

The Scope of Criminal Liability of the Bank in the Crime of Money Laundering

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Abstract:

Banks are considered one of the fundamental pillars contributing to the revitalization and modernization of the national economy through the organization of various economic activities. They act as a vital engine for economic policy, playing a significant role in collecting savings from individuals and investing them in different sectors.

However, banks may also be exploited by individuals with illicit funds to launder their criminal proceeds. For this reason, the legislator has paid particular attention to regulating the mechanisms of banking operations within a strict legal framework, establishing legal provisions that criminalize and penalize any violations.

Accordingly, any person—whether a natural or legal person—who breaches these rules becomes subject to the penalties set forth by law. The bank, as a legal entity, is bound by a set of obligations, and if it fails to comply, it may be held criminally liable for crimes committed on its behalf or by its organs or legal representatives.

Keywords: *Bank, Criminal liability, Legal person, Money laundering, Banking crime*

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I. INTRODUCTION

Criminal liability arises for a person who commits unlawful acts in violation of applicable laws, thereby deserving the punishment prescribed by law. This person may be a natural person or a legal entity, which includes groups of persons or assets endowed with legal personality by law. Banks, specifically, are bound by a set of obligations; if these are breached, the bank can be held criminally liable for crimes committed on its behalf or by its organs or legal representatives, such as money laundering or breach of banking secrecy, among other prohibited banking activities that entail criminal penalties. The novelty of the Algerian banking system has left it lacking operational mechanisms that ensure it keeps pace with economic trends amid the broad openness of the market economy and increasing financial globalization. With the evolution of banking crimes, banks have become effective tools used by criminals to legitimize their illicit proceeds. Consequently, the Algerian legislator has sought to develop mechanisms to combat this type of crime. Banks, during the performance of their duties, may commit acts that fall under criminal offenses punishable by law. It has been observed that banking institutions of various types and forms, as legal entities, often resort to suspicious methods while conducting their activities as defined by laws, regulations, and guidelines, exposing them to criminal liability as established by law. Based on this, the Algerian legislator has enacted a series of laws to confront and combat this serious phenomenon. Notably, Law No. 15/04, which amended and supplemented the Penal Code, explicitly states the criminal liability of legal entities for criminal acts, marking significant legislative progress in Algerian law. Furthermore, Law No. 23/01 amending and supplementing Law No. 05/01 related to the prevention and combating of money laundering and terrorism financing, and Law No. 06/01 concerning the prevention and combating of corruption, were issued. During the bank's operations, it is subject to several obligations that must be observed in the field of banking information. Any violation of these obligations entails criminal liability, which appears as a breach of measures aimed at preventing money laundering and maintaining banking secrecy.

Problematic: What determines the scope of a bank's liability for the crime of money laundering?

1. Conditions and Elements for Establishing the Criminal Liability of a Bank

A bank can commit banking crimes through natural persons who act on its behalf and account, or through its legal representatives who have the authority to express its will. Therefore, the law requires several essential conditions and elements to establish the criminal liability of a bank, which can be outlined as follows:

1.1. The Algerian Legislator's Stance on the Criminal Responsibility of Banks

To understand the stance of the Algerian legislator on the criminal responsibility of banks as legal entities, it is essential to examine the provisions of the Penal Code and its complementary texts through various stages that the Algerian law has undergone. This journey moves from non-recognition to actual acknowledgment, which we will study through three successive sections: the phase of non-recognition of criminal responsibility for banks as legal entities (Subsection One), the phase of partial recognition (Subsection Two), and finally, the phase of actual or full acknowledgment of the criminal responsibility of banks as legal entities (Subsection Three).

1.1.1. Phase of Non-Recognition

Initially, the Algerian legislator did not recognize the criminal responsibility of banks as legal entities. However, it did not explicitly exclude it. For instance, Article 9, Clause 5, of the Penal Code mentions "the dissolution of the legal person (bank)," which led some to believe that the Algerian legislator implicitly recognized the criminal responsibility of legal entities (banks) (SALEM, 2005, p. 66). However, this opinion is incorrect for several reasons, including:

- a. The Penal Code does not provide any indication that the penalty of dissolving a legal entity is specifically for a legal entity that commits a crime. Instead, it is a penalty imposed on a natural person committing a felony or misdemeanor, not on the bank itself.
- b. The legislator nullified this penalty's effect in Article 17 of the Algerian Penal Code, which clarifies the concept of the penalty and its application conditions in two ways: first, the legislator no longer speaks of dissolving a legal entity but rather preventing it from continuing its activity; second, as a supplementary penalty, it cannot be imposed unless explicitly stipulated by the legislator for a specific crime, in adherence to the principle stated in the first article of the Penal Code: "No crime and no punishment or security measures without law." Reviewing the Penal Code and its complementary laws, we do not find any imposition of the dissolution penalty on a legal entity (the bank). (BOUSQUIAA, 2013, p. 217)

Thus, it is evident that the Algerian legislator, in the Penal Code, excluded any possibility of penalizing a legal entity and did not adopt the criminal responsibility of a legal entity through any explicit or implicit provision.

1.1.2. Phase of Partial Recognition

Despite the non-recognition of the criminal responsibility of legal entities (banks) in the Penal Code before its amendment in 2004, this responsibility was enshrined in some specific laws while not excluded by others. For instance, Ordinance N° 69/107 explicitly recognizes the criminal responsibility of legal entities in Article 55, stating: "When exchange regulation violations are committed by managers or directors of a legal entity, this entity itself is prosecuted and punished with the financial penalties stipulated in this ordinance, in addition to the ongoing prosecutions against these individuals."

This provision indicates that the Algerian legislator clearly and definitively recognized the criminal responsibility of legal entities before its acknowledgment in the general Penal Code. Additionally, Ordinance N° 96/22, amended by Ordinance No. 03/01, explicitly states in Article 5: "The dissolution of a legal entity subject to private law, without prejudice to the criminal responsibility of its legal representatives for violations committed on its behalf by its agents or representatives."

Here, the legislator specified the legal entities subject to criminal liability, including the conditions for its establishment, the follow-up procedures, and the applicable penalties. Furthermore, Law N° 03/09, dated 19/07/2003, stipulates in Article 18 that: "A legal entity committing one of the crimes stipulated in this law in Articles 9 to 17 shall be punished with a fine equal to five times the fine imposed on a natural person."

From the above, we cannot say that the previous law recognized the criminal responsibility of legal entities (banks) as a general rule. However, it did not deny the possibility of this, as included in several specific legal texts.

1.1.3. Phase of Actual Acknowledgment

The Algerian legislator clearly and precisely enshrined the criminal responsibility of banks as legal entities in the amendment of the penal code No 04/15 issued in 10/11/2004 in Article 51 bis, stating: "Except for the state, local communities, and legal entities subject to public law, a legal entity is criminally liable for crimes committed on its behalf by its bodies or legal representatives when the law so stipulates. The criminal responsibility of a legal entity does not prevent the prosecution of the natural person as the main perpetrator or an accomplice in the same acts".

In this provision, the Algerian legislator stipulates the criminal responsibility of a legal entity in case of committing any crime, excluding entities subject to public law from criminal liability. Moreover, this responsibility does not exclude the criminal responsibility of the natural person, whether as the main perpetrator or an accomplice. (BOUKHAZNA, 2010, p. 145)

This acknowledgment results from recommendations by various committees assigned to draft the Penal Code amendment project since 1979, as well as the recommendations of the Justice Reform Committee, which presented its report in 2000. It is noteworthy that the Algerian legislator, while revising the legislative system, issued several laws expanding the scope of criminal responsibility for legal entities. The most notable are:

- Law No. 18-04 on the prevention of narcotics and psychotropic substances, and the suppression of their illegal use and trafficking: The Algerian legislator stipulates in Article 25: "Notwithstanding the penalties imposed on the natural person, a legal entity committing one or more of the crimes stipulated in Articles 13 to 17 of this law is punished"...
- Ordinance No. 06-05 on combating smuggling: Article 24 stipulates: "A legal entity criminally liable for the prohibited acts stipulated in this ordinance is punished with a fine three times the maximum fine imposed on a natural person committing the same acts"...
- Law No. 01-05 on the prevention and fight against money laundering and terrorist financing: The Algerian legislator in this law, amended by Ordinance No. 02-12, imposes criminal penalties on financial institutions, such as banks, in Article 34 for intentional violations by their managers and employees, like failing to verify customer identity before opening an account or not inquiring about the source of funds.

The evolution of the Algerian legislator's stance on the criminal responsibility of banks as legal entities has transitioned from non-recognition to partial recognition in specific laws, culminating in clear and precise acknowledgment in the amended Penal Code. (FELLIH, 2014)

1.2. Conditions for Establishing the Criminal Liability of a Bank

It is worth noting that the criminal liability of a legal entity differs from that of a natural person due to the intangible nature of the legal entity, which necessitates essential conditions for establishing the criminal liability of the legal entity. These conditions, derived from its nature, can be summarized as follows:

1.2.1. The Legal Entity Committing a Conduct Subject to Criminal Accountability

Unlike a natural person, who can be prosecuted for any crime specified and punishable under the Penal Code and complementary laws whenever the elements of the crime and conditions for prosecution are met, a legal entity can only be prosecuted and held criminally liable if there is an explicit provision to that effect. This means the bank's liability is special and distinctive, in addition to being subject to the principle of legality of crimes and penalties, i.e., no crime, no punishment, and no security measures except by law. The Algerian legislator has not limited criminal liability to specific crimes but has expanded its scope and preserved its specificity. This is reflected in the Penal Code amended by Law No. 15/04 dated 10/11/2004, which includes the liability of legal entities for crimes such as forming a criminal organization and money laundering. (BOUSQUIAA, 2013, p. 214)

By examining Article 51 bis of the Penal Code, "Except for the state and local authorities and legal entities governed by public law, the legal entity shall be criminally liable...", it is clear that the legislator has specifically assigned criminal liability to legal entities governed by private law and excluded legal entities governed by public law, which include the state and local authorities, meaning administrative public institutions and industrial and commercial public institutions. Thus, both public and private sector companies and economic interest groups, as well as civil companies and political associations like parties or social and cultural organizations regardless of their aim of profit, are held criminally liable. Subsection Two: The Crime Committed on Behalf of the Legal Entity. (SAQR, 2008, p. 102)

1.2.2. The Crime Committed on Behalf of the Legal Entity

This condition is adopted in most legislation that recognize the criminal liability of legal entities, including the Algerian legislator, who stipulates the responsibility of legal entities for crimes committed on their behalf, as per Article 51 bis of the Penal Code. Thus, it is necessary for the organ or representative of the legal entity to seek a benefit or advantage for it due to the commission of the crime, either to achieve financial gain, avoid harm, or prevent loss. It does not matter whether the benefit is material or moral, actual or potential. (SOROUR, 1996, p. 48)

The legislator expressed in Article 51 bis, paragraph 1 of the Penal Code: "... the legal entity shall be criminally liable for crimes committed on its behalf...". Therefore, to establish the criminal liability of a legal entity, the crime must be committed with all its material and moral elements against the natural or legal person by the organ or representative of the latter, aiming to achieve financial gain or obtain a benefit or avoid a loss, as long as it was performed in the exercise of its administrative and managerial powers, even if no financial gain was achieved.

Referring to Article 51 bis, the latter of the Penal Code states: "The criminal liability of a legal entity does not preclude the liability of the natural person as the main perpetrator or accomplice." It can be said that the criminal liability of the legal entity as the main perpetrator generally arises from the fulfillment of the crime elements resulting from its representative or one of its organs as main perpetrators, provided the crime was committed in its name and on its behalf, as long as its activity falls under the provisions of Article 41 of the Penal Code. A legal entity can also be considered an accomplice through the involvement of its organs or representatives in a particular crime in its name and on its behalf, constituting a form of criminal participation as defined in Article 42 of the Penal Code. Furthermore, a legal entity can be held liable for an attempted crime by its representatives or one of its organs even if the completion of the crime was halted during the execution stage. (KEDDOUR, 2013, p. 94)

This means that the legislator recognizes the principle of dual criminal liability for the same act; the financial institution's liability for the crime committed does not preclude the natural person's liability. Both the natural person and the financial institution are co-responsible for the same act and are punished separately, depending on their role in the same crime, either as the main perpetrator or an accomplice, to provide additional criminal protection. (RAHAL, 2013, pp. 8-9)

1.2.3. The Crime Committed by the Representative of the Legal Entity

It is illogical for a legal entity to engage in criminal activity personally; rather, it acts through the natural persons constituting it. These are individuals legally qualified to act on its behalf, including the board of directors, the chief executive officer (HIYAA, 1987, p. 264), the general manager, the supervisory board, the general assembly of partners or members in the case of companies, and the president, members of the office, and the general assembly when it comes to associations and unions. Representatives of the legal entity, as referred to in Article 51 bis of the Penal Code, are natural persons authorized to act on its behalf, whether this authority is legal or granted by the institution's law, such as the CEO, the manager, the chairman of the board, or the general manager. (BOUSQUIAA, 2013, p. 245)

Most cases where the bank is criminally liable as a legal entity arise from crimes committed by its representative, and rarely from crimes committed by one of its organs. The Algerian legislator referred to Article 65 bis, paragraph 2 of the Code of Criminal Procedure, which defines the legal (lawful) representative of the legal entity as follows: "He is the natural person authorized by law or the legal statute of the legal entity to represent it." This means that representatives of the legal entity are natural persons with the authority to act on its behalf, whether this authority is legal or contractual. This could be the general manager alone or the director or chairman of the board, implying that the member may be a representative and vice versa, except in rare cases like a temporary manager. (SALEM O. , 1995, p. 33)

Additionally, judicial representatives assigned by the court to oversee liquidation procedures upon the dissolution of the legal entity are also included. According to Algerian legislation, simple employees and workers are excluded from being considered representatives of the legal entity, and thus the financial institution is not held liable for crimes committed by them, such as money laundering, even if done for the institution.

If a bank employee assists in laundering money to conceal and disguise the true nature of funds knowing that these funds are proceeds of a crime, even though the bank benefits from the deposit of these funds, the bank will not be criminally liable unless one of its lawful representatives or organs knew that these funds were proceeds of a crime. However, if the bank director helps deposit funds obtained from a felony or misdemeanor knowing this, the bank will be criminally liable because the crime was committed by the bank's lawful representative and for the bank's benefit, from which the bank gains commissions. (BOUSQUIAA, 2013, p. 244)

- a. **Case of the Actual Manager:** Most French jurisprudence holds that an illegally appointed manager exercising actual powers in the name of the legal entity and committing a crime in this capacity does not establish the criminal liability of the financial institution. Instead, the institution is considered a victim rather than an accused. On the other hand, some argue that the criminal liability of the legal entity arises in cases explicitly stated by law, excluding actual administrators unless explicitly provided by law. (BEN OTHMANE, 2014, pp. 6-7)

- b. Case of the Authorized Agent:** French jurisprudence tends to consider that a natural person authorized or mandated by the legal entity is deemed its legal representative. If they commit a crime during the exercise of their activities as authorized or mandated, the legal entity is criminally liable. This approach has been adopted by the Algerian legislator in Article 51 bis of the Penal Code, "by its organs or lawful representatives."
- c. Case of the Legal Representative Exceeding Their Legally Defined Powers:** If a legal representative, while acting on behalf of the legal entity, exceeds their authority and commits a crime, the entity is not typically held liable. However, the majority of French legal scholars argue that this requirement, set by French legislators, should not be adhered to because it creates a loophole for legal entities to avoid criminal liability. The Algerian legislator stipulates that the crime must be committed by the legal representative, as defined in Article 65 bis 2 of the Code of Criminal Procedure, which specifies that the representative is authorized to represent the legal entity either by law or by the entity's statutes. In contrast, French legislators hold the entity criminally liable for crimes committed by any representative of the legal entity. The term "representative" is broader than "legal representative," as specified in Article 65 bis 2 of the Code of Criminal Procedure, which limits the definition of a legal representative to the organs of the legal entity and those authorized by law or the entity's statutes. (SALEM O. , 1995, p. 199)

1.3.Elements of Criminal Liability of the Bank

According to general principles of criminal liability, for a bank to be criminally liable, three essential elements must be present.

1.3.1. The Element of Fault

This is the material link between the perpetrator and the punishable act, known as material attribution. It is the first component of a crime, legally defined as a deviation from the behavior of an ordinary person with the awareness and free will to commit the criminal act. Fault can occur in both intentional and unintentional crimes, where the perpetrator is responsible for the outcome even if it was unintended, due to negligence, whether they are the principal actor or an accomplice. Thus, criminal liability arises from fault, whether intentional or unintentional. (BEN OTHMANE, 2014, p. 9)

1.3.2. The Element of Harm

Material harm involves compensating the client for all losses and missed profits, as well as for current and future damages if they are certain to occur. Moral harm includes the bank's failure to execute a client's instructions to transfer funds from their account to a specific beneficiary, damaging the client's reputation and entitling them to compensation for the harm caused by the bank.

1.3.3. The Element of Causality

Causality in public law is the connection between the act or behavior and the criminal outcome deemed a punishable offense. If the result occurs independently of the act, there is no crime. For any crime to exist, the outcome must be directly caused by the criminal act. (Abd-Elfattah , 1986, p. 130)

2. Forms and Components of the Bank's Criminal Liability

Upon reviewing the Algerian Penal Code, it is clear that the legislator has not defined banking crimes because the code does not define crime itself. However, the Monetary and Banking Law and the Law on the Prevention and Combating of Money Laundering enumerate several banking crimes. This section will discuss crimes such as breaching banking secrecy and money laundering.

2.1. The Crime of Money Laundering

Money laundering is a crime that has recently gained significant attention internationally, regionally, and locally. Most legislation have criminalized it and established a general legal framework to effectively combat it. The definition of money laundering and its elements will be discussed.

2.1.1. Definition of Money Laundering

Money laundering by organized crime groups involves presenting illegal funds as legitimate and deriving from lawful activities, thus avoiding legal scrutiny and confiscation (HASSEN & BROWARI, 2011, p. 33). The common goal is to disguise the true nature of the funds. Money laundering gives illicit funds an appearance of legitimacy, a concept described metaphorically as "whitening" the money. Legal scholars have defined money laundering from different perspectives: (TADRISTE , 2014, p. 12)

- a. **From a Subject Matter Perspective:** Money laundering involves using inherently legitimate means, particularly banking and economic methods, to secure and conceal illicit funds from crimes.
- b. **From a Purpose Perspective:** It includes activities aimed at integrating illicit funds into legitimate economic and investment activities at national or international levels to ultimately legitimize the funds.
- c. **From a Nature Perspective:** Money laundering is characterized as a secondary crime reliant on an initial crime and is transnational, as the primary crime may occur in one jurisdiction while laundering activities span multiple jurisdictions, complicating legal prosecution. (MALHAQ, 2013, p. 72)
- d. **In terms of its negotiability:** it is that the parent crime occurred on the territory of a country, while the money laundering activity is distributed on the territory of another country or countries.

The Algerian legislator adopts a broad definition of money laundering in Article 02 of Law No. 05/01 of 06/02/2005, amended and supplemented, concerning the prevention and combating of money laundering and terrorism financing. The law states that money laundering includes:

- The conversion or transfer of property, knowing that such property is the proceeds of crime, to conceal or disguise the illicit origin of the property or to help any person involved in the commission of the predicate offense evade the legal consequences of their actions.
- Concealing or disguising the true nature, source, location, disposition, movement, or ownership of the property, knowing that it is the proceeds of crime.

- Acquiring, possessing, or using property, knowing at the time of receipt that it constitutes proceeds of crime.
- Participating in, conspiring to commit, attempting to commit, aiding, abetting, facilitating, and counseling the commission of any of the above offenses. (ABDESLEM, 2016, p. 32)

2.1.2. Elements of the Crime of Money Laundering

For the crime of money laundering to be established, several elements must be present, as with any crime. These elements are:

a. The Legal Element of the Crime of Money Laundering

• Direct Legal Provisions Criminalizing Money Laundering:

- Ordinance No. 22/96 dated 02/27/1996, concerning the suppression of violations of legislation and regulation related to the movement of capital abroad. The Algerian legislator criminalized false declarations of funds deposited in banks and financial institutions and obliged the bank to investigate the source of deposited funds to monitor money laundering.
- Executive Decree No. 02/127 dated 07/12/2002, establishing a financial intelligence unit composed of 21 articles. Articles 01 and 02 define it as an independent institution with legal personality and financial autonomy.
- Law No. 02/11 dated 12/24/2002, containing the Finance Law for 2003, includes several articles related to money laundering.
- Law No. 23/01 dated 02/07/2023, amending and supplementing Law No. 01/05 dated 02/06/2005, concerning the prevention and fight against money laundering and terrorist financing.
- Law No. 04/15 dated 11/10/2004, amended and supplemented the Penal Code, defining the crime of money laundering in Article 389 bis to Article 389 bis 7, including the definition and penalties for money laundering.
- Law No. 06/01 dated 02/20/2006, concerning the prevention and fight against corruption, includes six chapters. The first chapter under the general provisions in Article 2 defines criminal proceeds as "all property obtained directly or indirectly from the commission of a crime".
- Law No. 23/09 dated 06/21/2023, including the monetary and banking law, stipulates in Article 87: "No one may be a founder of a bank or financial institution or a member of its board of directors, nor may they manage, run, or represent a bank or financial institution in any capacity if they have been convicted of various offenses, including money laundering."

b. The Material Element of the Crime of Money

Laundering The material element is the external manifestation of the crime, through which the infringement of the legally protected interest is realized, forming the basis for the commission of the crime. The material element in the crime of money laundering includes:

• The Criminal Conduct in Money Laundering:

- **The Transfer or Transportation of Funds:** Article 02 of the amended and supplemented Law 05/01 states: "It also includes the transfer of funds or their transportation. This involves conducting a banking operation to transfer an amount of money from the account of the ordering party to the account of the beneficiary creditor or transporting it from one place to another without using banks. The transfer of funds means changing the form of money or the form of currency." (MESSAOUDI, 2014, p. 18)
- **Concealing or Disguising the True Nature of the Funds:** Also stipulated in Article 2 of Law 05/01, concealing means removing the funds from their criminal source to prevent reaching the true source or uncovering the source of illicit funds. Disguising means providing a false justification for the source of the funds, fabricating a legitimate but false source for the money intended to be laundered.
- **Acquiring, Possessing, or Using Funds Derived from Criminal Activity:** Also stipulated in Article 02 of Law 05/01, it means acquiring illicit money by receiving it through an action performed by any natural or legal person such as banks, financial institutions, and companies of all types in exchange for performing certain acts.

c. Participation and Attempt in the Crime of Money Laundering:

Participation in the crime of money laundering differs from participation in other crimes. In other crimes, a participant typically provides shelter or a hideout, but in money laundering, participation involves transferring, transporting, concealing, or disguising the illicit source of funds or possession (ABDESLEM, 2016, p. 125). Law 23/01 criminalizes other acts considered part of money laundering operations, including:

- **Payment Crimes:** Article 6 of Law No. 23/01 dated 02/07/2023, amending and supplementing Law No. 05/01 concerning the prevention and fight against money laundering and terrorist financing, mandates the use of payment methods through banking and financial channels for any amount specified by regulation. The purpose of this mandate is to control the movement of capital.
- **Offender Crimes:** According to Article 04, these are natural and legal persons required reporting suspicious transactions, including financial institutions and non-financial professions. (WASTI, 2017, p. 180)
- **Crimes of Managers and Employees of Financial Institutions:** This involves intentionally disclosing information about a suspicious transaction to the owners of the funds or informing them about the results reached by the specialized judicial body in charge of monitoring. (ABDESLEM, 2016, p. 128)

d. Object of the Crime of Money Laundering:

The object of the crime of money laundering is stipulated in Article 4, Paragraph 1 of the law on money laundering and combating terrorism financing: "any type of money, tangible or intangible, especially movable or immovable assets obtained by any means, or legal documents and instruments of any form, including electronic or digital forms, indicating ownership of such assets or interest therein, including bank credits, traveller's checks, bank checks, money orders, stocks, securities, bonds, promissory notes, and letters of credit." (MUBARKI, 2008, p. 187)

e. Criminal Result of Money Laundering:

The criminal result in the crime of money laundering is the transformation of money obtained through illicit means to appear as if it was obtained legally by integrating this money into the economic cycle, making it appear legitimate. This is outlined in the Penal Code, Article 389 bis, regarding the criminal result "for the purpose of concealing or disguising the illicit sources of such properties." (ABDESLEM, 2016, p. 130)

f. Moral Element of Money Laundering:

It is required to have knowledge of the illicit source of the proceeds or assets acquired or concealed or the disguising of the true nature, source, location, or means of disposition of the properties. Money laundering is an intentional crime that can only be committed with the deliberate will of the person, free from any impairment to their consciousness or freedom of choice. (MUBARKI, 2008, p. 188)

2.1.3. Penalties for Legal Entities

Among the penalties stipulated in the Algerian Penal Code for legal entities committing the crime of money laundering are fines, confiscation, prohibition from practicing professional or social activities, and dissolution of the legal entity. (MASSOUR, 2016, p. 407)

a. Fines for Legal Entities

According to Article 389 bis 7, legal entities committing money laundering crimes are fined not less than four (4) times the maximum fine stipulated in Articles 389 bis 1 and 389 bis 2 of the Penal Code. The minimum fine for a natural person is the maximum fine for a legal entity, while the maximum fine is specified in Article 18 bis of the Penal Code, not to exceed five (5) times the maximum fine for a natural person. The legislator's omission of the maximum fine only specifying the minimum constitutes an infringement on the principle of criminal legality, potentially limiting the judge's discretion and benefiting the offender with mitigating circumstances.

- **Confiscation:** Confiscation refers to the state seizing money or objects related to the crime, being a real penalty that targets the object itself. It is considered one of the most effective means to combat money laundering by achieving deterrence for the perpetrator, whether a natural or legal person. (MASSOUR, 2016, p. 407)
- **Other Penalties:** Judicial authorities may also order the dissolution of the legal entity, the closure of the institution or a branch for up to five (5) years, prohibition from practicing one or more professions, or the publication and posting of the conviction ruling. (ABDESLEM, 2016, p. 131)
- **Exemption from and Reduction of Penalties:** Exemptions from penalties are provided in the Penal Code for anyone who commits or participates in a money laundering crime and reports the crime to administrative, judicial, or relevant authorities before proceedings commence and assists in identifying the perpetrators. Apart from benefiting from the exemption from penalties, penalties are halved for anyone who commits or participates in money laundering after proceedings have commenced or assists in apprehending the perpetrators. (AZOUZ, 2017, p. 188)

II. Results and discussion :

Main Conclusions:

- If the bank fails to meet a legal or contractual obligation, it engages its civil liability, whether contractual or tortious.
- The novelty of the Algerian banking system leads to a lack of adequate mechanisms to follow economic trends in an open and globalized market.
- With the rise of organized crime, notably money laundering, banks have become an effective tool for legitimizing the proceeds of crimes. The Algerian legislator has thus introduced mechanisms to combat money laundering, such as the obligation for banks to report suspicious transactions.
- Legal provisions alone are not sufficient to combat money laundering; it is necessary to develop the mechanisms of the Algerian banking system.

Recommendations:

- Regulate banking activities with a legal system suited to their importance in providing credit, to ease the burden on courts.
- Determine the liability of the bank as a legal entity and of each employee to facilitate accountability.
- Ensure continuous monitoring of banking activities to avoid errors, prevent the bank from abusing its rights, and reduce litigation.
- Create specialized judicial sections for banking matters, with judges trained in banking activities.
- Adapt legal provisions to resolve banking disputes consistently.
- Strengthen the role of the Central Bank in supervising banks.
- Increase the knowledge of legal professionals in banking techniques and their repercussions to broaden the legal protection of clients, notably by training judges specialized in banking.

III. Conclusion:

The bank's criminal liability is engaged in case of failure to meet its legal or contractual obligations. Three elements are required to engage the bank's civil liability: fault, damage, and causal link. The objective of the bank's liability is to impose a compensatory sanction for the harm suffered by the client. Given the crucial role of banks in the national economy, and the absence of a specific banking liability system in Algeria, the general principles of liability must be applied. The legislator has not provided provisions to compensate for damages caused by the bank in case of good faith errors during suspicious operations.

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