THE LEGAL NATURE OF PRE-CONTRACT NEGOTIATIONS

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ABSTRACT

Objectives: One of the objectives that prompted us to search for (the legal nature of the negotiations leading to the contract) is to adapt these negotiations so that the legal provisions that apply to them are identified, in addition to knowing the legal nature of the responsibility that arises on the negotiating parties as a result of their breach of the obligations and principles on which the negotiations are based to provide legal protection for the negotiating parties as a result of this breach.

Theoretical Framework: The negotiations leading up to the agreement shall be based on the basic principles of good faith, confidentiality, and freedom of contract. The civil liability of negotiators oscillates between tort and contractual. The mutual obligations between the parties to the negotiation are fixed and unified.

Method: We followed the descriptive approach in explaining the concept of negotiations leading to the contract, as well as understanding the different phenomena and relationships between the parties to the negotiating relationship leading to the agreement, and the comparative approach was used by comparing the research between Iraqi, French and Egyptian law.

Results: The negotiations leading up to the contract are considered a set of preliminary procedures carried out by the negotiating parties that precede the conclusion of the contract in a final manner. Negotiations leading to the agreement are characterized by several characteristics, being a prelude to the contract and voluntary negotiations so that one party does not have authority or restrictions on the other.

Originality/Value: The present research pertains to the legal character of the talks conducted by the parties involved prior to the finalization of the contract. This pertains to the process of engaging in talks that culminate in the establishment of a consensus about fundamental values such as good faith, confidentiality, and freedom of contract.

Keywords: pre-contract negotiations, legal nature, final contract, contractual and tort liability.

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A NATUREZA JURÍDICA DAS NEGOCIAÇÕES PRÉ-CONTRATUAIS

RESUMO

Objetivos: Um dos objetivos que nos levou a procurar (a natureza jurídica das negociações que conduzem ao contrato) é adaptar estas negociações de modo a que as disposições legais que se lhes aplicam sejam identificadas, além de conhecer a natureza jurídica da responsabilidade que decorre para as partes na negociação em consequência do incumprimento das obrigações e princípios em que as negociações se baseiam para proporcionar proteção jurídica às partes na negociação em consequência desse incumprimento.

Quadro teórico: as negociações que conduzirão ao acordo serão baseadas nos princípios básicos de boa-fé, confidencialidade e liberdade contratual. A responsabilidade civil dos negociadores oscila entre o ilícito e o contratual. As obrigações mútuas entre as partes na negociação são fixas e unificadas.

Método: Seguimos a abordagem descritiva na explicação do conceito de negociações que levaram ao contrato, bem como a compreensão dos diferentes fenômenos e relações entre as partes na relação de negociação que levou ao acordo, e a abordagem comparativa foi usada comparando a pesquisa entre a lei iraquiana, francesa e egípcia.

Resultados: As negociações que antecedem o contrato são consideradas um conjunto de procedimentos preliminares realizados pelas partes negociadoras que precedem a celebração do contrato de forma definitiva. As negociações que conduzem ao acordo caracterizam-se por várias características, sendo um prelúdio do contrato e negociações voluntárias para que uma parte não tenha autoridade ou restrições sobre a outra.

Originalidade/valor: A presente pesquisa refere-se ao caráter jurídico das conversações conduzidas pelas partes envolvidas antes da finalização do contrato. Isto diz respeito ao processo de encetar conversações que culminem no estabelecimento de um consenso sobre valores fundamentais como a boa-fé, a confidencialidade e a liberdade contratual.

Palavras-chave: negociações pré-contrato, natureza jurídica, contrato final, responsabilidade contratual e extracontratual.

1 INTRODUCTION

Many individuals resort to executing contracts of different shapes and sizes to satisfy their demands and accomplish their goals behind the arrangement (Dhanapal & Renganathan, 2023). However, contractors cannot be certain in advance that they will receive it, particularly in contracts that need research and agreement on the main problems before establishing a definitive commitment in a contract that the law requires to fulfill all of its duties. So long as the other party has met all of its obligations, the talks leading to the contract are regarded as the vast field for the parties to contract in getting prior knowledge and complete conviction in attaining the contract's feasibility (Hameedi, Union, Talab, & Almagtome, 2022). Therefore, contract discussions are negotiating between the parties involved to obtain a contractual agreement. These conversations are integral to the legal system's contract creation procedure. Contractual talks are seen from
a legal perspective as an offer and acceptance between the parties to finalize a specific contract. A bid is a party's proposal to enter into a contract and its conditions, whereas acceptance is the opposing party's acceptance of this offer and its terms.

2 THEORETICAL FRAMEWORK

Negotiations in the language were described as the exchange of opinion between the parties involved, negotiated on the topic of any neighbor. They dealt with people in the matter, i.e., negotiated with each other (Firth, 2014). Negotiations are defined idiomatically as exchanging views between the parties to the contract or more to conclude the contract without necessarily completing it as long as the negotiators do not reach a final agreement (Maarif, 2020). From the above definition, it was found that its authors asserted that negotiations are a contract with evidence that mentioned the term (the parties to the agreement) because they certainly did not mean the parties to the final agreement. After all, the final contract has yet to be concluded. Therefore, according to the above definition, negotiations is a contract that is replaced by a mere exchange of views, and we believe that such assertion is not permissible, as it is only a contract of advice once an exchange of ideas takes place. And how to hold it just to be replaced by a discussion of views!

Some defined it as a contract under which the parties undertake to negotiate a final agreement (Khorasany, Paudel, Razzaghi, & Siano, 2020). It appears from the above definition that it is very concise and concise and asserts that it is a contract of negotiation aimed at concluding the final agreement. Some have defined it as dialogues between prospective contractors to search for the possibility of finding the compatibility of wills towards the rights and obligations that are the subject of the contract (Windschitl, 2002). It seems from the above definition that it is almost certain that negotiations are not a contract, through the mention in the definition of probable contractors and the search for the compatibility of wills on the rights and Commitment to the contract to be concluded, meaning we are dealing with one contract is the contract that is being negotiated and dialogue about which may or may not be completed.

Some have defined it as a set of preliminary processes in the form of consultations, discussions, endeavors, and exchanges of views to reach an agreement (Poppe, Leininger, & Wolff, 2019). It means that the negotiations leading up to the contract are a stage that precedes the conclusion of the contract in a final manner, the
content of which is dialogue and discussion between the parties to the contract to discuss the terms of the contract and study the feasibility of the contract and the percentage of access to it (Ouwens, 2020). According to the latter definition, we find it the closest to correctness because it has shown that negotiations are a stage that precedes the contract. And between the discussions and dialogues regarding the elements and introductory paragraphs in the contract and a statement of the intended feasibility study of the contract and the extent of reaching the goal of the conclusion, it seems more likely among the previously mentioned definitions. It also appears from the above that contractual negotiations are essential as they are decisive in whether or not to conclude the contract.

As for the legal legislation, we do not find a legal article concerned with the definition of negotiations leading to the contract explicitly, and this may be justified in that the definition is not the legislator's task. Still, it is not denied that the legislator has addressed it implicitly. For example, we find that the Iraqi legislator stipulated (the acceptance matches the affirmative if the parties agree on all the essential issues in which they negotiated, but the agreement on some of these issues is not enough for the Commitment of the parties, even if this agreement is proven in writing) Iraqi Civil, 1951. It means from the above that the Iraqi legislator stipulated the correspondence between the offer and acceptance in the contract when the parties to the negotiations agree on all the essential issues in full and not partially (Juana, Kango, Singh, Abdussamad, & Ismail, 2023).

As for the Egyptian legislator, it has stipulated that the contract is concluded as soon as the parties exchange the expression of two identical wills, taking into account what the law estimates above that of the specific conditions for the conclusion of the contract Egyptian Civil, 1948. The Egyptian legislator did not address the term negotiations. Still, it is implicitly understood from the text of the above article that the two wills may coincide with any consent to conclude the final contract. This congruence inevitably took place after negotiations, dialogues, and exchange of views (Manipol, 2023). As for the French legislator, he also did not address the contractual negotiations before the issuance of Decree No. 131 of 2016, as this amendment granted the contractor a period of reflection and another for reversal after the parties' agreement on it or the text of the law. In the review period, the acceptance issued by the person to whom the offer is addressed is not considered (Lizotte, 2020). The French legislator attached utmost importance to the stage of negotiations, as it made it a step before the conclusion of the contract definitively by
giving two deadlines to the contractor, one for reflection and the other for reversal. The negotiations leading up to the agreement are characterized by several characteristics that may create an independent legal entity that distinguishes it from others and the most important of these characteristics.

The negotiations leading up to the contract are considered a stage before the conclusion of the contract (Gastinger, 2016). Hence, the conclusion of the contract or not depends on the outcome of those negotiations, but this does not mean that the Commitment of the parties to the negotiations is to achieve a result but to exert care to conduct the negotiations in good faith according to what the parties see without error or fraud. The negotiation that takes place between the two parties is through the exchange of views, and discussion of the terms and conditions of the contract with free will and unrestricted and all the conversations, dialogues, and exchange of opinions on the contract, its terms, and method of implementation take place at a stage before its conclusion. It means that during the negotiation period, there are no negotiations that prepare for the contract permanently, as it is in the account of each negotiating party that it is for a specific period and ends either with the conclusion of the final contract or not, according to the conviction of the parties. They exist for the particular purpose of preparing the agreement by studying the contract in all its aspects.

It means that the parties have generated full conviction to conclude the final contract based on what was reviewed, negotiated, and agreed upon during the negotiation stage about the essential elements of the agreement, its conditions, and its conditions and that this agreement cannot be repudiated or violated. The parties negotiate the terms of the contract through free and open communication, during which they express their respective points of view and debate the agreement's stipulations. Each side can present its case and engage in frank dialogue about the other side's position before coming to a mutual agreement and signing the contract. Thus the will of all parties to the negotiation to conclude the contract is inevitable with everything previously agreed upon in the period of the talks. Contractual negotiations must also be considered specific and achieve legal security, so negotiation freedom should not negatively affect achieving this security. It may come to mind that the negotiations leading up to the contract are an exchange of the views and discussions of the contractors, and it is somewhat similar to the stage of concluding the contract, which is the identical offer and acceptance if the acceptance of the other accompany the negotiation of one party. Or it can be a stage similar to the
promise of contracting. Suppose the parties remain in the stage of discussion. In that case, each party expresses his opinion and conditions, and negotiators may approach the position positively when concluding the contract. It is also known that the contract is the link of the offer issued by one of the contracting parties with the acceptance of the other in a way that proves its impact on the contract (Al-Ayal, 2022). It means from the above definition that the contract is located in conjunction with the acceptance of one of the contracting parties with the affirmative issued by the first contractor in a way that proves its impact on the contractor, that is, the obligations and rights of the parties fall on the place of the contract, while contractual negotiations do not find a link to the offer and acceptance, the negotiations are an exchange of views and discussions, they do not have obligations and rights on the same place, but rather obligations and rights of the parties represented in the conduct of the negotiations themselves, most notably the negotiation in good faith, there must be no error or fraud, and informing the contractor about everything surrounding the contract and the place while ensuring that confidentiality is maintained on all the information related to the contractor that is considered to the contractor in keeping it confidential, especially when the final contract is not concluded (Amirkhanyan, 2009).

The final contract has yet to be concluded, and the furthest contract stage is reached. All the essential issues have been discussed and studied, and after each negotiating party is sure to achieve the desired goal of the contract, the agreement stage is reached. Despite that, some see the negotiations as an actual preliminary contract. Still, the question here is that the contract must end or expire with implementation, so what is the performance in this contract, is consultation, dialogue, and exchange of views? Considering that the contract must prove the effectiveness of the offer and acceptance of the contractor, what is contracted in the negotiation contract?

As it is known that the promise to contract is a contract under which the promising person is committed to selling something. For example, suppose the promised person shows his desire to buy. In that case, the promise to contract is only concluded once all the essential issues are completed and the period during which the agreement must be terminated (Thomas, 2021). Therefore, negotiations cannot be considered a promise to contract because the latter requires determining the period necessary to conclude the final contract, whereas negotiations have no duration. An offer expresses the will to obtain an agreement when acceptance and perfect conformity accompany it
As for the negotiations, if they are issued, they by each party is considered an invitation to negotiate, and if the other party accepts this invitation to enter into the negotiation does not mean that this acceptance of entry is acceptance in the conclusion of the final contract, as the purpose of which each party aims is to negotiate and exchange views and discuss the conditions and conditions of the contract to know each party the extent to which it has reached the desired goal of concluding the contract or not. At the end of the negotiation, either results in Whether or not to conclude the contract. Thus, inviting a person to a person to enter into the negotiation cannot be considered an offer issued by the negotiator. Therefore, even if consent and a response to the negotiation are obtained, it does not necessarily lead to the conclusion of the final contract (Selberg, 2023). To clarify the legal nature of the civil liability of the negotiators in the negotiations leading up to the contract, when one of the negotiators violates the principles and obligations that the parties must abide by, it is necessary first to identify those principles and then the legal nature of those negotiations.

3 METHODOLOGY

We followed the research on the topic (the legal nature of the negotiations paving the way to the contract), the descriptive approach in explaining the concept of the negotiations paving the way to the agreement as well as understanding the different phenomena and relationships between the parties to the negotiating relationship paving the way to the contract, and the comparative approach was used by comparing the research between Iraqi, French and Egyptian law.

4 RESULTS AND DISCUSSION

4.1 BASIC PRINCIPLES OF NEGOTIATIONS LEADING UP TO THE CONTRACT

For the negotiations to lead their goal, which is to reach the conviction of the negotiators, whether to conclude the final contract or not, these negotiations must be based on the foundations and principles necessary to preserve both negotiator's rights and freedoms, as we mentioned earlier that the negotiations may end with the conviction of the negotiators to conclude the contract or not, so this conviction is born as a result of the existence of freedom in contracting as well as good faith while proceeding with the negotiations by contracting or not, as well as the obligation to maintain confidentiality on all the information obtained During the negotiations, which require not to be disclosed
because of their importance to their owner, so we will address these principles each in a separate section as follows:

4.1.1 I: Freedom of contract

The idea of negotiations leading to the contract is based on the fact that the negotiators want, before starting to conclude the final contract to see its terms and conditions and the extent to which it is feasible or not, and thus so that each negotiator is aware and aware of the feasibility of the contract or not. Thus, each of them is convinced in the conclusion of the contract, and this is what we call freedom of contract, so each negotiator must have complete freedom to negotiate until reaching the contract. Each party Negotiator is a personal initiator to discuss a particular topic. Therefore the discussion is not a commitment but a conversation and listening to the other party's views. It is not permissible to be the will of any negotiator restricted or forced to enter into the negotiation or to reach the result produced by the negotiations, and in exchange for advocacy, recognition, and confirmation of the freedom of the negotiators to achieve the contract or not. This freedom must be completely absolute. Each negotiator must consider the ethics of contracting. The law imposes ethics, including a good principle (Deshayes, 2008) and the obligation to confidentiality and cooperation. (Iraqi Civil, 1951; Egyptian Civil, 1948). The media is the content from which the other party (the negotiator) obtains the information that is useful to him to conclude and implement the contract (Iraqi Civil, 1951).

4.1.2 II: Good faith

Good faith is one of the principles on which a person's actions are not to be said, whether daily life actions or legal ones. Therefore, the principle of good faith is one of the basic principles referred to by the laws, even if implicitly at least, but what is noted is that this principle was referred to in the period of the conclusion of the contract (Iraqi Civil, 1951). As for the stage before its conclusion, legislation is almost devoid of this principle. However, the French legislator, after the issuance of Decree 131 of 2016, was keen to organize the negotiation stage, and one of those principles is to maintain good faith by informing each negotiator of the other party of all the circumstances and conditions of the contract and the needs and requirements of the deal. However, negotiations must be characterized by the principle of good faith, which means that the
The negotiator's commitment to good faith is not in its ordinary sense, which goes to the obligation of the contract to implement the contract according to what it included in a manner consistent with what requires good faith. Still, what is meant by good faith in negotiation or the stage before the contract, which is honesty and honesty through the exchange of discussions and dialogues towards the other negotiator, so some have known good faith in negotiations to deal honestly and negotiate in a way imposed by honesty and integrity in dealing. As long as there is an agreement to negotiate, the parties must do it in good faith (Baroud 2016). Legislators and courts use commitment in good faith to comprehensively make the moral norm permeate the legal base until the pre-contractual stage (Guillemard, 1994).

4.1.3 III: Obligation of confidentiality

As important as the stage of negotiations leading up to the contract, as much as it is a dangerous stage, so most modern legislation has given importance to it, and the fact that negotiations require that each negotiator be informed of the circumstances of the contract or deal and therefore may see the negotiators on information that is confidential so that it falls on the emancipation of the negotiator who saw it an obligation not to disclose it to others, and not to exploit it for his benefit. They are the reason for the material profit he gets. It is worth noting that confidential information is the one that the owner sees as confidential and must be preserved. If it is no longer so from the point of view of its owner, it is not considered a matter of disclosure as a mistake that entails responsibility for the perpetrator (Lamia and Zakari, 2023). Thus, the secret is a piece of information entrusted to someone (other than the donor) to maintain, as the owner's will to grant the report is a crucial element in the declaration of confidentiality. The confidentiality obligation is not absolute, especially in technology transfer contracts, but it is a relative obligation even for people and the duration and subject matter. Not all subjects or technical information, documents, and documents presented in negotiations are characterized by confidentiality (Lamia and Zakari, 2023).

4.2 THE LEGAL NATURE OF THE NEGOTIATIONS LEADING UP TO THE CONTRACT

There must be an obligation and a breach of civil liability for an act; if the responsibility is one of the principles stipulated by the law, such as refraining from acting...
in a way that causes harm to others, then the liability is in tort. Thus, according to the above, it is possible to adapt the negotiations leading up to the contract as mere material facts. Therefore, they do not generate obligations between the parties or as legal actions that cause reciprocal commitments that must be carried out and not breached.

Therefore, we will deal with the assumption that the negotiations leading to the contract are material facts or that they are contractual negotiations, each in a separate section as follows:

4.2.1 I: Negotiations leading to the contract material facts

As it is known, it is necessary to understand the origin of the material fact so that the negotiations leading to the contract can be adapted as a material fact or not. As we know, material facts are the physical activity that occurs and is felt by the law with a legal effect, and this act can be optional and happens by action and choice. Will of the person who owns the incident and results in the emergence or demise of a right without this person having intended to obtain this right or its disappearance as is the harmful act or a beneficial act, as is the case of gain without reason, and in both cases, the law has a legal effect represented in most of its forms (compensation), whether as a result of the occurrence of damage, whether by the harmful act or by lack as a result of the enrichment of the opposite person. These facts may occur without human intervention in their occurrence. However, the law entails legal effects on them represented in the acquisition of rights or in their expiry, as is the case in birth and death, as birth is a gain for fairness, while death is a forfeiture of rights. Therefore, if we want to make the nature of the negotiations leading to the contract material facts, considering that the intention or will of the contractors towards achieving the legal effect of concluding the final contract is that effect that may be the result of the legal action, but this effect is not inevitable, meaning that the negotiators in the period of negotiations have the freedom to achieve this effect or not as it follows their conviction in the extent of achieving the economic feasibility of the contract. Therefore they have complete freedom in Contracting, and consequently, the question of concluding the final contract is not inevitable. As we know that the principle of freedom of contract of the regulations in force in jurisprudence, where every person is free to enter into the contract in most contracts, and therefore if the parties entered before contracting in the negotiations, that pave the way for the conclusion of the final contract in the event of agreement on all the essential points of the contract.
Therefore, any breach in the period of negotiations has a legal basis for tort liability, even for the intentional interruption of negotiations or error or fraud that would lead to the end of not reaching the contract when the other party (the aggrieved) proves the fault of the first party. (Salihah, 2006) (Teresa inverso, rupture abusive des pourparlers en droit francais et en droit Anglo-Saxon, Ire parution 30 Avril 2021). Suppose we want to search for the basis of the breach of the obligations imposed on the parties in terms of good faith and to refrain from interrupting negotiations without a legitimate excuse, lack of cooperation, or lack of Commitment to confidentiality. In that case, it can be traced back to the error, which is the basis of tort liability. The fact that the error is any act or act issued by the will of the perpetrator, it is conceivable to cut off the negotiations Without a legitimate excuse or lack of seriousness in negotiations or procrastination in them, that is, in all cases where it is possible to imagine a breach or wrongdoing is in bad faith.

4.2.2 II: Negotiations leading to the contract of a contractual nature

Entering into and proceeding with negotiations as a natural result is intended for both parties to know all the accurate information about the essential points of the contract so that the negotiating parties are certain, at their end, whether or not to enter into the contract. And the conviction in this requires that all the negotiating parties have obtained the actual conditions of the contract, which means that everything put forward by the negotiating parties during the negotiations must be correct and done in good faith. That was mentioned earlier regarding the obligations of the negotiating parties, and this led some to say that the negotiations leading to the contract are contractual. Therefore any breach of any responsibility on the parties to the negotiation raises contractual liability. The place of negotiations is the conclusion of the final contract, and without this contract would not have entered the parties in the negotiation. Therefore, according to this point of view, the negotiations that took place before signing the actual contract are rendered obsolete by signing the final contract. In addition to the principles on which the negotiations are based on the existence of good faith, cooperation, the exchange of information, and Commitment to confidentiality, all the information that the parties may obtain according to the eyes of its owner is considered confidential and must not be disclosed, are obligations that the parties must not violate. Any breach that occurs would give rise to contractual liability.
According to the preceding, the disclosure of the legal nature of civil liability arising from the breach of obligations imposed by the negotiations depends on the adaptation of the negotiations leading to the contract as material facts or of a contractual nature. The negotiations leading up to the contract are material facts. They are the closest to the right because if we look at the obligations received by the negotiations are opposite and similar. For example, all negotiators must commit to good faith and cooperation, continue negotiations, and only cut them with the right or procrastination. We find that these obligations have a legal basis not to harm others, which is one in all negotiations leading up to any contract, so if we want to consider the negotiations leading up to the contract as a contract, it is a negotiation contract. Therefore the legislator must regulate it in some detail as it is unified for all contracts but is called the negotiation contract is a designation. The penalty for breach of the contract according to the general rules must first be the implementation in kind. If the implementation is impossible, the implementation is made for a fee, so how can the implementation in the category be envisaged in the negotiations? Therefore, responsibility cannot be considered on the basis that the negotiations are purely contractual, it cannot be considered inviting one party to negotiate as an offer nor the acceptance of the other party to enter into negotiations as acceptance, and therefore contractual responsibility is based on the existence of the contract. The breach falls into one of the obligations of the contract. Still, the negotiations leading to the contract are not a contract because the latter is when the offer issued by one party is linked to the acceptance of the other in a way that proves its impact on the contract, even if we assume the negotiations leading up to the contract shall be replaced by the conclusion of the final contract, as the latter cannot be confirmed in advance, as it may or may not be held. Therefore, if we want to adapt the civil liability of the negotiations leading to the contract, this follows the will of the negotiators about the thing that is intended to reach it from the negotiation, whether to reach the conclusion of the final contract or to reach conviction in the conclusion or not, in the last assumption to get a sentence in the conclusion or not and the reason for the negotiation is to be informed by the parties of the conditions of the contract and the final contract to reach conviction or not. It is possible to adapt the negotiations as a contract that is supposed to be implemented in good faith and therefore any Breach of the principles that have been mentioned earlier will raise contractual liability, but if the negotiations are adapted as their place is the conclusion of the contract, it is not possible because the conclusion is not the inevitable
will of the negotiators, it follows their conviction and therefore the negotiations are just a material fact in which the parties are supposed to commit not to harm others by violating the basic principles of the negotiations, otherwise it will be raised tort liability against the breaching person. If we go to the effect of the breach, we will find the most spacious place to apply it is compensation, which we always find the most applicable in tort.

5 CONCLUSION

After completing research on the subject (the legal nature of the negotiations that led to the contract), the contract will be drafted. The findings indicate that Negotiations leading to the agreement are considered a set of preliminary procedures carried out by the negotiating parties that precede the conclusion of the contract in a final manner, the purpose of which is to dialogue and discuss the essential elements of the agreement to ensure that the feasibility of the deal is reached. Negotiations can be the distinction or criterion that differentiates general contracts from contracts of acquiescence. These negotiations cannot be envisioned in terms of compliance assurances. The difference between negotiations leading to an agreement and the contract is that the contract is a link between the offer and acceptance, whereas negotiations cannot be viewed by one party as an offer and by the other as an acceptance; negotiations are an exchange of views and discussions about the contract, not the conclusion.

4- The negotiations leading up to the contract cannot be considered an offer; they are merely an invitation to negotiate, and even if the other party agrees to negotiate, he does not consider this as an approval of a previously issued offer. The negotiations leading up to the contract must adhere to good faith, confidentiality, and contract freedom. The civil liability of negotiators fluctuates between tort liability and contractual liability. The parties' mutual obligations are defined and unified based on the same fundamental principles upon which the negotiations are founded. They exclude the notion that the negotiations leading up to the contract are contractual. Nonetheless, it may be regarded as such if governed by express legal provisions and a named contract.

Therefore, we recommend that the national legislator organize the negotiations leading up to the contract with some organization and in all respects and under a contract called the negotiation contract, at least there are general principles followed by all contracts that must be negotiated before their conclusion so that there is greater certainty and clarity in the determination of contracts, thereby reducing the number of disputes that
may arise during the implementation of contracts. Organizing negotiations under the guise of a contract will provide more options for concluding the talks in a way that achieves the negotiators' goals. It will prevent the negotiations from becoming merely a station through which the parties may seek to obtain information that may be essential and confidential to its owner and for which, if disclosed and broadcast, compensation may be unrewarding for the owner. We also recommend that the legislator be stricter on the sanctions imposed for breach of negotiations, mainly if the contract is commercial or related to the country's economic activity. To emphasize the critical role played by the negotiations by keeping all negotiating parties informed, informed, and in agreement on all the essential elements from the contract's inception to its conclusion, even in the event of a dispute involving him, the legislator should include a paragraph in the negotiations to be agreed upon regarding the arbitration clause if a controversy mars the contract. It would make it easier for the judge to decide on the debate. We also recommend that the Iraqi legislator follow the example of the French legislator in terms of giving utmost importance to the stage of negotiations by making it a step before the conclusion of the contract definitively by providing two deadlines to the contractor, one for reflection and the other for reversal.
REFERENCES


