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Position of the Constitutional Court of the Russian Federation on the Matter of Restricting Constitutional Rights of Citizens Concerning Banking Secrecy

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***Abstract*—**The aim of the present article is to analyze the position of the Constitutional Court of the Russian Federation on the matter of restricting the constitutional rights of citizens to inviolability of professional and banking secrecy in effecting controlling activities. The methodological ground of the present Article represents the dialectic scientific method of the socio-political, legal and organizational processes with the principles of development, integrity, and consistency, etc. The consistency analysis method is used while researching the object of the analysis. Some public-private research methods are also used: the formally-logical method or the comparative legal method, are used to compare the understanding of the 'secrecy' concept. The aim of the present article is to find the root of the problem and to give recommendations for the solution of the problem. The result of the present research is the author's conclusion on the necessity of the political will to improve Russian legislation with the aim of compliance with the provisions of the Constitution. It is also necessary to establish a clear balance between the constitutional rights of the individual and the limit of these rights when carrying out various control activities by public authorities. Attempts by the banks to "overdo" an anti-money laundering law under threat of severe sanctions by the regulators actually led to failures in the execution of normal economic activity. Therefore, individuals face huge problems with payments on the basis of clearing, in addition to problems with cash withdrawals. The Bank of Russia sets requirements for banks to execute Federal Law No. 115-FZ too high. It is high place to attract political will here. As well, recent changes in Russian legislation, e.g. allowing banks to refuse opening of accounts unilaterally, simplified banking activities in the country. The article focuses on different theoretical approaches towards the concept of "secrecy". The author gives an overview of the practices of Spain, Switzerland and the United States of America on the matter of restricting the constitutional rights of citizens to inviolability of professional and banking secrecy in effecting controlling activities. The Constitutional Court of the Russian Federation basing on the Constitution of the Russian Federation has its special understanding of the issue, which should be supported by further legislative development in the Russian Federation.

***Keywords*—**Bank secrecy, banking information, constitutional court, control measures, financial control, money laundering, restriction of constitutional rights.

I. Introduction

STATE authorities and agents responsible for the alert function, and subsequently the courts, including the Constitutional Court of the Russian Federation are faced with the problem of secrecy in different aspects. This problem must be solved at the highest level with the direct application of constitutional norms.

Attempts by the banks to "overdo" an anti-money laundering law under the threat of severe sanctions of the regulators actually led to failures in the execution of regular economic activity.

Under the threat of revocation of the license for banking activity requirements of the Bank of Russia, simply drove banks into a corner [18, p. 363].

II. Arising of a Concept of "Secrecy"

The word 'secret' (taina) is of ancient origin. It was originally used in the masculine gender – 'tai' [4, p. 156]. A famous Russian writer and lexicographer, V. I. Dahl, defines 'secret' as "what one does not know, what is a mystery to one; all the hidden unknown things. Something secretly stored, what a person hides from someone intentionally" [6, p. 254]. Ozhegov and Shvedova present a definition of 'secret' in the explanatory dictionary as "something hidden from others, which everybody doesn't know, the mystery" [12]. A 'secret', in general, is defined accurately in the spoken language as well. In its broadest interpretation, a "secret is a sphere of objective reality, hidden from our perception or understanding. On the one hand, it's something that is not currently understood by the human mind, on the other hand, it is something already known, but purposely hidden from other people" [9, p. 5].

Banking secrecy actually refers to a particular type of information that becomes known to a credit institution during the execution of banking activities. Certain other persons are acknowledged with such information as well. Such persons receive the information from credit institutions in the course of its examination and its application.

Banking secrecy is a specific type of commercial secrecy. It consists, first, of the secrecy of the bank as an independent subject of economic relations and, secondly, of all commercial secrets of clients, which the bank is aware of because of contractual relations with the clients [20, p. 56].

According to a Russian professor of law, Oleynik, such a problem of bank secrecy needs to be considered based on the following general provisions:

- banking secrecy is one of the types of legal regimes of information with limited access;
- the banking secrecy regime and regimes of religious, medical, commercial, investigative or judicial secrecy

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shall be considered as similar;
- the law establishes special regulations that govern banking secrecy [19, p.358].

Taking into account the nature of the legal relationships concerning banking secrecy, the author distinguishes three kinds of relations:
- relations between the bank and the client;
- relations between the client and the government; and,
- relations between the government and the bank.

Such relations are governed by a set of rules of the Constitution, legal norms and regulations [11, p. 218]. On the one hand, banking secrecy protects the interests of the client and prohibits third party access to the confidential information of the bank. Such third parties include the state represented by state agencies. On the other hand, legal acts and regulations reinforce the interests of the state, establishing the order of access to banking secrecy. The author agrees with the opinion of a Russian judge and professor, S. Sarbash, who states the legislative regulations regarding access by the state to the confidential information of individuals, needs to be improved [15]. The state bodies carrying out public functions represent the state in a particular case.

III. Regimes of Banking Information

Banking secrecy is determined by the law, which provides for:
- the legal status of subjects of legal relations concerning using, granting and protecting the information at the disposal of the credit institution;
- the content of the information, which is subject to the regime of banking secrecy;
- the conditions and procedure to grant and use the information at the disposal of the credit institution;
- the procedure of legal protection of such information including responsibility for the disclosure of such information [16].

Different legal regimes are applied to the banking information, depending on the content and purpose.
- *Open banking information*. Open banking information shall be provided to an unlimited number of persons. Such information is available to anyone who applied to the bank, regardless of the purpose of obtaining such information. Such information may be disseminated through the publication as well.
- *Banking information of restricted use*. The dissemination of such information outside the bank is undesirable. It may prejudice the commercial interests of the bank (e.g., the data on the quantity of banking customers, etc.).
- *Closed banking information*. The law generally prohibits the dissemination of such information. Closed banking information protects the legitimate interests of the bank's customers. It may be granted to authorized persons only on an exceptional basis according to certain rules, the existence of which is covered by the concept of 'providing information'. This information is banking secrecy itself [10].

Therefore, one of the sharpest current issues is the problem of compliance by credit institutions with banking secrecy rules while implementing anti-money laundering measures. These problems are of current importance not only in the Russian Federation, but also across the entire globe.

IV. World Banking Practice Concerning Banking Secrecy

The United States of America (USA) have long ago liberalized its banking laws. The USA simplified its whole approach to the concept of 'banking secrecy', in fact, almost abolishing such secrecy. At the same time, Switzerland and several other countries seek to maintain the historically established approaches to the organization of secrecy of banking information [2]. However, most countries of the European Union enter the path of transparency of banking deposits and transactions as well. The Finance Ministers of the 15 European Union countries signed a law that would prohibit banks to carry anonymous accounts. Such a law shall also eliminate the concept of 'banking secrecy' in the matters of interexchange of information on taxation. Another law providing for interexchange of information on foreign investors, entered into force in the European Union in January 2004. However, the author admits that the liberalization of banking secrecy laws ultimately leads to customer and cash flow-out.

In the case of cash withdrawals in banks of the European Union, the bank shall complete a special form and notify the relevant state body for financial monitoring of such operations. In the case of a significant amount of cash withdrawal, in addition to the traditional form of notification to the state body for financial monitoring, the bank shall complete the form on suspicious transaction operation. The question arises: Where is banking secrecy then? There must be of course exceptional cases not subject to the legislation on banking secrecy [7]. The problem is in the balance between the compliance with the interests of private clients, based on the constitutional provisions on secrecy and compliance with the interest of the state bodies, based on special legislation or even normative acts of the Executive power branch. The following question arises: Can true banking secrecy exist exclusively when not only the state authorities, but the bank itself does not know the identity of the beneficiary [13]?

According traditional opinion, Switzerland has the best legislation on banking secrecy in Europe. In this country, a client can solve their investment objectives through a single bank. Such bank protects the identity and commercial interests of the client from all the others.

According to the Swiss legislation, the bank has no right to give a foreign state the dossier related to any clients suspected of tax evasion or of other fiscal crime. Swiss law interprets such a situation as tax optimization, not tax evasion. Such a situation concerns issues when a client 'forgets' to send additional forms of declaration of income from their accounts in foreign banks or 'forgets' to declare the full amount of income. In this case, the client's risk facing only a fine, no other punishment is supposed [5]. A tax offence with the purpose of concealing illegal proceeds using forged papers

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and documents entails much more serious consequences, including imprisonment. In fact, the boundaries between the first issue and the second crime are not clear and not respected by all countries. The USA does not accept the Swiss demarcation of the two fiscal crimes [3]. Some other OECD (the Organization for Economic Co-operation and Development) countries do not accept such Swiss demarcation either, which results in different approaches to taxation at the international level and harsh criticism of Switzerland tax policy by foreign governments.

V. A Conflict between Banking Secrecy and Money Laundering

The law of the vast majority of countries is changeable under the influence of political forces and processes. In a particular moment it is important to understand which political priorities the government is effecting. Sometimes, such political priorities come into conflict with fundamental human rights. This can be shown in the case of counterfeiting legalization of illegal income, money laundering [17, p. 169]. Most states implementing anti-money laundering procedures have both general legislation concerning the rights and freedoms of citizens and specific legislation aimed directly at combating money laundering. In the UK, for example, disclosure of information is considered to be contrary to the law in case a person disclosing such information simultaneously fulfilled the three following conditions:

- such person knows or suspects or has good reasons for knowledge or suspicion that another person is engaged in money laundering;
- the information or other materials on which such knowledge or suspicion or good grounds for such knowledge or suspicion is based, is derived by such person in the course of his professional activities;
- such person has not reported the information properly, as soon as such person received the information or other materials.

However, the person shall not be considered guilty of an offence if such person has good reasons not to provide information or other materials [18, p. 231]. The same happens in the case such person is a professional legal adviser and such person obtains the information or other materials under confidential circumstances [1].

"Arrangements

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if:

(a) he makes an authorized disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct".

In certain cases of money laundering, Spanish legislation provides for the possibility of derogation from the principle of the presumption of innocence. That means that such constitutional conquest as the presumption of innocence loses its power and legality while considering money laundering. The burden of proof is transferred to the person accused of money laundering. At the same time, the strict observance of the constitutional rights of such persons is required.

It should be noted that, when it comes to money laundering, especially in the context of the rejection of the presumption of innocence, the issue at hand is only a deliberate lucrative crime. The law establishes the deliberate purpose of the crime. That means that a person must understand that the source the property is illegal while effecting concealment, non-provision of information, acquisition or transfer of such property [19, p. 176]. The source is not important itself. It can be tax evasion, concealing of the origin of property or injury to third parties. When the action is deliberate the importance is in the orientability of such action: concealment, cover-up or assistance in the laundering of illegal proceeds.

Systematic analysis of acts of foreign legislation reveals the following problems [14, p. 8]:

- Special legislation on anti-money laundering does not provide a clear list of organizations obliged to provide information to the body of financial control. Such entails a non-clear criterion of identification of such legal entities.
- Many countries apply principles of privacy of transactions. It may also provide a right of a person not to identify them in the transaction [8, p. 37].
- Special legislation while using the principle 'Know your customer' provides for two kinds of client authentication: simple and advanced. Since in most cases simple identification is not enough to eliminate money-laundering suspicion, advanced identification shall be required. Such fact automatically results in the application of such advanced identification to the absolute majority of customers. Moreover, when applying a risk-based approach the client is likely to be assessed as having "high risk". Such a characteristic affects the client. The client however is deprived of the opportunity to contest such a characteristic.
- Lack of clear evaluation criteria leads to the excess of information, and subsequently to failing to filter out the information regarding legalization, from the information provided by the organizations in order to avoid sanctions for failure to provide information. Application of sanctions for providing excessive information by the entities cannot eliminate the problem either. The criteria of information to be submitted are not clearly defined, particularly in relation to suspicious transactions.
- Since the information provided to the financial monitoring body has a secret character, no possibility of appeal is provided for the client. To crown it, all such information

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has an evaluation character. This can lead to discrimination in the assessment of a client on grounds of race, appearance or behavior. All this can result in a direct violation of the natural human rights provided in international documents, e.g. The Universal Declaration of Human Rights (UDHR), 1948.

- It is possible to use the information not only for the purpose of struggling against legalization, but, for example, for abuse in case such information comes into the hands of unauthorized persons or, worse, criminal hands. The Russian market "Gorbushka"[2] is a striking example of the above. Other countries unfortunately also have more or less similar institutions.

Currently in Russia, there are quite a number of cases where courts clearly recognize violations of the constitutional rights of citizens. It is not a single case of judicial practice. The burden of proof and excuses falls on the banks. Banks are forced to introduce some ridiculous limits, as these institutions have to follow the law, and one law contradicts the other. No one knows how to implement all this.

According to the decision of the Central District Court of Volgograd passed on 4 February 2012 on the claim of citizen O. I. Petrova to the Volgograd branch of Promsvyazbank, the court declared illegal the refusal of the bank to pay cash in the amount of 1.35 million roubles from the account of such natural person. The reason for such refusal of paying money was non-presentation by the client of documents proving the origin of funds upon the bank's request.

The Bank acted in accordance with the Federal law No. 115-FZ as the representative of Promsvyazbank explained in court. Ms. Petrova repeatedly received large sums of money that were withdrawn exclusively in cash. Thus, the bank considered another similar operation as suspected in the illegal origin of the money. Due to the fact that Ms. Petrova did not provide the documents requested by Promsvyazbank on the proof of the origin of the funds, the operations on her account were suspended for an indefinite period.

The court found the bank's actions illegal for the following grounds. According to Part 3 of Article 845 of the Civil Code, the bank has no right to control or restrict the use of a client's funds. The list of documents, the lack of which the bank may refuse to execute the transaction on the account, is set in the Federal Law No. 115-FZ. Such a list is closed and does not include the documents requested by Promsvyazbank. The law allows the suspension of transactions on the account without the specific instructions of the regulator for a maximum period of two days.

As a result, the court gave a judgment that the bank, striving to fulfill the Federal Law No. 115-FZ, acted in breach with such law. At the same time, the bank was in breach of the Civil Code and the Law "On Protection of the Consumer's Rights".

"Article 845. The Bank Account Agreement

1. *Under the bank account agreement, the bank shall undertake to charge cash to the account opened for a client (account holder), to implement the client's instructions on his transfer to, and the withdrawal of, relevant sums of money from the account and on other operations with the account.*
2. *The bank may use the monetary means placed on the account, while guaranteeing the client's right to make use of these means.*
3. *The bank shall have no right to determine and control the trends of using the client's monetary funds and introduce other restrictions on his right to dispose of cash at his discretion which are not provided by the law or the bank account agreement.*
4. *The rules of this Chapter relating to the banks shall also be applicable to other credit organizations in case of the conclusion and execution of the bank account agreement in conformity with the issued permit (license)".*

The present example is an evidence of multiple cases of a direct violation of the constitutional rights of individuals while trying to comply with anti money-laundering legislation.

The above example of the refusal of a cash withdrawal from a bank is a common way to attempt to comply with the Federal Law № 115-FZ. Since direct banking services to cash funds became more expensive, banks are faced with the fact that for money-laundering purposes, money is used extensively on deposits and current accounts as well. The method recommended by the Bank of Russia to deal with protective tariffs frightens away 'good' customers. At the same time, banks face revocation of its license, as well as serious reputational risks, while working with 'bad' customers, even if they timely notify the Rosfinmonitoring[3] on suspicious transactions.

VI. Limitations of Constitutional Rights of Citizens while Controlling Activities

What about banking secrecy, if Article 26 of the Federal Law "On Banks and Banking Activity" No. 395-1, dated 2 December 1990, almost entirely devoted to the duties of banks to disclose banking secrets to the public authorities? The wording of this article is very vague:

"The information on operations of legal entities, citizens engaged in entrepreneurial activities without forming a legal entity, and individuals shall be provided

[2] The famous revolutionary "market" was formed at the turn of the change of political power at the beginning of nineties'. It was a sort of a rebellion of youth against the "old" mastodons. With the collapse of the USSR a wave of music, films, cartridges for consoles and consoles themselves fall down on Moscow. During the period of transformation of Russia (and even nowadays) one could buy everything at "Gorbushka": from ballpoint pens to disks with the database of the Bank of Russia.

[3] The Federal Financial Monitoring Service of the Russian Federation (Rosfinmonitoring) is a Federal Service that was created by a Decree of the President Vladimir Putin, dated 1 November 2001. It is aimed to collect and analyze information about financial transactions in order to combat domestic and international money laundering, terrorist financing, and other financial crimes.

by credit institutions to the authorized body performing measures on counterfeiting legalization (laundering) of incomes obtained by a criminal way in cases, procedure and amount provided by the Federal Law No. 115-FZ".

The Order of the Rosfinmonitoring No. 103, dated 8 May 2009, which approved "The Recommendations for Developing Criteria for Detecting and Identifying Signs of Unusual Transactions" with 2014 year amendments, does not clear up the situation. Thus, the institute of banking secrecy has not yet received a clear legal regulation in Russia. Such an institute is required to build a legal state and a developed economy in the country. And, how many persons illegally receive and disclose banking secrecy? Access to banking secrecy and its preservation is almost impossible to track. Law enforcement agencies from time to time establish the facts of dissemination of confidential information about clients of banks in the public domain, for example on DVDs, which are available for sale in computer markets, e.g. at 'Gorbushka'.

> "Each of them contains confidential information gathered by law enforcement and other government agencies of the Russian Federation. Here you can find everything from a dossier of detention, personal addresses, passport numbers, statistics, telephone calls and address book data to bank accounts, contact lists, tax data and database of air travels".

Due to the bank secrecy information leakage the value of the banking secrecy is decreasing. This leads to irreparable damage to banks and their customers. Another problem arises at this point: crimes aimed at illegal data accessing are not considered crimes in itself. The Russian Civil Code does not consider information as property. To make a person answer for banking secrecy disclosure, a broad interpretation of Article 158 of the Criminal Code is required [9, p. 12]. Meanwhile, the institute of banking secrecy is necessary for the effective functioning of the Russian economy. Adverse acquisition risks in the provision of information are still very high in Russia. Adverse acquisition main risks neither lay in the legal vulnerabilities of the assets (which gives skilled aggressors legitimate opportunities on buying controlling stakes) nor in the possibility of the abuse of rights (e.g., suiting a 'victim' with formally legal, but in fact groundless claims). On the contrary, the main risks are:

- illegal seizure of property (e.g., using fake documents) with the support of corrupt employees all involved in the deal, state bodies and courts, which have legal access to banking secrecy;
- a compulsion to convey the property title by personal pressure on the owner (usually under the threat of criminal prosecution).

This is the main reason why Russian, Ukrainian, Kazakh and other businessmen use protective technologies: the fear to fall under the redistribution of property without the possibility of protection of rights in an independent court. In developed countries, such as in the United States, the main danger is different: the chance of becoming a victim of a ruinous lawsuit. Every year in the USA thousands of completely frivolous lawsuits are filed with claims of billions of dollars. In such lawsuits, plaintiffs claim millions of dollars for alleged defective goods, 'sexual harassment', 'emotional suffering', 'professional negligence', etc. A characteristic feature of such claims is that the primary defendants are not persons with a direct relation to the events, which form the basis of the claim, but wealthy companies and citizens related somehow. The aim is to get a legalized extortion 'payment' under the amicable settlement agreements. On this ground, the culture in the United States is referred to as a 'compensation culture'.

According to Russian experts, the loss of 20% of the information consisting commercial secret, leads to the bankruptcy of the company in 60 cases out of 100. Losses from the actions of unscrupulous competitors, using espionage in the financial sector amount to 30% of all damage, which is incurred by banks.

Taking into account all the above, is there justification to protect property from the potential effect of such claims? Does banking secrecy create problems for the state if it seeks to protect the interests of the citizens of this state? Why, once again, do we have to oppose the interests of the individual and the system, which consists of such individuals?

The submission of information constituting banking secrecy to the bodies combating corruption, money laundering and other crimes is of course not considered as a violation of banking secrecy. Such practice is used not only in Russia but also on the basis of international practice. At the same time, it is necessary to outline the strict framework of the submission of information, access to this information, its storage, and use and non-disclosure agreements. Currently, all officials, ranging from minor officials to directly interested persons, are ready to fight banking secrecy. What about such important legal institutions as the presumption of innocence, privacy and ownership?

With regard to further restrictions of the constitutional rights of citizens, it is also possible to identify a number of investigative measures, 'sharp' operatively-search actions and other events, significantly limiting such rights in Russia:

- inspection of premises;
- monitoring of mail, telegraph and other communications;
- wiretapping;
- collection of information from technical communication channels;
- test purchase;
- operative implementation;
- controlled delivery;
- operative experiment;
- the survey;
- inquiries;
- the collection of samples for comparative research;
- observation;
- the identification of the individual (operative identification); and,
- the survey of non-residential premises, buildings, structures, terrain and vehicles.

The right of an individual to the confidentiality of a client's information about their banking accounts and banking deposits and other information is derived from the constitutional

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guarantees of inviolability of private life, personal secrets and the inadmissibility of the dissemination of information about a person's private life without their consent. The law shall establish the types and amount of such information. And the appropriate duty of the banks and other credit organizations is to maintain banking secrecy. And the duty of the state is to guarantee such right in the legislation and by legal enforcement. Thus, the Constitution of the Russian Federation defines the basis of legal regime, the legal regulation of banking secrecy as a condition of freedom of economic activity arising from the nature of market relations, and guarantees the right of citizens to freely use their property for entrepreneurial and not prohibited by legal economic activities, as well as a way to protect information on the private life of citizens, including their financial situation, and protect their personal secrets.

VII. The Constitutional Court of the Russian Federation on the Matter of Restricting Constitutional Rights of Citizens to Inviolability of Professional and Banking Secrecy in Effecting Controlling Activities

Repeatedly filed complaints to the Constitutional Court of the Russian Federation concern the constitutionality of various articles of the Federal Law No. 115-FZ. E.g., Subparagraph 1 of Paragraph 1 of Article 7 require organizations carrying out operations with monetary funds or other assets to identify natural persons with a surname, name and patronymic (if the law or national custom does not provide for otherwise), citizenship, details of the identity document, data migration card, document confirming the right of a foreign citizen or persons without citizenship for stay (residence) in the Russian Federation, address of residence (registration) or place of stay, taxpayer identification number (if any). The applicant to the Constitutional Court claims that such provision of the Federal Law No. 115-FZ restricts the right of ownership disproportionate to the protected constitutional purposes. Therefore, Subparagraph 1 of Paragraph 1 of Article 7 of the Federal Law No. 115-FZ shall be recognized as contrary to Articles 2, 17 (Part 1), 18, 34 (Part 1), 35 (Part 1 and Part 2) and 55 (Part 3) of the Constitution of the Russian Federation.

According to the legal position of the Constitutional Court of the Russian Federation, the right to private property does not belong to those rights that in accordance with Article 56 (Part 3) of the Constitution of the Russian Federation shall not be restricted under any circumstances. At the same time, the Constitutional Court of the Russian Federation states that restrictions and their character should be determined by the legislator in accordance with the Constitution of the Russian Federation but not arbitrarily. Article 55 (Part 3) of the Constitution of the Russian Federation shall be used in the particular case. It provides that the rights and freedoms of citizens may be limited by a federal law only to the extent that this is necessary in order to protect the foundations of the constitutional system, morality, health, rights and lawful interests of other persons, national defense and state security:

"The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defense of the country and security of the State".

The Constitutional Court of the Russian Federation pointed out that the provisions of Article 55 (Part 3) of the Constitution of the Russian Federation correspond to international law and international treaties of the Russian Federation. According to such international treaties, while exercising their rights and freedoms, a person can be subjected only to those limitations provided by law and necessary to ensure due recognition and respect for the rights and freedoms of other persons, for the protection of the state (national) security, territorial integrity, public order, prevention of crime, protection of health or morals (good morals), satisfaction of fair requirements of morals and the general welfare in a democratic society.

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

"The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant".

"ARTICLE 10

Freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

ARTICLE 11

Freedom of assembly and association

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others,*

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including the right to form and to join trade unions for the protection of his interests.

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercising of these rights by members of the armed forces, of the police or of the administration of the State.*

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto.

ARTICLE 2

Freedom of movement

1. *Everyone, lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
2. *Everyone shall be free to leave any country, including his own.*
3. *No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Based on the above, the Constitutional Court has concluded that the federal legislation when establishing the legal mechanism for combating money-laundering and preventing terrorism financing may provide for the measures to prevent such acts and to identify natural and legal persons acting in this way, as well as to oblige financial institutions and other organizations effecting operations with monetary funds to identify their customers. Thus, the Constitutional Court states that the challenged Subparagraph 1 of Paragraph 1 of Article 7 of the Federal Law No. 115-FZ serves the public interest and is aimed at the realization of participants of civil turnover mutual rights and duties. Such provision cannot be regarded as violating the constitutional right of ownership, civil law principle of freedom of contract and autonomy of will of the parties to such agreement, and thus as contrary to the Constitution of the Russian Federation, its Articles 17 (Part 1 and Part 3), 34 (Part 1), 35 (Part 1 and Part 2) and 55 (Part 3). Such provision is in conformity with the Constitution of the Russian Federation. This conclusion of the Constitutional Court of the Russian Federation took away the responsibility for a highly controversial interpretation of the legislation of the Russian Federation concerning anti-money laundering. The Constitutional Court of the Russian Federation refused to review the above complaint. In the opinion of the Constitutional Court of the Russian Federation, there exists no uncertainty in the matter of compliance of Subparagraph 1 of Paragraph 1 of Article 7 of the Federal Law No. 115-FZ to the Constitution of the Russian Federation.

Summarizing the practice of the Constitutional Court of the Russian Federation on this issue, the author notes that keeping secrecy, including banking and professional, is considered by the Constitutional Court as a necessary constitutional guarantee of the principle of adversarial proceedings laid down in Paragraph 3 of Article 123 of the Constitution.

"Judicial proceedings shall be held on the basis of controversy and equality of the parties".

The Resolution of the Constitutional Court of the Russian Federation No. 33-P, dated 17 December 2015, the Resolution of the Constitutional Court of the Russian Federation No. 8-P, dated 14 May 2003, the Resolution of the Constitutional Court of the Russian Federation No. 439-O, dated 8 November 2005, the Resolution of the Constitutional Court of the Russian Federation No. 10-O, dated 19 January 2005, appeal for a balance of the constitutional values protected to prevent distortion of the substantive law guaranteeing privacy. While analyzing the concept of attorney-client privilege, the Constitutional Court of the Russian Federation comes to the conclusion that not all of the information that the attorney and their principal would be willing to give a confidential character is in fact within the attorney-client privilege secrecy. A similar provision applies to banking and other secrecy.

The Constitutional Court does not support broad interpretation of the concept of secrecy. The Constitution does not protect the regime of secrecy of information indicating the committing of an offence or a crime. Consequently, the constitutional regime of secrecy applies only to those objects and documents obtained by legitimate means. The presence of signs of a crime provides a reasonable basis for the removal of information from a regime of professional secrecy. Instruments, documents and information received by a criminal way do not fall under the regime of protection of professional information. This is reasonable both from the perspective of the legal interpretation of the Russian legislation and from the point of view of common sense. The European Court of Human Rights gives a similar interpretation. It says that a search warrant should, whenever possible, ensure the limitation of its consequences within reasonable limits[4].

"The government considers that the measures taken have fully remedied the consequences for the applicant of the violation of the Convention found by the European Court in this case, that these measures will prevent new, similar violations and that Belgium has thus complied with its obligations under Article 46, paragraph 1, of the Convention".

The Resolution of the Constitutional Court of the Russian Federation, dated 14 May 2003, follows such European practice. The subsequent practice of the Constitutional Court

[4] Resolution CM/ResDH (2008) 37 Execution of the judgment of the European Court of Human Rights Van Rossem against Belgium (Application No. 41872/98, judgment of 9 December 2004, final on 9 March 2005).

of the Russian Federation also unified the court practice on the issue of the professional, banking and other secrets.

VIII. Conclusion

From one point of view, the author comes to the conclusion that the legislation on banking secrecy contains more questions than answers. Article 26 of the Federal Law "On Banks and Banking Activity" states:

"A credit institution, the Bank of Russia, an organization that performs the functions of the mandatory insurance of deposits shall guarantee the secrecy of operations, accounts and deposits of their customers and correspondents. All employees of the credit institution shall be obliged to keep the operations, accounts and deposits of its customers and correspondents' secret, as well as any other information specified by the credit institution, if this agrees with a federal law.

The statements of the operations and accounts of legal entities and unincorporated entrepreneurs shall be issued by the credit institution to them, courts of law, and courts of arbitration (judges), the Audit Chamber of the Russian Federation, tax bodies, the Pension Fund of the Russian Federation, the Social Insurance Fund, the bodies of the enforcement of judicial acts and acts of other bodies and officials in the cases stipulated by legal acts on their activities, and, when authorized by the head of an investigation agency, to the bodies of preliminary investigation for the cases in charge".

Where is the guarantee, what are the components of the guarantee, and what conditions must be fulfilled?

TABLE I
STATISTICS ON THE RULINGS OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION (HEREINAFTER – THE CC)

Period			1995-2016	01.01.-30.04.2017
All Rulings of the Constitutional Court			**25416**	**938**
Including	On explanation of Resolutions of the CC in public hearing		**7**	**-**
	On termination of the proceedings in public hearing		**18**	**-**
	On termination of the proceedings before its consideration by the CC		**112**	**-**
	On postponing of the hearing, on inaccuracy corrections, etc.		**43**	**-**
	On denial to consider claims of citizens		**24918**	**921**
	Including Rulings	Based on legal positions of previous Decisions of the CC which are in force	**1267**	**-**
		On denial to consider claims in protocol form	**403**	**15**
	On termination of correspondence with the claimant		**318**	**17**
Bases for Rulings	Article 43 Part 1 Point 1 of the Federal Constitutional Law on the CC		**2792**	**23**
	Article 43 Part 1 Point 2		**19576**	**825**
	Article 43 Part 1 Point 3		**1327**	**18**
	Article 43 Part 1 Point 4		**164**	**7**
	Other grounds (Articles 44, 61, 68, 83, etc.)		**1557**	**65**
Claims denied to consider	Claims of citizens and associations		**24494**	**928**
	Inquiries and petitions of the President of the Russian Federation (RF)		**2**	**-**
	Inquiries of the Federation Council		**5**	**-**
	Inquiries of the State Duma		**21**	**-**
	Inquiries and petitions of the 1/5 members of the State Duma		**36**	**-**
	Inquiries and petitions of the 1/5 members of the Federation Council		**3**	**-**
	Inquiries and petitions of the Government of the RF		**4**	**-**
	Inquiries and petitions of the bodies of legislative and executive power of the subjects of the RF		**265**	**6**
	Inquiries and petitions of the courts of general jurisdiction and state commercial courts		**388**	**3**
	Inquiries and petitions of the General Prosecutor Service of the RF		**5**	**-**
	Inquiries and petitions of the Ministries and Departments of the RF		**16**	**1**
	Claims and petitions of the High Commissioner for Human Rights in the RF		**39**	**-**
	Inquiries of the constitutional subjects of the RF		**11**	**-**
	Inquiries of other state bodies		**11**	**-**
Aggregate number of Rulings published in official media			**1140**	**4**

The protection of information is the problem of primary importance. Such an issue requires a political solution and legislative settlement. The higher is the level of information protection, the higher is the preservation of banking secrecy - the stronger is the authority of the credit institution and its potential customers, the greater is the benefit of the bank to the economy of the state. At the same time, the bank will not violate the legislation on anti-money laundering. Swiss banks (even despite the occasional scandals) are famous for the absolute safety of the information about the deposits and transactions of their clients. Such safety of the information creates an important condition for ensuring the stability of their work, a guarantee of observance of constitutional principles, and one of the conditions of the European welfare state.

The author concludes that the meaning of the Constitution of the Russian Federation poses the institute of banking secrecy in its nature and purpose in public-private nature.

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Such an institute aims at ensuring conditions for effective functioning of the banking system and civil turnover, based on the freedom of its members. At the same time, the institute of banking secrecy guarantees the basic rights of citizens protected by the Constitution of the Russian Federation, the interests of individuals and legal entities. Powers of public authorities shall follow from such an institute in carrying out public functions, in their relations with the banks, other credit organizations and their clients. The scope and content of the rights and responsibilities of clients in their relations with the banks, other credit organizations that are the carriers of financial information, and with the public authorities and their officials, shall also be based on the above institute. Such an institute can be used only to implement these functions to use banking secrecy, thus not affecting the private lives and privacy of citizens.

All the above brings the author to conclude on the necessity of the political will to improve the Russian legislation with the aim of compliance with the provisions of the Constitution while executing controlling measures by Russian authorities.

TABLE II
STATISTICS ON THE RESOLUTIONS OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

Period		1995-2016	01.01.-28.04.2017
Including	All Resolutions of the Constitutional Court	**474**	**12**
	Based on Article 125 of the Constitution of the RF	**1**	**1**
	Based on Article 125 Part 2 of the Constitution	**67**	**1**
	Based on Article 125 Part 3 of the Constitution	**2**	**-**
	Based on Article 125 Part 4 of the Constitution	**365**	**10**
	Based on Article 125 Parts 2 and 4 of the Constitution	**26**	**-**
	Based on Article 125 Part 5 of the Constitution	**13**	**-**
Grounds to consider the cases resulted in the Resolutions	Claims of citizens and associations (claimants in total)	**4139**	**17**
	Claims of the High Commissioner for Human Rights in the RF	**9**	**-**
	Inquiries of the President of the RF	**10**	**-**
	Inquiries of the Federation Council	**7**	**-**
	Inquiries of the State Duma	**15**	**-**
	Inquiries and petitions of the 1/5 members of the Federation Council	**3**	**-**
	Inquiries and petitions of the 1/5 members of the State Duma	**22**	**-**
	Inquiries and petitions of the Government of the RF	**1**	**-**
	Inquiries and petitions of the Ministry of Justice of the RF	**1**	**1**
	Inquiries and petitions of the bodies of legislative and executive power of the subjects of the RF	**82**	**1**
	Inquiries and petitions of the constitutional courts the RF	**1**	**-**
	Inquiries and petitions of the courts of general jurisdiction and state commercial courts	**124**	**-**
Results of consideration of cases on constitutionality (Article 125 Part 2 and Part 4 of the Constitution)	Normative provisions at dispute are considered answering the Constitution, including with the explanation of the constitutional meaning	**172**	**8**
	Normative provisions at dispute are considered in full or in part contradicting the Constitution	**286**	**3**
Considered at a sitting without holding a hearing (Article 47.1 of the Federal Constitutional Law on the CC)		**87**	**7**

Note: Total number of claims may not coincide with total number of Resolutions of the CC, as claims on the same subject were united and considered in one hearing.

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