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The legal effect of the nationality of the commercial company In international and Algerian law

The Legal Effect of the Nationality of the Commercial Company in International and Algerian Law

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Abstract

The idea of nationality as we understand it today, as a person's belonging to a particular state, is a modern idea. It was shaped only in the last century when Mancini declared his doctrine. Before that, the idea of nationality was not clear. Once a person belonged to a certain family, and then groups of families descended from close ancestors formed a tribe, the person became a member of a particular tribe, and the tribe evolved into a state later, and as soon as this was only for the Natural person, was it possible to conceive of a nationality belonging to the legal person which is the company.

Key Words : Moral personality - Diplomatic protection - Conflict of laws - Sovereignty of states - trading company.

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I. Introduction

The recognition of the commercial company as a legal person in contemporary law has become an established fact as a legal entity affecting the economic and social life, and it has imposed itself despite the jurisprudential controversy regarding it, due to its material capabilities, strength, spread and length of life compared to the natural person with limited capabilities and means, as the modern jurisprudence ended That the meaning of the person in the law extends to the natural person and the legal person, and both of them have different ties to the state. In the past, jurists of private international law held that the idea of nationality is limited only to natural persons without commercial companies, because nationality is a legal and political bond between the state and its constituent individuals, as it is determined by the people's element in the state, just as nationality is based on an emotional bond. And spiritual, and then these ties are non-existent with regard to commercial companies, but modern jurisprudence considers the necessity

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for the company to enjoy nationality, because nationality as a legal system is based on belonging to the state, which is something that exists in both the natural person and the moral person alike, in addition to that nationality is a system that arranges The law has necessary results for both the natural and legal persons, and to take an in-depth look at the issue of the nationality of the commercial company, we will address it through the following problem: To what extent is the idea of nationality proven to the commercial company as a legal person? What are the legal implications of this evidence?

II. The first topic - the controversial scope of the nationality of the commercial company in international jurisprudence

Talking about the nationality of the commercial company leads us directly to that legal bond through which the company itself is affiliated with a specific country, as a reciprocal image translated by a dialectical bilateral relationship ranging between involvement and submission, where the commercial company is considered involved in the national economy of a particular country while this involvement leads to the emergence of A relationship of submission, according to which this commercial company is subject to the sovereignty of that country and thus logically benefits from its protection, which is a reciprocal legal relationship between both the commercial company on the one hand and the state on the other hand, which entails mutual interests⁽¹⁾, A focused look at jurisprudence clearly shows us that it is very reluctant to attribute nationality to a private legal or legal person (commercial company), and this is due specifically to the nature of nationality itself, that characteristic that includes ties that must be available between the parties to the relationship so that we can prove it and say With its existence, the relationship that includes two bonds that unite the individual (the natural person) on the one hand and the state on the other hand, one of which is a political bond and the second a legal bond. natural persons), all this characterization, in fact, makes us in front of the impossibility of imagining the existence of the description of nationality from a legal point of view except for the natural person, given that the idea of the nationality of the moral person is a hypothetical and unreal idea, created and released into existence by the human thought as a legal trick, in order to Achieving specific goals and objectives, that is what makes them differ and completely differ in their reality and content from the capacity of the natural person, as the capacity of the legal person is confined and determined in the purpose and purpose for which it was established, and outside of this it is not possible to assume for it tangible matters such as loyalty and affection such as what is This is the case with the natural person, and on this basis, from this standpoint, the traditional concept of nationality “Sticto Sensu” was not appropriate for the legal person (commercial company), and yet this matter did not prevent the majority of jurisprudence from agreeing on the need to use the metaphor for this expression in order to determine the system to which these companies must be subject⁽²⁾. Nevertheless, the jurisprudence in this field is divided between two directions, on the one hand, a direction that denies the nationality of the company, matched by it, on the other hand, a direction that supports the enjoyment of the company with nationality and dyeing it in this capacity, where we find those who deny the attribute of nationality to the company, headed by the jurist Bibi and the jurist Nabawaii, who say that it is impossible to imagine that a person A legal person enjoys a nationality similar to that enjoyed by a natural person, and their arguments for that are that it has no soul or sense, and it cannot perform national service, and they say that the idea of a legal person does not exist at all, but rather it is an establishment and a legal idea. As for the supporters of the idea of establishing nationality on the commercial

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company They say that the moral person is real and the moral personality is real. The state exists even though we do not feed with it, and it is real and an entity, so it enjoys everything that natural persons enjoy in terms of name, home, financial and nationality, but the content of this relationship differs according to the difference between the natural person and the moral person with regard to nationality only⁽³⁾. A deep disagreement arose over the idea of assigning nationality to a legal person, and this dispute later intensified to the point of a large and clear division, resulting in the emergence of two parties, one of which completely denies the idea of nationality of the legal person, and the second supports and approves it⁽⁴⁾. This is due specifically to the special importance that the idea of nationality has for the commercial company as a legal person, as the commercial company's acquisition of the nationality of a country has important subsequent effects on this acquisition, represented in the protection that this company will enjoy from the side of this country, as well as the advantages that it will acquire. As stipulated in the legislation of the same country⁽⁵⁾.

III. The first requirement - opponents of nationality dyeing on the commercial company

Opponents of implementing the idea of nationality in relation to the company are based on two main pillars, the first of which is related to the nature of the legal personality, while the second basis relates to the nature of the idea of nationality itself⁽⁶⁾. As for the deniers and opponents of the idea of imprinting nationality on the commercial company based on the nature of the moral personality, they base in the logic of their opinion that man is the only being that can enjoy the true legal personality, which enables him to enjoy the nationality, unlike the moral persons that are characterized by the metaphorical and false personality that It is based on an illusion and imagination, and it lacks a real legal personality that enables it to enjoy nationality, just as the legislator, when he invented the idea of a legal personality, his purpose and goal is to give the ability to the various legal groupings to achieve their goals for which the individuals formed these groupings, and for this reason it must be restricted and not expanded in giving An explanation of the content of the legal personality or even in defining the scope of its application, and that giving nationality to the legal person makes it deviate and deviate from the main goal for which the idea of the legal personality was established, just as the existence of legal persons or not does not increase or decrease the number of members of that state, This removes any benefit, value, or necessity for imbuing the idea of nationality with it, and that imbuing the legal person with nationality is a confusion between both the idea of nationality and the homeland, and it is tantamount to measuring and projecting the natural person onto the legal person, just as the natural person acquires the nationality of the country on whose soil he is born, so The company also acquires the nationality of the state on whose soil it is formed, and this is required by their analogy, and it is an erroneous analogy and projection at all levels. It is not possible for the corporate person to acquire the nationality of the state on whose soil it is located, because this person was not born on its soil like the person Natural, there is a difference between the birth of a living being, and the formation of a legal person, and what is actually meant here is the home of the legal person (the commercial company) and not its nationality, as the commercial company cannot have a nationality⁽⁷⁾. As for the deniers and opponents of the idea of imprinting nationality on the commercial company based on the nature of the nationality bond itself, their support for that is that the nature of the nationality cannot agree with the legal person, as the nationality itself is based on a social basis, what can only be imagined with regard to the natural person, so nationality is an expression It is about the involvement of a specific person in the

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concerned national group and his feelings of loyalty towards it, and the commercial company is a legal person, devoid of feelings and sensations, which prevents the establishment of such advanced feelings between it and the concerned country, which makes it impossible for the commercial company to enjoy the nationality of a particular country, as Nationality is a bond, as a result of its approval and confirmation, the holder may enjoy a set of rights of a political nature, such as the right to run for office and the right to vote. It also entails a set of obligations of a political nature, such as the obligation to perform military service, which is inconceivable given the nature of citizenship. The commercial company as a figurative legal person, and the most important bond, which is the blood bond, which is considered one of the most important reasons for acquiring the original nationality for the natural person, which is impossible to imagine with regard to the legal person, as there is no marriage or birth for the legal person as it is proven for the natural person, and from this standpoint, it cannot then be said that a legal person (commercial company) can bear a certain nationality⁽⁸⁾.

IV. The second requirement - supporters of dyeing nationality on the commercial company

And the owners of this approach see that the nationality of the commercial company comes as a direct effect of the realization of the legal moral personality of a company, and they support their arguments through the various channels of the international and domestic legal scope of jurisprudence and international instruments, as well as the provisions of the judiciary and legislation. The nationality of the natural person is equivalent, and this is given that the legal person is a real fact, not just a legal perception, and this legal person himself is considered an effective economic element in the life of the state, which would justify the necessity of these persons' affiliation with the state, with the establishment of a political and legal relationship between them that is determined by it The rights, obligations and the legal system of the company as a legal person, in addition to determining the applicable law in case of conflict of laws⁽⁹⁾. It is also known that the commercial company, as a legal person independent of its founding members, necessarily requires that it enjoy a nationality of its own and is independent of its partners in particular⁽¹⁰⁾. They also establish their arguments in a coherent group starting from considering nationality as a legal system based on belonging to or affiliation with the state, which can be achieved with regard to the company as a legal person as well as for a natural person⁽¹¹⁾. And that limiting some rights and obligations to natural persons without legal entities, does not exclude the idea of nationality from the company as a legal person, because the failure of these effects with regard to the legal person may happen to some cases for natural persons, and yet we cannot deny them nationality⁽¹²⁾. This also explains the existence of a great similarity between natural persons and legal persons in terms of the effects of the enjoyment of nationality, as it is a system in which the law entails results necessary for both the natural person and the legal person, such as the right to own property and carry out economic activities, which necessitates the necessity of determining the nationality of the legal person. This is to find out how long it is possible for him to enjoy the rights prescribed by law, such as those privileges granted by the state to its citizens such as tax exemption, obtaining subsidies, and the extent to which the state protects its citizens and legal persons, in addition to knowing the legal system to which it is subject when it is established and managed or when it ends with dissolution and liquidation⁽¹³⁾. And that the adoption of protection for the commercial company at the international level,

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especially during exceptional circumstances such as the state of war, where the state provides the necessary protection for its national companies that are active at the international level as one of its nationals, and also provides the necessary support for them, in order to enable them to compete with foreign companies in the vicinity of their activity, What prompts him to say that contemporary jurisprudence has settled on acknowledging the nationality of the legal person, based on arguments and evidence that he considers proven and essential⁽¹⁴⁾. While another group of supporters of proving the nationality of commercial companies as legal persons relies on grounds derived from international treaties and agreements concluded to protect and ensure the rights of nationals, and they mean natural persons and legal persons, and the contracting state has an interest in the enjoyment of nationality by these legal persons represented in commercial companies This is because it represents the backbone of its national economy, and if the nationality of the state is not established for it, then it is impossible for it to benefit from those treaties it concluded for this purpose⁽¹⁵⁾ . In addition, some international treaties explicitly provide for the possibility of commercial companies enjoying the nationality of the state, including the Lausanne Convention of 1923, as well as the Brussels Convention relating to the precautionary seizure of maritime vessels of 1952⁽¹⁶⁾. What makes us conclude that the agreements concluded by states in order to protect their natural persons can only be applied to those companies that enjoy the nationality of these countries, and may explicitly stipulate that the commercial company acquires this nationality.

As for the judiciary and its rulings, it has settled on the right of companies to acquire nationality, as a result of their acquisition of a moral personality independent of the persons of the partners. The joint venture company is considered a legal person, and nationality, as it is one of the requirements of natural persons, is also considered one of the requirements of legal persons, so every commercial company has a nationality that determines its legal status, and this nationality is specified by law⁽¹⁷⁾. The Nancy Court also stated on 04/16/1983 that “the commercial company is a legal person distinct from the personality of its members, and therefore it has a completely special nationality, and it also has a private financial liability independent of their liability.” The Paris Court of Appeal ruled on 05/2/1957 that The company that carries out only part of its activity but its main headquarters is in Paris, where the meeting of the general assembly and the board of directors is held and where the members of the senior management and oversight are located, it has French nationality⁽¹⁸⁾ . On the other hand, we find that the French Court of Cassation has applied the rules of nationality to legal persons, with regard to companies of persons, as it considered it French, regardless of the nationality of its members, as long as it was formed in France and in accordance with the conditions established by French law, and its main headquarters is located there, and it conducts all its business there. Then, on 10/20/1953, it ruled that the nationality of French limited liability companies is determined by the location of the head office, and that the judiciary found it urgent to set a criterion to determine nationality or its affiliation, however, French jurisprudence acknowledged that the modern judiciary has recognized the application of the rules related to the nationality of the commercial companies, even if they are contrary to the nationality of the persons constituting them⁽¹⁹⁾ . As for the legislative aspect, we find a lot of internal legislation that provides for the enjoyment of nationality by commercial companies, and depriving those that do not have the nationality of the state from owning specific funds, or benefiting from specific financial and tax privileges, as we find from that in French legislation, what is stipulated in Article 31 of The Law of July 24, 1867 amended by the Law of February 25, 1953, as well as Article 31 of the Law of

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March 7, 1927, which require consensus to change the nationality of joint-stock companies and limited liability companies, which is considered an endorsement of the idea of nationality for the legal person and its application to commercial companies, as stipulated in the Companies Law French in Articles 31, 60, 154 of the Law of July 24, 1966⁽²⁰⁾. This recognition is also derived from the text of Article 1837 of the French Civil Code⁽²¹⁾. As for the Egyptian legislation, let us return to the text of Article 41⁽²²⁾. From the Trade Law, which states that “all joint-stock companies established in the Egyptian country must be Egyptian and have their original headquarters in the aforementioned country”, which can be considered an implicit recognition by the Egyptian legislator that commercial companies have nationality, while the Lebanese legislator went beyond that, he was more explicit in his adoption of the idea of the nationality of the commercial company, especially in what he mentioned in Articles 26, 80, and 202 of the Lebanese Trade Regulation, which explicitly stipulated the word nationality⁽²³⁾.

While returning to the Algerian legislator, although he acknowledged the nationality of commercial companies, he did not address that according to explicit texts, but conducting an extrapolation process for some legal texts in this regard, we were able to derive this approval, as Article 50 of the Algerian Civil Code stipulates⁽²⁴⁾, However, “companies whose main headquarters are abroad, and which have activity in Algeria, are considered to be based in the eyes of domestic law in Algeria”..., which is the text that came in line with what was stipulated in Article 547, paragraph 2 of the Algerian Commercial Code⁽²⁵⁾. Which explicitly affirmed that companies operating in Algeria must be subject to Algerian legislation, as well as Article 10 of the Algerian Civil Code, amended by Law No. 05-10 of June 20, 20015 issued in Official Gazette No. 44 p. 18⁽²⁶⁾. Which imposes and emphasizes the obligation to apply Algerian law to foreign companies that carry out an activity in Algeria, and for that reason, the general rule, according to what was stated in the Algerian legislation, is that the commercial company is linked to the law of its social status, as the exceptional provision established in the case of the company practicing its activity in Algeria does not change the legal status of the company, but it requires the application of Algerian law to it, if it is related to an activity practiced in Algeria, as laws that fall within the regional scope of the Algerian countries⁽²⁷⁾.

V. The second topic - the criteria for determining the nationality of the commercial company and the effects of its approval

After confirming the recognition and approval of the nationality of the commercial company on the private legal person, and its affiliation with a specific country through this legal association, and the impossibility of applying to the company the same standards that apply to the natural person in determining his nationality, such as the blood association, which is impossible to find in such a case, until the adoption of the territorial association It makes it possible for confusion and conflict to occur between the law that recognizes the legal existence of this company on the one hand, and the law that determines its nationality on the other hand⁽²⁸⁾.

VI. The first requirement - the criteria for determining the nationality of the commercial company

Note that determining the criteria that enable the approval of the nationality of the commercial company is known for its variation and difference due to the difference in the legal system of each country. Each country may choose the standard that it deems appropriate and is in line with

its legislative system. Therefore, we find that despite the discrepancy in the selection criteria, the most famous criteria and most of them are It was adopted, represented in four criteria, which took their place through the tacit understanding between the various countries in their practice spontaneously and continuity.

VII. First - the criterion of the place of incorporation

Supporters of this criterion argued that it is the most specific and objective criterion, as it is characterized by stability and lack of ambiguity. According to this criterion, the legal person (the commercial company) enjoys the nationality of the international entity that was established and formed on its territory. The center of incorporation is the center in which the registration took place in The commercial registry under which the company's system was published, and it would avoid the problems arising from the moving conflict of laws, which are problems that usually arise under the systems that depend in determining the nationality of the company on the criterion of the main management center, which is characterized by continuous change and instability, and the core content For this criterion, since the legal person is established by the legal action of its founders in a specific country, and the legal personality is recognized according to its laws, its legal status must be subject to the law of that country, and the place of incorporation for the legal person (commercial company) is considered as the place of birth or the right of territory for For natural persons, so the company acquires the nationality of the state as its original home, which has been recognized for its legal personality, and this standard is characterized by stability and clarity, and leads to reassurance for others, on the grounds that the commercial company assumes for its establishment the availability of certain conditions, which we find in this standard⁽²⁹⁾. However, this criterion was not spared from criticism, as it was considered to be mostly formal and unrealistic, especially in the case of transferring the company's activity, as the latter retains the nationality of the country of its incorporation without having a link with the country to which it was transferred. Adoption of this criterion is also dependent on the will of the founding individuals, without regard to the will of the state, which should have the say in this regard, given that nationality is a legal bond that binds the company to the state⁽³⁰⁾. It is also one of the most important criticisms directed at the criterion of the place of incorporation⁽³¹⁾ : Whereas, this criterion relies on the control of the subordination of the form to the law of the place of conclusion as a criterion of nationality in this regard, and it is not permissible, because the rule of subordination of the form to the law of the place of conclusion is an optional rule that is limited to its application in the field of conflict of laws, and is related only to the form of legal actions, and with this description this rule is incapable of Determining the nationality of legal persons because of its regular nature, and the adoption of this criterion keeps the determination of the nationality of the legal person in the hands of individuals, so they choose the place of incorporation, which is a choice that involves determining its nationality as required by their own interests without regard to the interest of the state, and this criterion On its own, it cannot express the fact that the legal person belongs to the state, as it opens the door to fraud, as it allows individuals to link the legal person to the state that they know in advance that it does not tighten the restrictions it imposes when forming legal persons, despite the absence of a real link between it and the legal person that to be configured.

Second - the criterion of the exploitation center

In determining the nationality of the commercial company, this criterion is based on the nationality of the country in which its main activity is based, or the center of exploitation in

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which the commercial company exercises its activity. Others, what makes this criterion based on objective considerations, and the supporters of this criterion base their opinion on the fact that the center of exploitation is the place where the company achieves its objectives, and it is also considered the real home for the implementation of the practical goals that it undertakes, without neglecting that it provides the company with an element of stability, which is considered one of the Requirements and conditions for adopting this criterion in determining nationality so that it is far from and difficult to deceive individuals who establish companies when they are given part of the freedom⁽³²⁾. We also do not neglect to say that this criterion is also based on objective considerations, as by determining the location of the exploitation center, the real economic interests of the company are embodied, and accordingly, the nationality bond is more serious and real, as this place is usually the legal home of the company, and it is difficult to change it by the will of individuals. whenever they wanted to. This is what prompted the Algerian legislator to adopt this criterion according to what was stated in the text of Article 10 of the Algerian Civil Code, and Article 547, paragraph 2 of the Algerian Commercial Code, which is the same approach as the Egyptian legislator, who adopted it according to what was stated in the text of Article 11 of the Egyptian Civil Code, which It reads: "If these persons carry out their main activities in Egypt, the Egyptian law shall apply⁽³³⁾" Nevertheless, this criterion was not spared from criticism despite the many advantages that characterize it, especially if we look at large companies such as oil companies or those specialized in construction, which may operate at the same time in multiple countries with the same economic importance, which makes it impossible to implement this criterion, as well In the event of instability of the company's activity in a particular country, such as road construction companies, its nationality according to this criterion is temporary, which is inconsistent with the nationality bond that is characterized by stability and stability. Among the most important criticisms leveled against this criterion are the following⁽³⁴⁾: The difficulty of applying this criterion in some hypotheses, especially in the case where the legal person has multiple centers of exploitation in different countries all of equal importance, and at that time it is difficult to prefer one country over another, and this criterion may result in a worried or temporary nationality that does not last for long, which is what It is achieved in cases where the activity of the legal person is not settled in a particular country, without forgetting that the adoption of this criterion would raise multiple problems in the field of conflict of laws (the case of moving conflict), which is achieved every time the center of exploitation is transferred from one country to another.

VIII. Third - the standard of the main management center

According to this criterion, the nationality of the country in which the main management center of the commercial company is located is the same as the nationality that affixes to the company, since the main management center is meant by the place where the bodies of the legal person and the bodies based on its management are concentrated, it is the actual place and in which decisions are issued And the orders and directives related to this legal person, and in which the general assembly and the board of directors are held, and the company must also be registered in the commercial register of that country specifically, and it is required that it fulfill all the legal conditions specified by the legislator in that country in accordance with the legislation in force in it, and it is possible In this regard, he said that this criterion is more realistic, as it expresses the true connection of the nationality bond, and is objective and easy, and does not depend on the will of the parties alone⁽³⁵⁾.

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For your information, this criterion prevailed and was adopted in some European countries, such as France, Germany, and Italy. Therefore, and based on the aforementioned texts, we find that the French legislator has adopted the criterion of the main management center, by granting French nationality to every company whose main administrative center is located on its territories. National, and this is regardless of the nationality of the partners in it, especially if it turns out that the place of investment of the company is in France, and this is what was adopted by both jurisprudence and judiciary with regard to limited liability companies, and we also find that the Egyptian legislator has linked the nationality of the company and its main management center, as stipulated in The Egyptian Trade Law in Article 41 of it specifically, although the most correct opinion in jurisprudence went specifically that the legislator in the text of this had taken the criterion of the main center in determining the nationality of the joint-stock company, and was not satisfied with the center of incorporation, but rather linked the two criteria to acquire the Egyptian nationality, and according to this basis is considered The company is Egyptian if its head office is located in Egypt, and this is regardless of the place of carrying out the company's activity and the nationality of the partners in it, while the company is considered foreign if its head office is located abroad even if it starts its activity in Egypt, and the actual and real center is taken into account in this regard. for the company⁽³⁶⁾, Knowing that it was the word of the judiciary in this field, as returning to the French judiciary, we find that it adopts the criterion of the main management center, in determining the nationality of commercial companies as well as determining their legal personality, and the French judiciary subjected issues related to whether the company is dissolved or liquidated to the law of the company's main center⁽³⁷⁾. It should also be noted that even this criterion, with all its advantages, has not been spared criticism, as we have summarized it in the following⁽³⁸⁾: The implementation of this standard is not without some difficulties from a practical point of view. The main management center mentioned in the articles of association may not be the real or actual center, hence the various legislations tended to link the criterion of the main management center to being actual in order to avoid sham in determining the main management centers, since it may happen in reality that all the elements do not coincide or are concentrated Determined for the main center in one place, and it goes without saying that it is conceivable that the existing management center in the country does not respond to all the requirements imposed by the law of this country, which is what happens when the founders make this country the center of management of a particular company for illegal or fraudulent purposes. premeditated intent.

IX. Fourth - the control standard

This criterion was applied for the first time by the French judiciary, during the two world wars, by taking protection measures against enemies. During the first and second world wars, a great question arose about the legal status of companies that represent the interests of enemy countries, and this is despite the fact that they are companies that have the nationality of the country of incorporation. , or the nationality of the state of the social headquarters, according to the criterion adopted by each country, and the judiciary began to discover that the criterion of the main center of the commercial company was not satisfied with the enjoyment of rights, so those companies that are dominated by people belonging to the enemy state, and who hide behind the criterion of the center, were excluded The main reason for this is the application of an alternative standard, which is the control standard⁽³⁹⁾, According to this criterion, the national or foreign character of the commercial company is determined, given the description attached to those who

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have control over this person. It is restricted by several elements such as the nationality of the partners, the nationality of the managers, and the nationality of the owners of the invested funds, because the legal person is, in their opinion, nothing but a puppet whose strings are driven by these human beings. Thus, the governmental person cannot be granted another nationality unlike the nationality of the shareholders and partners who are considered the original component of it, but it requires that That all partners or shareholders be of the same nationality, which is a condition that is rarely met; As we often find in the company a mixture of multiple nationalities, and therefore the proponents of this theory tend to believe that the nationality of the majority of the partners determines the nationality of the company⁽⁴⁰⁾, On this basis, citizenship is granted to the commercial company on the basis of the nationality of its capital owners, or the nationality of its managers, and this is regardless of its main management center, or the place in which it carries out its activity. The exceptionalism that European countries went through during the First World War prompted them to take protection measures, including imposing custody on the funds of sponsoring enemies, while prohibiting dealing with them or confiscating their money, as this matter is not limited to natural persons, but extends to enemy companies. , which resides in the territory of the country that has taken such measures, how much according to this criterion the French Court of Lyon on March 30, 1915 and the supporter of the French Court of Cassation on July 20, 1915 took⁽⁴¹⁾, That it is not necessary for him to place the company in groups under guard that most of the shareholders have the nationality of the enemy, as it is sufficient that the interests of the enemies are dominant and are considered dominant over the company, as the ruling stated that: France, and according to French law and its real main center, is also no more than a person who hides behind a commercial and industrial project of the enemies, who does business with a Frenchman and must be put under guard.” Legislation also played a role in adopting this criterion, as we find it based on the peace treaties after the end of World War I, with the aim of liquidating funds in the Allied countries, owned by companies subject to the control of the nationals of the Axis countries, as stipulated in Article 297 of the Treaty of Versailles⁽⁴²⁾, Article 249 of the Saint-Germain Treaty⁽⁴³⁾.

The Egyptian legislator also adopted this criterion during the Second World War, by imposing custody on the funds of the Axis countries, including Germany and Italy, and also adopted this criterion when Egypt was exposed to the tripartite aggression in 1956, and this applies to companies that have important interests for both Britain and France, and in this context specifically. Order No. 05 of 1956 was issued⁽⁴⁴⁾, And related to trade with nationals of both Britain and France, as special measures have been taken with their money, and the order stated that “Egyptian or foreign companies, institutions and associations that the Minister of Finance and Economy issues a decision as operating under British and French supervision or as having important British or French interests in them, and from Through this text, we can conclude that the Egyptian legislator did not suffice with applying the criterion of controlling the funds of the enemies at the nationality of the company, but rather extended that even to the Egyptian companies that may be controlled by the enemies, with the aim of protecting the political and economic entity of the state, and thus this criterion differs from the approved standards In determining the nationality, the natural persons hidden behind the company are seen as a legal person⁽⁴⁵⁾. Despite the effectiveness of this criterion, it, like its predecessors, was not without criticism. The most important criticisms of this criterion centered on the following⁽⁴⁶⁾: Determining the nationality of the commercial company, in view of the nationality

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of the partners or those who hold the reins of dominance over the management, is a denial of the idea of the independent legal personality that the legal person has independent of the persons constituting it, just as building the nationality of the commercial company on the basis of the nationality of the partners, managers, or other elements Hegemony means using a political association to formulate a legal and economic control in the state, which is not permissible, especially since the affiliation of a legal person to a particular state is based primarily on an economic nature and not on a natural political need, and this criterion may involve severe difficulties from a practical point of view if it is It is difficult to reveal the constituent members of the legal person, not even its real mentors, especially in the case of equal groups of shareholders of two different nationalities who together have dominance over the company, without forgetting that disclosing the nationality of the shareholders or managers who dominate the legal person is very difficult, especially when companies are issued The adoption of this criterion may appear in some cases to involve injustice to a group of shareholders without guilt, just as relying on the control criterion is ignoring and contempt for the elements of speed and confidence that dominate commercial relations, whether in domestic law or at the level of international private relations, as the adoption of this leads to The criterion is to impose an obligation that falls on the shoulders of every trader to search for the elements directing or dominating the legal person before making any contract with him that harms international economic life.

X. The second requirement - the results of approving the nationality of the commercial company

Among the most important results that may result from conferring the nationality of a country on a particular commercial company is its benefiting from all the privileges and rights stipulated in the legislation in force and stipulated in that country, and on the other hand, its carrying out the duties imposed on the national companies of that country, which are limited in general The effects of dyeing the company with a nationality have three important effects, the first of which is legal, the second is economic, and the third is political.

XI. First - the legal effect

Here, a distinction must be made between the law applicable to the establishment, functioning and termination of the commercial company on the one hand, and the law applicable to the company's activity on the other hand, as well as the law applicable in the normal case and on the other hand the law applicable in the event of a dispute between the company and the foreign country in which you are active.

With regard to the law applicable to the company in the normal case, the internationally applicable principle is that the company is subject to the law of its country of nationality, whether it is related to its establishment, operation or termination, that is, from the beginning of its life to the end of its life. With regard to the law applicable to the company itself, jurisprudence and law are divided. To two directions, the first of which subjects the company to the law of its nationality in the sense that the establishment, functioning and dissolution of the company is subject to the law of the country in which this company enjoys its nationality. With two criteria, there is the issue of conflict of laws that becomes complicated, as it is difficult to determine the applicable law on the basis of two criteria, and this is what led Algeria to adopt Article 10, Paragraph 03 of the Algerian Civil Code, which stipulated: "...as for legal persons such as companies, associations, institutions, and others, their system applies." The legal law of

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the state in which it has its principal and effective social headquarters⁽⁴⁷⁾. Here, a distinction must be made between the law applicable to the establishment, functioning and termination of the commercial company on the one hand, and the law applicable to the company's activity on the other hand, as well as the law applicable in the normal case and on the other hand the law applicable in the event of a dispute between the company and the foreign country in which you are active. Here we focus on the paragraph ... "its legal system"... which means the applicable law at its incorporation, during its operation, and in the event of its termination. The company whose main and actual social headquarters is in Algeria is subject to Algerian law and Algerian law applies to it, whether at its incorporation, operation, or termination, and the same With regard to other countries, as well as by referring to Article 50 of the same law, which stipulates: "...companies whose main headquarters are abroad and have activity in Algeria, their headquarters in the eyes of domestic law is considered to be in Algeria..."⁽⁴⁸⁾. But with Algeria moving towards economic openness and a free economy, as well as the entry of many foreign companies to invest in Algeria, the application of the third paragraph of Article 10 of the Algerian Civil Code leads to the removal of the application of Algerian law to foreign companies that are active in Algeria, which is what led the Algerian legislator and the preservation of the interests Algeria to adopt the principle of territoriality of laws, and this trend was enshrined by the Algerian legislator through several laws, by returning to Article 02 of Ordinance No. 71-22 of April 12, 1971⁽⁴⁹⁾, Which defines the framework in which foreign companies are active in the field of hydrocarbons, and which obliges foreign companies operating in the field of hydrocarbons to establish a commercial company that is subject to Algerian law and has its headquarters in Algeria, as well as paragraph 04 of Article 10 of the Algerian Civil Code, which stipulates: "... However, if foreign legal persons carry out an activity in Algeria, they are subject to Algerian law"⁽⁵⁰⁾. In the event of a dispute, by reference to Ordinance No. 01-03 of August 20, 2001 related to the development of amended and supplemented investment, and in Article No. 17 of it specifically, we find its text according to the following: "Every dispute between the foreign investor and the Algerian state that is due to the investor or because of a measure it has taken is subject to The Algerian state against him to the competent judicial authorities, except in the case of bilateral or multilateral agreements concluded by the Algerian state, related to reconciliation and arbitration, or in the case of a special agreement providing for a settlement clause or a clause allowing the parties to reach an agreement based on private arbitration"⁽⁵¹⁾.

XII. Second - the economic impact (Foreigners Center)

The acquisition of any company of the national nationality of a country gives it the right to enjoy all the rights that patriots usually enjoy, and this also entails its commitment to all the obligations that national law usually imposes on patriots⁽⁵²⁾. The rights that he benefits from are: the right to resort to the judiciary of that country, the right to obtain real estate and industrial plots of land to establish the project, the right to use and exploit public facilities, the right to practice all legally permissible activities in accordance with the laws in force in that country, the right to borrow from banks The right to transfer capital and income as permitted by the legislation of that country The right to treatment in accordance with the principles of international law The right to protection from abuse⁽⁵³⁾. The obligations of companies that hold the nationality of a country other than the country in which they operate can also be limited to the following: respect for the laws and legislation in effect on the territory of that country, the obligation to pay the taxes and fees due from the Algerian state, according to what is stated in the

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Direct Taxes and Similar Fees Law, the obligation By reinvesting the percentage of the profits agreed upon to be reinvested according to what was stated in the agreement concluded between it and the Algerian state, respecting the labor laws in force in Algeria, respecting the rights of workers, granting them their salaries and subsistence within the framework of the applicable laws, as well as respecting the legal working hours, in addition to many other legal obligations and expressly provided for in this field⁽⁵⁴⁾.

XIII. The political impact (diplomatic protection)

This is also known as the political role in determining the nationality of companies. Diplomatic protection means that the requesting country takes upon itself one of its citizens that it wishes to defend against another country, whose internationally illegal actions would have caused harm to him, for which he believes that he is entitled to obtain compensation⁽⁵⁵⁾. It is the protection granted by a state through its official representatives to persons of private law - individuals or companies - who hold its nationality against an infringement of their interests that constitutes a violation of international law committed by the authorities of another state⁽⁵⁶⁾. According to Article 1 of the draft articles on diplomatic protection adopted by the United Nations International Law Commission on May 3, 2004, diplomatic protection is defined as follows: "Diplomatic protection means a state's resort to diplomatic action or other means of peaceful settlement when it adopts a state, by virtue of its right The case of one of its nationals in connection with the harm caused to him as a result of an internationally wrongful act committed by another state." Also, by returning to the text of Article 1, we can say that, according to international law, the state is responsible for the harm suffered by a foreigner as a result of the wrongful act or omission of that state. State, and diplomatic protection is the procedure used by the State of nationality of the injured person to secure the protection of that person and to obtain redress in connection with the internationally wrongful act that harmed the person⁽⁵⁷⁾. The best example of this is the case of Barcelona Traction (Barcelona Traction Company), where the facts of this case conclude that the advanced company was established in Canada in 1911, where it took its main management center there, and thus acquired Canadian citizenship in accordance with the provisions of the Canadian law in force at the time. The advanced company carried out its main activities in Spain, where it obtained a concession from the Spanish government. The latter has taken violent measures against the aforementioned company. As a result, three of the shareholders of the advanced company filed a lawsuit against it, requesting a ruling declaring its bankruptcy, dissolving its board of directors, seizing all its properties in its various branches, and disqualifying its Belgian director. On February 12, 1948, the judges of the Catalan Court issued a ruling in which the two applicants answered their aforementioned requests, but the Canadian government did not move a finger, as it refused to intervene to stand by the company in question, despite its nationality, and the basis for the advanced position is that the advanced company, even if it holds Canadian citizenship, due to its complete establishment in Canada and the presence of its main management center on its soil. Despite all of that, Canadians own only ten percent of the shares of that company, while the remaining 90 percent of its shares is owned by non-Canadian citizens. As such, there was no reason for the Canadian government to intervene in this regard. It is established from the aforementioned case papers that Belgian citizens own 75 percent of the shares of the aforementioned company, and from this standpoint, the Belgian government submitted to the Spanish government a request not to harm its citizens who are shareholders in the company in question. As a result, negotiations were held between the

two developed countries. The latter lasted for ten years, but nothing came of it, and as a result of the aforementioned, Belgium filed a lawsuit on September 23, 1958, before the International Court of Justice, demanding a ruling obliging Spain to compensate it for the damages incurred by its nationals as a result of the violations committed by the Spanish administrative agencies. , v. the applicants, and on March 23, 1961, Belgium applied to the Registry of the Tribunal with a request to dismiss the case as a result of negotiations with Spain on the previous subject. But the previous negotiations did not work, which prompted Belgium to file the lawsuit again on June 19, 1962, renewing its request from the aforementioned statement. On this payment, it was decided that the advanced company is owned by Belgian citizens (natural and legal persons), which means its subordination and political affiliation to Belgium, despite its establishment in Canada and its acquisition of its nationality as a result, and indicating that the aforementioned company has two nationalities, the first is Canadian, according to For the standard of the country of incorporation and the country of the main management center. As for the second, it is the Belgian nationality, according to the censorship criterion, and the last is the actual nationality. In this way, Belgium justified its intervention to protect a company that enjoys its nationality⁽⁵⁸⁾. In the case related to the Barcelona Traction Company for Traction, Lighting and Energy Limited (Belgium v. Spain), the International Court of Justice recognized in its judgment issued on July 24, 1964 the existence of basic rules that differ from other rules, and concluded that in the field of diplomatic protection, there is a fundamental difference between the obligations of states towards the international community as a whole, and its obligations in the face of another country, and that the first obligations are an argument against all *Erga omnes* concern by their nature all states, and all states have a legal interest in that the rights corresponding to these obligations be protected, and the Court cited as examples of these obligations the prohibition of acts of aggression and genocide collectivism and the infringement of the fundamental rights of human beings, including the right not to be subjected to slavery and racial discrimination⁽⁵⁹⁾.

Conclusion

In conclusion, we can say that recognizing the nationality of the commercial company has gone through a great jurisprudential debate between those who originally denied the idea of the nationality of the legal person and those who supported it. However, the global practice in this field later recognized the existence of the nationality of the legal person finally, and countries differed in the field of determining the nationality of companies, but this The definition is very important in terms of the effects that it arranges later, and the most important of these effects or aspects are represented in three roles or results: legal, political, and economic. Then we moved to the exception, which is the case of a bilateral treaty or agreement in this regard, especially when a dispute arises and the possibility of resorting to international arbitration, then we touched on the economic role or what is known as the status of foreigners, which is represented in the privileges or rights enjoyed by foreign companies operating in Algeria. On the other hand, the duties or obligations that fall upon it, and then the political role represented in the diplomatic protection that countries grant to their companies operating abroad in the event that they are exposed to harm from the country of carrying out the activity, and all this shows the importance and essence of the commercial company enjoying the nationality of a country.

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¹⁹ French Court of Dispute ruling of November 23, 1959.

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<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000692245&categorieLien=id>

²¹ Article 1837 French Civil Code:

“Any company whose head office is located on French territory is subject to the provisions of French law, Third parties may avail themselves of the registered office, but it is not enforceable against them by the company if the real office is located in another place”

²² See Article 41 of the Egyptian Trade Law: <http://qadaya.net/?p=6603>

²³ Where Article 26 of it stipulates: “Companies that have a main place in Lebanon, whatever their nationality, must be registered in the trade register concerned with the area of their headquarters.....”.

²⁴ See Article 50 of Ordinance No. 75-58 of Ramadan 20, 1395 corresponding to September 26, 1975, which includes the Civil Code, as amended and supplemented.

²⁵ See Article 547 of Ordinance No. 75-59 of Ramadan 20, 1395 corresponding to September 26, 1975, which includes the Commercial Code, as amended and supplemented.

²⁶ See Article 10 of Ordinance No. 75-58 of Ramadan 20, 1395 corresponding to September 26, 1975, which includes the amended and supplemented Civil Code, as the article states: “... However, if foreign legal persons exercise an activity in Algeria, It is subject to Algerian law.

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