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Obligations Arising from the Negotiation Phase of Contracts for Exploitation of Industrial Property Rights and the Penalty for Breach Thereof

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Abstract :

The negotiation phase of contracts for the exploitation of industrial property rights is an essential preliminary stage prior to the conclusion of the final contract, as the framework that allows the negotiating parties to understand the object of the contract and clearly define the terms of the exploitation. This stage entails a set of obligations on the negotiators that derive their existence from the principle of good faith as the basis for international commercial transactions.

This article aims to study these obligations and determine the penalty for breach of them, in particular civil liability and compensation for damage. The article concludes that establishing an effective legal system to regulate the negotiation phase would strike a balance between the parties' freedom to negotiate and ensure the security and stability of this stage, in a way that limits any arbitrariness and ensures the protection of the injured party in the event of a breach of these obligations.

Keywords: Negotiation, Industrial Property Rights Exploitation Contracts, Obligations, Civil Liability, Compensation.

Introduction:

Industrial property rights occupy an important place within intellectual property rights, given the legal protection they grant to industrial and commercial creations, such as inventions protected by patents, trademarks or industrial designs, which made them the subject of investment through multiple legal contracts that guarantee the owners of these rights the possibility of benefiting from them economically, the most prominent of which are contracts for the exploitation of industrial property rights, which include licensing contracts in their simple form, such as the license contract to use a patent or an industrial model, and more complex contracts such as vantage contracts, which combine several industrial property rights¹.

Despite the acquiescence nature of this type of contract², in which the grantor who owns the transferred industrial right prepares the terms of the contract in advance without the possibility of discussing them by the recipient, the contractual process, especially for compound contracts, is often preceded by a basic preliminary stage, represented by the negotiation stage, as the framework that allows the parties to clarify their legal and economic positions and to arrive at a clear conception of the contract to be concluded.

In this regard, we would like to point out that the negotiation process, despite its great importance, has not been legally regulated in Algeria like most comparative legislative systems, which has created a legislative vacuum regarding the obligations arising during it, as it is generally subject to the principle of good faith, as a criterion for controlling the conduct of the parties during negotiations.

The importance of the study lies in the fact that it deals with a basic stage of contract formation, namely the negotiation stage, which is very specific in industrial property rights exploitation contracts due to their special nature and

¹ Amal Ben Azza, *Al-Wafi in Industrial Property Contracts*, 1st Edition, Al-Wafa Legal Library, Egypt, 2023, pp. 110-126.

² Nadia Lakli, *Al-Wajeez fi Industrial Property Contracts*, Dar Laima Publications, Tipaza, Algeria, 2025, p. 14.

the intertwining interests of the parties therein. The study aims to shed light on the obligations of both the grantor and the recipient at the negotiation stage, while identifying the consequences of their breach.

Based on the above, the main problem can be raised as follows: What are the negotiating obligations that govern the negotiation stage in contracts for the exploitation of industrial property rights, and what are the legal consequences of violating them?

In order to answer this problem, the study has been divided into two main axes, the first axis deals with the obligations arising from the negotiation stage in contracts for the exploitation of industrial property rights, while the second axis is devoted to the study of the penalty resulting from the breach of these obligations. In this regard, we will follow the analytical method, given its suitability to the nature of the subject, while resorting to the various relevant jurisprudential opinions whenever necessary.

First Topic: Obligations Arising from the Negotiation Stage in Industrial Property Rights Exploitation Contracts

The obligations of both the giver and the recipient during the negotiation phase are classified into core obligations, which are imposed on the negotiating parties regardless of the existence of an agreement that provides for their commitment, and subsidiary obligations aimed at protecting the information exchanged and ensuring transparency in dealing between the parties.

First requirement: Basic obligations

The main obligations are the obligation to negotiate by initiating and continuing it, which is subject to a basic code of conduct of negotiation in accordance with the principle of good faith and honour of dealing, as a fundamental obligation to ensure the integrity and integrity of the negotiation process.

Section One: Commitment to Negotiation

The obligation to negotiate is not limited to simply declaring a willingness to contract, but extends to two interrelated duties: to begin and continue the negotiation.

The obligation to begin negotiations requires that both the grantor and the recipient initiate the negotiation of the terms of the contract seriously and not take them as a means of procrastination and misleading, especially for complex contracts that require prior preparation and the exchange of accurate information compared to simple¹ contracts.

At this stage, the negotiating parties meet and the negotiation sessions are opened, during which views are exchanged, proposals are discussed and alternatives are proposed, as well as legal, financial and technical studies related to the movable industrial right under negotiation², and familiarity with the national laws of the two countries, especially those related to investment, competition, export and import, in order to pave the way for reaching a stable and reliable agreement³.

Thus, the obligation to commence negotiations constitutes an obligation to achieve a result, without the need to explicitly stipulate it in the negotiation contract, since a breach thereof would result in the contractual liability of the breaching party⁴.

For his part, the commitment to continue the negotiation is a complementary obligation to start the negotiations, as there is no point in entering into negotiations unless there is continuity in it, which enhances trust between the negotiating parties and ensures that⁵ the final contract is reached.

Once both the grantor and the recipient have agreed to commence the negotiation sessions, they shall continue the process by making every effort to reach the conclusion of the final contract⁶, and to refrain from any conduct that would interrupt or withdraw from the negotiations without a serious or objective justification, which expresses the bad faith of the negotiating party and entails its legal liability for damages to the other party⁷.

However, this does not preclude the interruption or withdrawal of negotiations from them, when it is established that there are serious or objective reasons justifying the termination of the negotiations. Negotiations may also end for reasons beyond the control of the negotiating parties, making it impossible to continue the negotiations. In such cases,

¹ Nadia Lakli, op. cit., p. 47.

² Ahmed Abdel Karim Salama, *The Legal System for International Contract Negotiations*, Egyptian Journal of International Law, No. 56, 2000, p. 62.

³ Nadia Lakli, op. cit., p. 48

⁴ Jean CEDRAS, "The obligation to negotiate", *Rev. trim. commercial law*, 1985, p 279.

⁵ Hossam El-Din Kamel Al-Ahwani, *Negotiations in the Pre-Contractual Period and the Stages of Preparing the International Contract*, Journal of Legal and Economic Sciences, Vol. 38, No. 2, Faculty of Law, Ain Shams University, 1996, p. 11

⁶ Joanna SCHMIDT-SZALEWSKI, "The pre-contractual period in French law", *International Rev. of Comparative Law*, n° 2, 1990, p. 560.

⁷ Ali Ahmed Saleh, *Negotiations in International Trade Contracts*, Dar Houma, Algeria, 2011, p. 388.

there is no way to be responsible, as long as the negotiating parties have done everything in their power to ensure that the negotiations proceed towards their purpose¹.

In this description, the obligation to continue to negotiate constitutes a serious step towards the conclusion of the contract, without being interpreted as an obligation to conclude the final contract, as it remains an obligation on the parties to exercise the necessary care to avoid the failure of the negotiation process². The importance of this obligation is demonstrated in the case where the negotiating parties are making advanced progress in the negotiations on the transferred industrial right³. In the event that the substantive issues are agreed upon and the conclusion of the contract is suspended on the agreement on the secondary issues, the obligation to continue the negotiation remains, with the possibility of liability in the event of arbitrary withdrawal⁴.

Section Two: Commitment to Negotiate in Good Faith

Good faith in negotiation assumes the commitment of the grantor and recipient to conduct the negotiation honestly and honestly, and to be transparent and clear in the presentation of information without misleading or concealing substantive issues⁵. This obligation accompanies the negotiating parties at all stages of the negotiation, from the declaration of their willingness to negotiate, through the continuation phase, to the stage that determines the outcome of the negotiation process, either by concluding the final contract or ending the negotiations, without being accompanied by cheating, misleading or arbitrarily interrupting the⁶ negotiations.

Good faith does not abolish the freedom of negotiation, which means the freedom of the parties to enter into negotiations or not, continue or withdraw from negotiations, but rather regulates them in a way that limits the use of this freedom as a means of deception, procrastination or exploitation of the other party⁷, especially in contracts for the exploitation of industrial property rights where the recipient is the weaker party in terms of technical knowledge.

Second requirement: Sub-obligations

In addition to the basic obligations governing the negotiation process, equally important subsidiary obligations arise relating to the obligation to inform and confidentiality, as well as the obligation not to enter into parallel negotiations, which ensure the protection of sensitive information and ensure transparency in dealing between the parties.

Section I: Obligation to inform

The obligation to inform is one of the most important obligations of both the grantor and the recipient, although it is strict on the part of the grantor⁸, in view of the technical nature of the transferred industrial right under negotiation, which makes the recipient, as the weakest party in the contractual relationship, in a situation of knowledge inequality compared to the grantor⁹, which requires providing him with all the essential information and basic data, so that he is aware of his situation during the contract¹⁰.

The obligation to inform, or the so-called «obligation to inform», refers to the duty of one of the parties to the contract, who is in a stronger legal position, to notify the other party at the time of the formation of the contract of all the necessary information and data, in order to find a sound and informed consent of the weak party¹¹. This obligation is based on the principle of good faith, which requires each party to act honestly and transparently, and to avoid anything that may mislead the other party or conceal material data that affects its decision after the contract¹².

¹ .Rajab Karim Abdallah, *Negotiating the Contract*, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 448

² Jean-Marc LONCLE, Jean-Yves TROCHON, "The Negotiation Phase in International Contracts", *International Business Law Review (RDAI/IBLJ)*, n° 01, 1997, p 16 et seq.

³ Jean CEDRAS, *op.cit.*, p 279.

⁴ Rajab Karim Abd Allah, *op. cit.*, p. 449.

⁵ Larbi Belhadj, "The Problems of the Pre-Contracting Stage in the Light of the Algerian Civil Code and the Latest Jurisprudence of the Supreme Court: A Comparative Study", *Diwan of University Publications*, Algiers, 2017, p. 89.

⁶ Ahmed Abd al-Karim Salameh, *op. cit.*, pp. 63-64.

⁷ Moammar Boutabala, *The Legal Framework for the Negotiation Contract in the Negotiations of International Trade Contracts*, Ph.D. Thesis, General Law, University of the Brothers of Mentory, Constantine, Algeria, 2016-2017, p. 74.

⁸ Nadia Lakli, *op. cit.*, p. 49.

⁹ Walid Ali Maher, *Insight into Technology Transfer Contracts – A Comparative Study*, 1st Edition, Studies Center for Publishing and Distribution, Egypt, 2018, p. 103.

¹⁰ Amal ibn 'Azza, *op. cit.*, p. 140.

¹¹ Saeed Saad Abdel Salam, *Obligation to Disclosure in Contracts*, Dar Al-Nahda Al-Arabiya, Egypt, 1999, p. 8.

¹² Al-Arabi Belhaj, *op. cit.*, p. 87.

In this context, providing the grantor with the necessary information about the transferred industrial right provides the possibility of conducting a feasibility study, which allows him to assess the extent of the exploitation of the industrial right, and its suitability to the needs and taste of the consumer in the local market, taking into account the financial resources, their adequacy, and the potential risks of the project¹.

Thus, the scope of the information that the grantor must provide to the recipient expands to include all aspects of the transferred industrial right under negotiation, especially when it comes to compound contracts. At the forefront of this information is the legal status of the industrial right in terms of the scope of protection provided for it, the extent to which there are legal or administrative disputes in respect of it², and the transfer of technical knowledge related to the industrial right, which forms the basis of the obligation to inform, as it plays an important role in enabling the recipient to benefit from technology³.

In this context, we would like to point out that there is a difference in the form in which the obligation to notify is discharged according to the nature of the contract to be concluded. For complex contracts, such as a franchisor contract, the negotiating parties often include the obligation to notify either as a condition in the negotiation contract or in a separate agreement. This is in full conformity with what the French legislature has approved under the provisions of Article L.330-3 of the Commercial Code⁴, where it is stipulated that advance notification be made in the form of a written document known as a "pre-disclosure document"⁵, which the grantor is obliged to deliver to the recipient at least twenty (20) days before the signing of the final contract, including all legal, financial and commercial documents related to the project.

On the other hand, such a formal obligation is not required for simple contracts, where the negotiating parties are free to discharge it in contractual form or to dispense with it in order to achieve their interests. Although the written waiver of the obligation to inform in advance remains the best means of proof in the event of a dispute, the burden of proof is primarily on the defendant – the grantor – by not informing.

Section Two: Obligation to Maintain the Confidentiality of Information

It is a joint obligation between the grantor and the recipient, but it is more stringent on the part of the recipient as the party obtaining the technical and technical information relating to the industrial right under negotiation, imposing an obligation on the recipient to refrain from disclosing or using such information outside the scope of negotiations, in compliance with the principle of good faith in commercial transactions⁶.

Accordingly, the parties to the negotiation process must define precisely the scope of the obligation to maintain confidentiality, in terms of the object, i.e., the nature of the information protected, whether technical, commercial or financial, in terms of the time, i.e., the duration of the obligation of confidentiality during or after the negotiations, as well as in terms of the persons who have access to the content and secrets of the technology transferred, such as experts, engineers and technical advisers.⁷

This obligation has been discharged in written form, either as a condition of the negotiation contract⁸ or in a separate agreement⁹ known as the "NDA", which is valid during the negotiation period whether or not the final contract is concluded, and for an agreed period if it exists or within a reasonable time.

Section Three: Commitment not to enter into parallel negotiations

It is also called the "exclusivity clause" or the "exclusion clause", whereby the negotiating parties or one of them, often the recipient, undertakes not to enter into parallel negotiations with a third party on the same subject matter of the transferred industrial right for a limited period of time, under a clause in the negotiation contract or in an independent agreement¹⁰. This obligation is thus an obligation to refrain from acting, aimed at protecting confidential information, especially those relating to the transferred industrial right provided by the grantor, in order to ensure that it is not disclosed or exploited outside the framework of the negotiation.

¹ Amal ibn 'Azza, op. cit., p. 134.

² Naim Moghabgheb, *The Franchise: A Study in Comparative Law*, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2006, pp. 141-144.

³ Walid Ali Maher, op. cit., p. 107.

⁴ The obligation to inform was enshrined by Law No. 89-1008 of December 31, 1989, known as the before it was later incorporated into the French Commercial Code under Article ,Loi Doubin Act L.330-3 with its provisions detailed in the regulatory articles contained in the same Law ,R.330-1 and R.330-2.

⁵ Pre-Contractual Information Document – DIP.

⁶ Ali Ahmed Saleh, op. cit., p. 482, pp. 486-487.

⁷ Dergham Mahmoud Kazim, *The Legal Status of the Recipient in the Technology Transfer Contract: An Analytical Study*, 1st Edition, Al-Halabi Human Rights Publications, Lebanon, 2017, p. 183

⁸ Jean-Marc LONCLE, Jean-Yves TROCHON, op.cit., p 7.

⁹ Joanna Schmidt, *Negotiation and Conclusion of the Contract*, Dalloz, Paris, 1982, p. 258.

¹⁰ Nadia Lakli, op. cit., p. 50.

Moreover, the fulfilment of this commitment would enhance confidence between the negotiating parties, especially in the case where the negotiations make significant progress towards the conclusion of the final contract, as the conduct of parallel negotiations may cause serious harm to the counterparty that is forced to withdraw or cease negotiations, resulting in the loss of their time, effort and money¹.

Second Topic: Legal Consequences of Breach of Negotiation Obligations

The breach of the obligations imposed on them by one or both parties to the negotiation process during the negotiation phase gives rise to the civil liability of the breaching party, which raises the problem of determining the nature of such liability. The establishment of liability also entails the right of the injured party to claim compensation for the damages suffered. The nature of the liability and the provisions of the compensation will be treated as the civil penalty resulting from such breach.

First Requirement: Adaptation of Civil Liability Arising from Breach of Negotiation Obligations

Contracts for the exploitation of industrial property rights raise the question of determining the legal nature of the liability established during the negotiation stage. Is it a liability of a contractual nature, or is it liability of a tort nature? In this context, modern jurisprudence in determining the nature of liability has distinguished between two types of negotiations, negotiations that are not organized by a contract of negotiation, and negotiations organized by a contract of negotiation.

Section I: Negotiations that are not structured by a contract of negotiation

Unstructured negotiations are those that take place between the two negotiating parties, without an explicit agreement regulating them². This type of negotiation is the dominant form in simple contracts related to the exploitation of industrial property rights³, usually due to the clarity of the scope of the contract and the low risk associated with it, especially those related to the exchange of sensitive and substantive information.

Accordingly, the majority of jurisprudence tends to consider negotiations that are not accompanied by a negotiation contract as merely a material act that does not amount to a legally binding act⁴, and therefore civil liability for arbitrary interruption of negotiations is adapted as tort liability⁵. Based on a breach of a general legal duty of good faith in negotiation⁶.

Pursuant to the principle of freedom of negotiation, each party to the negotiation process is free to enter into or withdraw from negotiations at any time, without incurring any legal responsibility and without demanding the justification of such withdrawal, as it is not obliged to continue the negotiation until its conclusion based on the conclusion of the final contract⁷. However, this freedom is not absolute, as they remain obliged to respect the requirements of good faith and the honour of dealing, especially if the negotiations are advanced and the aggrieved party believes that the final contract will inevitably be concluded.

Accordingly, if the interruption or reversal of negotiations is accompanied by an error that has caused harm to the other party, in such a case the tortious liability of the party who committed that mistake is determined, even though the privacy of the technical information associated with the contracts for the exploitation of industrial property rights contributes to the extension of the scope of the error to include other behaviors such as disclosure of trade or technical mutual secrets, providing misleading information about the transferred industrial right that is the subject of the contract, and other conduct contrary to good faith and honor of dealing⁸.

Accordingly, the error does not have to be deliberate, but it is sufficient that it is the result of negligence or negligence without the intention to cause harm, as the fault in this case is measured by an objective criterion based on comparing the conduct of the negotiator with that of an ordinary man in the same circumstances to ascertain whether it constitutes a deviation from the usual conduct⁹. The judge assesses this based on the analysis of the circumstances surrounding the incident in dispute, for example, did one of the parties neglect or refrain from providing material information about the movable industrial right that is the subject of the contract? whether the negotiations were at the beginning or at an advanced stage? and whether the parties had a previous dealing? If this deviation is proven, he will

¹ Muammar Boutabala, op. cit., p. 170.

² Ali Ahmad Saleh, op. cit., p. 667.

³ Muammar Boutabala, op. cit., p. 186

⁴ Béregère LASSALLE, "The Talks", Rev. Legal Research, n° 3, 1994, p. 849.

- Joanna SCHMIDT, op.cit., p 50.

- Joanna SCHMIDT-SZALEWSKI, op.cit., p 547.

⁵ Philippe LE TOURNEAU, "The Breakdown of Negotiations", Rev. Trim. Commercial Law, n° 3, 11/1998, p 483.

⁶ Jean CEDRAS, op.cit., p 265 ss.

⁷ Philippe LETOURNEAU, op.cit., p 483.

⁸ Al-Arabi Belhaj, op. cit., p. 247.

⁹ Ali Ahmed Saleh, op. cit., pp. 690-691

adapt it as a tort error, and continue to examine the other elements of liability in order to determine compensation in proportion to the actual damage that follows.¹

In this context, we would like to point out that in view of the difficulty of proving fault on the part of the aggrieved party², and the fact that simple contracts related to the exploitation of industrial property rights are mostly based on the disclosure of valuable technical information that may affect the will of the contractors, both the grantor and the recipient may resort to concluding some preliminary agreements that ensure the smooth conduct of the negotiations and protect their interests during this stage, most notably the confidentiality agreement, the obligation to information agreement and the exclusivity agreement referred to above.

The conclusion of these preliminary agreements during the negotiation phase has an important legal effect in that the nature of liability arising from breach of obligations arising from tort liability based on injury to injury to contractual liability based on non-performance of the agreed obligations³ is shifted.

Section Two: Negotiations Organized by Contract of Negotiation

Negotiations organized by a contract of negotiation are those negotiations whose parties agree to be framed by an explicit agreement to be ⁴negotiated. This type of agreement appears especially in complex contracts, such as a franchise contract, which includes the provision of essentially sensitive information about the transferred industrial right under negotiation, in particular related to the transfer of technical know-how, which requires both the grantor and the recipient to engage in in-depth negotiations that are often prolonged, and the parties bear significant expenses related specifically to mobility and meetings, feasibility study, legal and financial consultations, the provision of technical information and framing⁵, the largest share of which is borne by the recipient as the party seeking the license.

In this context, the negotiation contract appears as a necessary preliminary stage for the framing of the negotiation process, as an interim contract according to which the negotiation process that paves the way for the conclusion of the final contract begins⁶, where both the grantor and the recipient are keen to include in this contract a set of clauses, one of which relates to the proper conduct of the negotiations by controlling their scope and duration, and the other aspect aims to ensure the seriousness of the negotiations, including the commitment to good faith, the provision of the necessary information, the maintenance of the confidentiality of this information and the non-arbitrary interruption of the negotiations.

Thus, in this case, the negotiations shift from a mere non-binding material act to a binding legal act, and the nature of liability thus changes from tort to contractual liability. It follows ⁷that the breach by one party to the negotiation process by the performance of one or some of the agreed obligations, when it results in injury to the other party, is a breach of a contractual obligation that requires the breaching party to be held accountable on the basis of the rules of contractual liability and the consequent compensation for the damages resulting from such breach⁸.

Second Requirement: Compensation for Damages Caused by Breach of Negotiation Obligations

A breach of the negotiating obligations entails the right of the injured party to claim compensation for the damages suffered as a result of such a breach. The prevailing jurisprudence has tended⁹ to exclude performance in kind in this case, even if the execution is neither impossible nor burdensome for the debtor, in view of the nature of these negotiations, which are based mainly on the principle of contractual freedom, with which the other negotiator may not be forced to enter into or continue the negotiations, and therefore the aggrieved negotiator has no way to obtain compensation except through performance for consideration.

Section One: Estimation of Monetary Compensation

The principle in estimating monetary compensation is that the judge first refers to the content of the negotiation contract, if any, or any independent agreement, to ascertain whether the negotiating parties have predetermined the amount of compensation, which is known as the "penal clause" or "contractual compensation". However, he retains the discretion to control it by reducing it if the debtor finds that the compensation was excessive or that the obligation has been partially

¹ Jean-Marc LONCLE, Jean-Yves TROCHON, op.cit., p 54.

² Al-Arabi Belhaj, op. cit., p. 15.

³ Al-Arabi Belhaj, ibid., pp. 224-225.

⁴ Muammar Boutabala, op. cit., p. 190.

⁵ Ahmed Abdel Karim Salameh, op. cit., No. 56, 2000, p. 55.

⁶ Ahmad Abd al-Karim Salameh, ibid., p. 57.

⁷ Al-Arabi Belhaj, op. cit., 236.

⁸ Amal ibn Azza, op. cit., p. 146.

⁹ Ahmed Abd al-Karim Salameh, op. cit., p. 74

- Jean CEDRAS, op.cit., p 281.

- Joanna SCHMIDT-SZALEWSKI, op.cit., p 564.

- Béregère LASSALLE, op.cit., p 856.

performed¹, or by increasing its value if the damage exceeds the amount of the agreed compensation and the creditor proves that the debtor has committed fraud or gross error².

In the absence of such a requirement, or the negotiation process is not framed under a written contract, the judge shall assess the appropriate compensation, which is required to include the direct damage foreseeable, which is a natural consequence of the failure to perform the obligation, i.e., the creditor could not have expected it with reasonable effort, i.e., the compensation shall include the creditor's right to and its lost gain³.

The question arises in the negotiation stage regarding the adoption of lost profits as a basis for estimating compensation, considering that the final contract has not yet been concluded, which has led some jurisprudence to narrow the application of the rule of loss of profits to estimate compensation, and thus not to compensate the profits that the injured negotiating party was expected to make from the contract to be concluded⁴, except to the extent of the damages resulting from the missed serious opportunities due to the breach of the negotiating obligations.⁵

Section II: Scope of Compensation

Compensation includes material and moral damages suffered by the party against whom the obligations were breached, which includes a variety of factors, the most important of which are: negotiation expenses, damage resulting from loss of time, damages resulting from the disclosure or exploitation of confidential information, as well as compensation for commercial reputation and loss of opportunity⁶.

First: Compensation for Negotiation Expenses

Negotiation expenses shall mean those expenses incurred by the aggrieved negotiating party during the negotiation process, such as travel and accommodation expenses, expenses for conducting preliminary studies, economic feasibility studies, and costs of preparing expertise, which constitute an actual loss that requires compensation when the causal relationship between such expenses and the negotiation process that ended in failure is achieved⁷, provided that such expenses are not excessive, as the negotiator is liable only for reasonable expenses⁸.

Second: Compensation for missing the opportunity

In this case, we distinguish between two hypotheses:

The first assumption: Compensation for the missed opportunity to conclude the final contract: This issue has sparked a wide jurisprudential debate between a party opposed to the idea of compensation for the loss or loss of the opportunity to conclude the contract under negotiation, which in our case is the contract for the exploitation of the transferred industrial right, considering that this contradicts the nature of the negotiation contract as it is a preliminary contract for the conclusion of the final contract, which assumes that the completion or non-completion of the final contract remains a possibility⁹. How is compensation done in the absence of serious and realized opportunities? ¹⁰.

A supporter of the idea considers that in the event that it appears from the circumstances that the negotiations were nearing its conclusion, and that the parties were about to reach an agreement on the final contract, the reckless termination of the negotiations without serious justification in light of the existence of a real and certain chance of concluding the final contract is considered a harm that requires compensation¹¹.

Hypothesis II: Compensation for the loss of the opportunity to conclude an alternative contract: Some jurisprudence supports the possibility of compensating the aggrieved negotiating party for the missed opportunity to conclude an alternative contract with a third party, provided that the alternative opportunity is serious, genuine and exists¹². However, this may raise some difficulties in proving that the aggrieved negotiator would have certainly entered into an alternative contract to the contract under negotiation, and the amount of compensation may be small if the party responsible for interrupting the negotiations was at¹³ fault.

¹ Article 184 of the Egyptian Constitution, corresponds to Article 1231-5 of the French Constitution, and Article 223 of the Egyptian Constitution.

² Article 185 of the Criminal Code.

³ Article 182 of the Criminal Code.

⁴ Rajab Karim Abd Allah, op. cit., pp. 633-634.

⁵ Muammar Boutabala, op. cit., p. 230.

⁶ Ali Ahmad Saleh, op. cit., p. 765.

⁷ Muammar Boutabala, op. cit., p. 224

⁸ Joanna SCHMIDT, op.cit., p 106.

⁹ Jean-Marc LONCLE, Jean-Yves TROCHON, op.cit., n° 01, 1997, p 33.

¹⁰ Martina SUCHANKOA, "The principles of UNIDROIT and pre-contractual liability in the event of failure of negotiations", *Revue de droit des affaires internationales (RDAI/IBLJ)*. No. 6, 1997, p. 694.

¹¹ Ahmed Abd al-Karim Salameh, op. cit., p. 76.

¹² Al-Arabi Belhaj, op. cit., p. 262.

¹³ Ahmed Abd al-Karim Salameh, op. cit., pp. 76-77.

Conclusion:

This study concluded that the importance of the negotiation stage in contracts for the exploitation of industrial property rights as the framework in which contractual will is formed and trust between the parties is built. Despite the absence of a detailed legislative organization for this basic stage in most legal systems, this did not prevent the consolidation of protection for the negotiating parties through the establishment of a set of obligations, which contributed to the general principle of the law, on top of which is the principle of good faith and the honor of dealing, supported by jurisprudential and judicial jurisprudence, where breach of it entails the establishment of civil liability.

In a related way, the organization of the negotiation phase according to this framework ensures a balance between the parties' freedom to negotiate on the one hand, and the protection of their legitimate interests on the other, which constitutes a real guarantee towards enhancing the stability of transactions related to the exploitation of industrial property rights.

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