds. He signed a document agreeing to pay this amount in weekly instalments, each worth one pound, stating the name and address of the company in which he works, Kivion.

In the absence of satisfaction, the respondent bank branch manager contacted the company where the debtor worked, and had a conversation with two of its directors, during which he disclosed the truth about the debtor's balance, adding that the customer did not keep his promises and was betting heavily. As a result of this

²⁶ - Hussein Al-Nouri, Ibid, p 22.

²⁷ - Hussein Al-Nouri, Ibid, p 22.

²⁸ - Mohammed Abdelwadud Abu Omar, Op Cit, p 31.

²⁹ - Case of TOURNIER. V, National provincial et Union Bank of England, 1953.

conversation, the plaintiff was dismissed, so he instituted a claim for defamation and breach of bank secrecy by the bank.

The applicant appealed against the judgement in favor of the bank before a court of first instance. The Court of Appeal ruled in his favor, stating in the reasons for the decision that "the obligation of bank secrecy includes whether and how much of the account is owed or credited, and extends to all transactions included in the account and the guarantees given in respect of this account".

It appears from the facts of this case that the Bank has infringed on the customer's personal right to protect his secrets, and that the Court of Appeal judgement was aimed at preserving the customer's material interest.

3. Limitations of sanctity to privacy under bank secrecy

The considerations behind banks' obligation to confidentiality are not limited to those related to personal right or to those related to the bank's own interest in securing its banking operations from other banks or in securing its customers' banking operations from their competitors, but extend to the public interest.

3.1. Public interest as a restriction on an individual's privacy in bank secrecy

Respect for one's private life, and his right to have his private affairs, including financial, confidential, doesn't mean not to ignore the society in which we live, it is within us as it is outside of us because the interest of the individual is linked to the interest of the community in an integral and indispensable way to the other. and thus the securing of banking transactions is a positive return for the national economy with the confidence it provides for public credit as a top interest of the State³⁰.

Some French jurisprudence has defined the public interest by stating: "Public interest means not only the security of the State but all that can be detrimental to

³⁰ - Abdelkader Al-Atir, Op Cit, p 27.

foreign policy, State communities, government investigations, trade policy, the rights and privileges of Parliament and the legislator, and all that can be detrimental to the agreement between different communities of society"³¹.

The public interest represents the higher trends, whether economic, political or social, and the Community's objectives, and indeed it is difficult to give a precise and clear definition of the public interest, as it is a different idea across time and changes by changing circumstances³².

We must point out that public order is often used as a synonym for public security and as a synonym for public good or benefit, but public order is as distinct from public security, and from the public good, but closely related to it.

Public security is a prerequisite of public order, but it is not synonymous with it. Public order is more inclusive. public interest, although relevant to public order, the latter is a situation, whereas the common good is the result of this situation, and everything that affects this situation affects the general interest of society, whether it be social, political, economic or moral³³.

If the activity of the State is carried out in the context of the public interest and public order, the meaning of the public order, which is the public interest in maintaining it, is also flexible, evolving and changing by time and basic principles and rules on which the entity of society is based in its various political, social and economic systems³⁴.

Anyway, if it is in the State's interest to have an absolute professional secret, it cannot be disclosed so that the State is not harmed by the disclosure of its political or administrative secrets, it would be dangerous to leave the full freedom of the State to

³¹ - LAGARDE, Supplément du nouveau code criminel annoté, Montréal, 1958, p.162. Adapted from: Ahmed Kamel Salama, Op Cit, p 68.

³² - Mohammed Abdelwadud Abu Omar, Op Cit, p 35.

³³ - Ahmed Kamel Salama, Op Cit, p 69.

³⁴ - Said Abdul Latif Hassan, Criminal Protection of Banking Secrecy, Arab Renaissance House, Cairo, 2004, p 87.

favor the public interest over the individual interest. Making the professional secret of public servants absolute means abolishing control over administrative and political acts, which is the title of true democracy, and the judiciary has the burden of reconciling the interests of individuals with the interest of the State³⁵.

3.2. Political and economic considerations affecting the sanctity of an individual's private life in bank secrecy

The public interest is one of the most important considerations underlying banks' obligation to bank secrecy. The public interest is the obligation to bank secrecy according to the State's system of government, on the one hand, and on the other hand, depending on the nature of the economic system adopted.

a) Political considerations affecting the sanctity of an individual's private life in bank secrecy

The Community's interest plays an essential role in defining the legal system of bank confidentiality, and this interest varies according to the State's political system in general.

For the political system, in dictatorship States, banking secrecy is diminished owing to the increasing influence of public authorities and the multiple restrictions on personal liberty, especially if it relates to the financial manifestation of such liberty, the exceptions to banking secrecy in the public authorities' interest increase, and the scope of invocation of confidentiality narrows.

In democratic States, respect for banking secrecy is an affirmation of the State's policy of freedom vis-à-vis individuals. Banking secrecy and freedom are intertwined, and it is therefore widely invoked against public authorities as a result of diminished restrictions on personal liberty³⁶.

³⁵ - Ahmed Kamel Salama, Ibid, pp 70-71.

³⁶ - Hussein Al-Nouri, Bank Confidentiality..., Op Cit, p 23, Ahmed Mohamed Badawi, Op Cit, p 139.

Switzerland's banking secret system is linked to the democratic system, since anyone who criticizes its banking secret ignores the logical consequence of its distinctive character, which is based on the affirmation of the State's policy of freedom to protect and secure the private interests of individuals when exercising rights that relate to their personality and protecting them from attempts to expose their own activity so that everyone feels autonomous towards the community. It is a system rooted in the distant past and is part of the State's social entity³⁷.

The public interest is reflected in the confidentiality of bank secrecy as a result of support for the national economy to trust the country's banking system and to encourage local and foreign capital to settle in the country whose laws protect bank secrecy³⁸.

Switzerland has established a strict banking secrecy regime, and has created a special law that provides the utmost protection, confidentiality and cover-up for account holders and their identities, attracting capital in an unparalleled manner and piling it into its banks to become one of the world's most prosperous countries, economy, business and international status³⁹.

Political and historical data, in turn, encouraged the regulation of banking secrecy, and Switzerland's secrecy was described as the Magino Line of Swiss Neutrality and its protection related to State security. More than any other imposition, it is equivalent to the confidential obligations of both doctors, lawyers and clergy, and the courts have traditionally likened their violation to espionage for foreign States⁴⁰.

Democratic States that adopt a solid banking system resist attempts by States with dictatorial regimes to uncover it. This is what happened during the Second World War when Swiss banks resisted all attempts by the Nazi Reich Government

³⁷ - Hussein Al-Nouri, Op Cit, p 24.

³⁸ - Abdelkader Al-Atir, Op Cit, p 27.

³⁹ - Mohammed Abdelwadud Abu Omar, Op Cit, p 34.

⁴⁰ - Naim Meghabghab, Op Cit, p 21.

who imposed the death penalty for failing to report money deposited abroad to disclose the accounts of certain non-loyal nationals.

When the Swiss banks alerted to the circumvention, they instructed their customers not to respond to the German nationals' request if the customer was accompanied by a person unknown to the bank, and the Swiss banks were asking the Berlin trade annex to investigate whether the request for restitution of the deposit was made by the customer's consent or was issued under the threat of the Nazi authorities.

After the end of the Second World War, the United States of America and the Allied States pressured the Swiss Government to disclose the enemy funds deposited in Swiss banks, and the Swiss Government and banks refused to make any statements regarding these persons' accounts. The United States of America threatened to freeze Swiss funds and waved economic pressure, despite which the Swiss Government and banks insisted on the Swiss Government's position protesting the banking secrecy.

Finally, the Washington Convention was signed in 1945, under which Switzerland pledged 100 million USD representing the funds requested without disclosing the names or accounts of these persons⁴¹.

Some Arab States have been alerted to the subject of bank secrecy, including Lebanon who adopted a banking secrecy law on 03/09/1956. It was an important step to encourage the movement of Arab capital, hoping that, Switzerland of the East, would become a refuge for fugitive funds and a capital terminal seeking absolute secrecy and high return security, thus benefiting the Lebanese economy and the Lebanese public interest⁴².

The nature of Lebanon's free and democratic system, surrounded by military dictatorships, has for several years made Lebanon a refuge for people and their property and heritage. The dire war that has prevailed in the Lebanese arena in the

⁴¹ - Hussein Al-Nouri, Op Cit, pp 24-25.

⁴² - Mohammed Abdelwadud Abu Omar, Op Cit, p 36.

past century underscores the seriousness of the political motive. If almost all economic sectors have been destroyed, the banking sector has, on the contrary, remained prosperous despite the devastation and ruin⁴³.

b) Economic considerations affecting the sanctity of an individual's private life in bank secrecy

The legal system of banking secrecy is undoubtedly influenced by the State's interference with economic activity in general and banking activity in particular. In States with a targeted economy policy, bank secrecy is increasingly restricted and public authorities' confidentiality is narrowed, and their authority to supervise bank business is expanded, leading to an increase in cases where bank secrecy is exposed.

But unlike in countries with a free economy, where the State only intervenes in economic activity as an exception, banking secrecy flourishes and restrictions for public authorities are reduced⁴⁴.

Respect for banking secrecy is an affirmation of the State's policy of freedom vis-à-vis individuals. Banking secrecy and freedom are intertwined. Socially, an increase in easy-to-hide monetary wealth results in owners seeking banks to secure account secrecy and anonymity, either for social reasons, including economic inequality and conflict between rich and other classes, so wealth holders try to avoid the causes of this conflict by hiding their wealth and securing banking secrets is the best way to do so⁴⁵.

The relationship between the concepts of liberalism and banking secrecy is very close, and while contemporary States tend to interfere in all economic and banking sectors, Lebanon's system is based on the contrary⁴⁶.

⁴³ - Naim Meghabghab, Op Cit, pp 20-21.

⁴⁴ - Hussein Al-Nouri, Op Cit, p 44.

⁴⁵ - Mohammed Abdelwadud Abu Omar, Op Cit, p 37.

⁴⁶ - Naim Meghabghab, Op Cit, p 19.

The banking confidentiality system is narrowed in socialist or oriented economy States, which interfere in economic activity in general and banking in particular, This has led to an increase in cases where bank secrecy is disclosed The State's authority to oversee and supervise the operations of banks is expanded. All this has led to the flight of national and foreign capital . where there is no favorable investment climate as well as fears that these funds will be nationalized⁴⁷.

The Arab States, which had followed the socialist approach, had noted that the socialist trend had resulted anti-foreign capital, and they had tried to welcome it by granting it certain advantages and by confirming that it should not be nationalized⁴⁸.

These States were quick to pass laws granting special concessions to investments in friendly States⁴⁹.

Algeria, which had been living under the umbrella of the socialist system, had entered a phase of opening up to the market economy, and in order to adapt to this stage, it had promulgated laws in line with that stage and made adjustments to the financial and banking system.

The unrestricted and unconditional abolition of bank secrecy seriously damages the country's economy and cannot be compared to any benefit arising from capital taxes. This remains true both internally and externally, as national and foreign capital leaves the country and there is no hope of entering any other foreign funds in the future. The adverse impact of this cancellation affects the entire savings, the decline in real values, the storage of cash, the decline in the bank's account opening ratio.⁵⁰

⁴⁷ - Zina Ghanem Abdul-Jabbar Safar, Op Cit, p 80.

⁴⁸ - Ahmed Mohamed Badaoui, Op Cit, p 141.

⁴⁹ - Revolution Command Council Decision N° 899 was issued on 12/08/1970 in the Republic of Iraq on the promotion of Arab investments in Iraq, as was the case in Lebanon when it passed a banking secret law on 23 September 1956, and in Egypt the Law on the Investment of Arab Money in Free Zones was promulgated by Resolution 65 of year 1971.

⁵⁰ - Naim Meghabghab, Op Cit, p 23.

Bank secrecy cannot be justified solely by legal and humanitarian considerations, but also by economic factors. so that banking institutions fulfil their functions, they must ensure their customers' discretion, as bank secrecy is the cornerstone of banking activity⁵¹.

4. CONCLUSION

The Bank's commitment to preserving the secrets of its customers entitles it to uphold this secret and to invoke it in the direction of others. However, such protest may sometimes run counter to other public or private interests, since the banking operation may be related to public or private interests, and attempts by some public authorities, or persons by multiple means, to disclose their details in order to claim their rights.

Thus, it has become clear today that the banking secrecy regime is being confronted with the course of globalization insofar as it seeks to resist and weaken all international pressures.

Mitigating the severity and stringency of the obligation to bank secrecy in favour of public interest and national security considerations necessarily results in the loss of these States' advantage in attracting foreign investment and capital as a result of underestimating the obligation to bank secrecy. But, if it chose to stand up to the international requirements of financial transparency, that would expose that State to international sanctions and isolate it from dealing with the global financial system.

Therefore, we can make the following proposals :

- The exceptions to the principle of bank secrecy must be overemphasized because they are linked to the principle of privacy, since the infringement of bank secrecy undermines the constitutional principle of privacy.

⁵¹ - Naim Meghabghab, Ibid, p 25.

- To limit the exchange of banking information between banks and between banks and central banks, without allowing them to be exchanged outside this framework, without prejudice to the sanctity of privacy.
- As a result of the principle of privacy, we suggest that customers' names as such be considered confidential matters that banks are prohibited from disclosing.

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4. International conventions and treaties:

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5. Constitutions:

- 1- Presidential Decree N° 20-442 of 30 December 2020, related to the promulgation in the Official Journal of the Algerian Republic, the amendment of the constitution, adopted by referendum of 1 November 2020, OJAR N° 82 of 30 December 2020.