IJTIHAD Journal On Legal and Economic Studies ISSN: 2335-1039
Volume: 12 / Number: 02 Year 2023 P 51- 75

Received: 08/03/2022 Accepted: 20/04/2022

Conciliation is an alternative way to resolve conflicts "In the matter of the provisions of the Civil and Administrative Procedures Code"

CHIKH Nassima*[1]
Faculty of Law, Belhadj Bouchaib- University of Ain Témouchent(Algeria),
nassima.chikh@univ-temouchent.edu.dz

Abstract:

Conciliation is an alternative way to resolve disputes, as it dispenses with judicial litigation, and is based on allowing the parties automatically or at the request of the judge at any stage in the litigation to discuss participation in finding a consensual solution to their dispute, by waiving each of them part of their rights, and it is based on special procedures stipulated by the Algerian legislator in the Civil and Administrative Procedures Code.

Keywords:

Conciliation is an alternative way to resolve disputes, its legal nature, its elements, procedures, and effects.

INTRODUCTION

In the Code of Civil and Administrative Procedures, the Algerian legislator has developed alternative methods for

* Corresponding author

resolving disputes represented in conciliation, mediation and arbitration.

The subject of our research will be about conciliation, because ending the conflict between the litigants through conciliation leads to alleviating the burden on them because the litigation procedures in it are a lot of complexity and hardship, as they take a long time and require high costs, in addition to that it is closer to fairness because each of the parties to the parties knows without doubt his legal position in the dispute between them, conciliation reconciles hearts and puts an end to the grudges of souls and discord between members of the same family.

This is the fact that conciliation is permissible in Islamic Sharia[1].

The Algerian legislator has organized the provisions of conciliation in Articles from 459 to 466 of Civil Code[2], as Introduced legal texts in the Civil and Administrative Procedures Code promulgated by Law No. 08/09 Dated: February 25, 2008[3].

What are these provisions? How did the Algerian legislator deal with it?

This is what we will answer in this research, through two axes, in the first we go too far with the concept of conciliation and its pillars, In the second axis, he dealt with the conciliation procedures and its effects, following the descriptive and analytical approach.

The first topic: Definition of conciliation and its pillars

Exposing the nature of conciliation requires us to define conciliation in a first requirement, and then clarify its pillars in a second requirement.

First Subtitle: The concept of conciliation

In order to define the concept of sulh, we first discuss its definition in a first branch, then distinguish it from similar systems in a second branch, then its legal nature in a third branch.

Section one: Definition of conciliation

Article 459 of the Civil Code states: "Conciliation is a contract by which the two parties terminate an existing dispute or prevent a possible dispute, by mutually waiving his right to each of them".

Conciliation sulh we conclude from this text that reconciliation has three components, namely, that it is an existing or potential dispute, the purpose of which is the intention to resolve the dispute, and the relinquishment of each of the conciliators by way of exchange from his right, which we will present successively.

First: An existing or potential dispute

In order for conciliation to take place, it is required that there be a serious, existing or total dispute between the two conciliators[4], but if there is no existing or potential dispute, the contract is not a conciliation, as if the landlord waived to the tenant some of the undisputed rent when he was able to pay the rest, then this exemption from debt, not conciliation.

If there is an existing dispute that is brought before the judiciary and the two parties terminate it by conciliation, this conciliation is judicial, and it is stipulated that no final ruling has been issued in the dispute, otherwise the dispute ends with a ruling, not a conciliation, provided that the dispute submitted to the judiciary is considered to remain, and then there is a place for conciliation until if a judgment is issued in the dispute when

this judgment is subject to appeal by the methods of appeal established by law, and when a final judgment is issued that is not subject to appeal, a dispute may be found between the two parties over the implementation of this judgment or its interpretation.

This dispute, too, may be the subject of conciliation, but the question that arises is who will be reconciled?

It is not necessary that there be an existing dispute raised over the it is sufficient for the conflict to occur between the two parties, so it is compromise is to prevent this dispute, and in this case it is a non-judicial settlement it is not the subject of our research.

Second: Intent to settle the dispute

The two parties must intend by the conciliation the settlement of the shepherd between them, either by widowing him if it existed, or ptokih if it was possible.

If the parties do not intend to resolve the shepherd and faint, the contract is not considered conciliation, as if the two parties agreed to a specific way to exploit the disputed eye until the dispute is resolved regarding it by the court/this agreement is not considered conciliation because it does not lead to a settlement to the dispute.

But it is not necessary for the shepherd to consider all the issues in dispute in it between the two parties, the conciliation may address some of the disputed issues he settles it, and leaves the rest to the court, which will decide on it[5].

Third: Each of the conciliators relinquished their rights

In conciliation, each of the conciliators must reciprocate for each other his right.

If one of them did not deny anything of what he claimed, and the other did not deny each one what he is claiming is not conciliation, rather it is a mere relinquishment of the claim and an affirmation.

Parties, it does not arrange the validity of the thing decided, and it is not possible to claim its invalidity except by lifting it authentic bill an suit.

But if this waiver was issued in the form of a unilateral legal act or act the side or the unilateral will of its owner, it is not considered a judicial compromise/consent the rules of waiver of the lawsuit or surrender of the plaintiff shall apply to him as well we will see when distinguishing the conciliation of similar systems.

The second subsection: **Distinguishing conciliation from similar systems conciliation**

As we knew it previously, is distinguished from a group of systems as well sayyi statement:

First: conciliation and arbitration.

Conciliation is ambiguous with arbitration in that both of them aim to settle litigation without a court ruling, but arbitration differs from conciliation is a clear difference, in which the two parties agree on two forms to resolve their dispute.

The one who decides on the dispute in arbitration (compromis) are the arbitrators in sulh (transaction) they are the parties to the dispute themselves.

And arbitration it does not require a sacrifice on both sides, unlike conciliation, as the arbitrators like judges, they judge whoever they see as having a right to all of his rights.

Second: conciliation and abandonment of quarrels

Conciliation differs from abandoning quarrels in that conciliation is a sacrifice from two sides.

While leaving the litigation sacrifice from one side, which is the plaintiff.

Third: Conciliation and absolution:

Compromise differs from absolution in that the latter is a complete renunciation of the truth both sides, though from one of the sides, as for the conciliation agreement, it is partial both of them settle the dispute.

The third branch: the legal nature of conciliation

The jurisprudence did not care about the works of conciliation or conciliation that are issued by the judiciary relying on the agreement of the opponents, the trends of jurisprudence in this regard contradict each other. Shen's doctrines are gone.

The judgments of the judiciary were also disturbed and did not settle on there is only one reason for these works, and some opinions have been based on defining the nature of the work issued by the judge confirming the conciliation to the form in which it was issued in it, and if the conciliation was concluded in a report signed by the judge and the litigants, the settlement in this case is in fact a contract in which the judge the role of the notary.

But if the action is issued in the form of a ruling confirming the conciliation, and it is devoted to an agreement litigants, it is considered a judicial act and is subject to the rules of judgments.

This led the text of the Algerian legislator in article 990 of the code of civil and administrative procedure stipulate that: “The litigants may make claims automatically, or by Endeavour

from the judge", and in article 992 of the code of civil and administrative procedure that: "the conciliation shall be recorded in minutes signed by the litigants, the judge and the clerk". The Article 993 of the same law stipulates the following: "it is the conciliation report is an executive document, as soon as it is deposited in the registrar ».

Accordingly, we see that the legislator has not limited the role of the judge to prove the conciliation reached by the litigants, but has made conciliation between the two parties an internal matter.

The conciliation ratified by the court was considered a contract court, and the following results:

- Conciliation entails all the normal effects of the contract the parties fulfill the obligations contained therein, and neither of them can go back to what you committed to.

- As long as it is a formal contract, it is considered an executive document that can be compelled by necessity renderings by means of forced execution.

- Since it is not considered a judgment or a judicial act, it is not valid the thing that has been decided, it may not be challenged by the means of appeal prescribed for judgments[6].

Second Subtitle: **The pillars of conciliation**

Conciliation has three pillars, like all contracts: consent, place, reason, and this is what we will cover next:

Section one: Satisfaction in the conciliation agreement

We deal with the beginning of the conditions of the meeting in satisfaction, then the conditions for the validity of consent.

First: Conditions of the contract

Since the conciliation contract is a contract of mutual consent, it is sufficient for its conclusion to be agreed upon the offer and acceptance between the contracting parties[7], and it applies to the conciliation by consensus offer and acceptance general rules in contract theory.

There is a need for a special procuration in the matter of conciliation, and it is not permissible for a lawyer to reconcile over the rights of his principal, unless the composition is stipulated in the power of attorney contract according to the text of article 574 of the civil code [8].

- Proof of conciliation agreement

The article 992 of the civil procedure code States the following: "The conciliation is in minutes, signed by the litigants, the judge, and the custodian, and deposited in the honesty of controlling the judicial authority".

It is understood from this article that the settlement is established by virtue of the minutes that:

In it the court records the agreement between the litigants, and accordingly this report is considered the official argument is what it says.

Second: Health conditions for the validity of the conciliation

It is required that the conciliators have the capacity to conclude the contract. It is also required that the will of each of them be free from defects, and that is as follows:

1- The eligibility required for the conciliators

Article 460 of the civil law states the following: "it is reconciled to be eligible to dispose of in consideration of the rights covered by a contract conciliation".

Based on this article, whoever concludes a conciliation is required to be qualified to dispose of a compensation in rights is a matter of conciliation, because the content of conciliation is descending each of the conciliators is entitled to part of his right, and the first is in return for a claiming right[9] it's mosquito behavior therefore, if the reconciler has reached the age of majority, he is qualified to conclude a conciliation.

But if he has not reached the age of majority, but has only reached the age of discrimination he does not have the capacity to conclude conciliation, because the distinguished guardian does not have the capacity disposition of his rights, and if he himself concludes a conciliation with another, the conciliation is acceptable to invalidate in favor of the minor.

For the conciliation to be valid, it must be represented by the guardian or the clerk or the provider in concluding it.

As for the undistinguished custodian, he does not have the right to conclude a conciliation treaty, just as your business does not the contract was originally due to his lack of will.

If he concludes a conciliation treaty, his contract is null and void.

2- The will is free from defects in conciliation

Like all contracts, there must be the consent of both the conciliators it is free from defects, and if the will of one of them is tainted by mistake, fraud or coercion or exploiting the conciliation treaty was voidable.

A- Invalidating the conciliation for error

We must differentiate between error in the law and actually wrong.

-Mistake in law

The Algerian legislator stipulated in article 465 of the extension law that the following: "It is not permissible to appeal the conciliation because of a mistake in the law."

And this is the text is an exception to the general rules, which consider an error in the law as a defect it leads to the invalidation of the contract, like the error in fact, me its conditions are met according to the text of article 83 of the said law, which states: on the following: "The contract is voidable due to a mistake in the law if it is available. It contains the conditions for error in fact according to articles 81 and 82 unless the law requires otherwise".

And from whom, it is not permissible for the reconciled person to slander the conciliation on the grounds that it occurred there is an error in the limitation period, and it is unknown that there is a rule in the law that determines acquisition of ownership by prescription [10].

- Actually wrong in fact

The error in the conciliation agreement is subject to the general rules, and it is a reason for nullifying the conciliation deal if it was essential, i.e. reached an extent of seriousness, if known by the contracting party when he made a conciliation, and if the injured party reconciles with the official he was given a certain amount of cash in return for the damage he sustained, which was discovered to him after that the injury was severe, as it left him with a severe disability he has to adhere to the invalidation of the conciliation for this mistake.

B - Revocation of the conciliation treaty for fraud

The conciliator may request annulment of the conciliation for fraud, if it is proven that there was an illegal deception that led him to commit a mistake that corrupted his will.

If a person falsifies documents in a dispute between him and another, then believe this the latter has the validity of these documents and is valid on this basis, it is permissible for him to requests revocation of this compromise for fraud.

C- Annulment of conciliation to break

If consent is accompanied by compulsion, the conciliation may be annulled in accordance with the rules established in coercion, if another person threatens to reveal a secret, he will be degraded if he does not accept it a conciliation treaty was offered to him, and the other accepted the conciliation under the pressure of this threat. It is permissible he may request the annulment of the conciliation agreement under duress[11].

D- Annulment of conciliation for exploitation

It is permissible to annul the conciliation for exploitation, if one of the conciliators exploited in the other reconciled, obvious indiscretion, or a wild passion that prompted him to accept conciliation with a heavy injustice, it is permissible for a victim of exploitation to ask revocation of the conciliation.

- Indivisibility when invalidated

The article 466 of the civil law states the following: “the conciliation treaty is indivisible, the invalidity of part of it, the invalidity of the whole contract.

However, this provision does not apply if it appears from the terms of the contract or from evidence of the circumstances that the contracting parties have agreed that the parts of the contract are independent each other".

According to this article, the invalidity of a part in the conciliation contract leads to invalidity the whole conciliation, whatever the cause of the invalidity, whether due to lack of capacity of one of the contracting parties, or for a defect in his will, or for the reason of the illegality of the culprit or the reason.

But this rule is not from the public order, it is possible that the intention is directed the contracting parties, expressly or implicitly, to consider the parts of the conciliation independent of each other some, if a part of it becomes invalid, the other parts remain because they are independent for the invalid part, and thus the conciliation is divided according to the will of the contracting party.

The second subsection: The place in the composition contract

The place of conciliation is the disputed right, and the relinquishment of both parties from part of his right, and it must meet the conditions that must be met in the shop generally.

It must be present, possible, specific, or assignable, in particular, it must be lawful and not contrary to public order article 461 of the civil code states: "It is not permissible to make conciliation in issues related to personal status or public order, but conciliation is permissible in the financial interests arising from the personal situation".

The personal condition of a person is part of the public order, and no one is in agreement it is special to amend its rulings, as well as eligibility, so no one has the right to descend of his eligibility and does not transgress its provisions, for example issues related to health marriage, nullity or parentage[12].

But it is permissible to conciliate the financial rights that the situation entails personal, such as conciliation between the husband and his wife about her financial rights from friendship and alimony.

Section three: The reason for the conciliation agreement

The reason for the conciliation treaty is the motive that pushes the conciliators to conclude conciliation, which differs from person to person, may be the reason for concluding conciliation is the fear of the conciliator from losing his case, or in order to avoid the length of the judicial procedures and the large number of expenses, or to maintain the relationship of kinship or affection between him and him.

The free conciliator, the reason for making the conciliation treaty is legitimate, because it was wrong it must be draft, the conciliation contract was void, so if the lessee reconciles with the lessor, we will keeps the leased property for prostitution or gambling, the settlement is void.

The second topic: Conciliation procedures and its effects

First Subtitle: Conciliation Procedures

Conciliation procedures we can -and based on article 4 and articles 990 to 993 of the code of civil and administrative procedure to extract the following conciliation procedures:

Section one: The presence of the two parties in front of court and their acknowledgment of when conciliation

Is judicial, it is not sufficient to have a conciliation contract it is true and valid between the two parties, even if this conciliation is proven in a customary paper it is signed by both parties, but in addition to that, both parties must attend by themselves or by an agent with a special power of attorney for conciliation before the court, and that each from them, he agrees to the settlement, so the court must make sure of itself the two parties have agreed to this conciliation, and this will not be possible for them unless it is present the two parties signed it in accordance with the provisions of article 992 of the code of civil and administrative procedure which: "stipulates that the conciliation shall be recorded in minutes, signed by the litigants, the judge, and the custodian, and it shall be deposited with the clerk of the authority's registry".

So, if one of the parties does not appear or attends and refuses to acknowledge by conciliation, the court may not ratify this conciliation.

If a third party intervenes in the case, the court may not ratify the conciliation is only made after a decision is made as to the validity of the intervention, and if someone disputes the conciliators or a third party in the case regarding the validity of the conciliation concluded between the two parties, it is incumbent on the judge to examine the validity of this is a conciliation, such that it is not permissible for him to ratify it and to settle the claim by conciliation except after deciding on the validity of the intervention's claim, but it cannot be done after the expiry date a case for conciliation is that a third litigant whose rights have been damaged by the conciliation are dismissed, he can only file an independent case.

Section two: Conciliation between the parties during the course of the litigation

We have already stated that the prevailing principle in the civil and administrative procedures law it is permissible to carry out the conciliation process during the course of the litigation and at all its stages whether the attempt was initiated by the opponents themselves or at the behest of the judge himself. (Articles 4 and 990 of the code of civil and administrative procedure).

In most cases, the attempt to conciliate takes place with the intervention of the competent judge the case, this article 991 of the same law mentioned above on: "appropriate unless there are special provisions in the law that stipulate otherwise".

By reading this article, it is true that the Algerian legislator has empowered the judge make an attempt at conciliation at the moment and place it deems appropriate, and accordingly it is the judge who is up to him to assess the appropriateness of his standing like this try.

The reason is to leave the discretion of the judge to choose the appropriate time to conduct the conciliation process, is that the appropriate moment differs from litigation to another litigation according to the facts and circumstances of each case or suit some adversarial moments are more favorable than others to do the conciliation process, so our legislator wanted to leave freedom to the judge in choose the right moment. Accordingly, the judge may conduct a conciliation attempt at the first session, or at the time of conciliation take investigative measures, or at the moment of personal attendance of persons.

The judge can lure the litigants for the purpose of settling between them, and it is even permissible the judge may offer the conciliation to the litigants after closing the pleading door, and

that is if can the judge one of the litigants asked to open the pleadings again to seize this opportunity and offer conciliation to the opponents.

The judge may present the conciliation to the litigants live in the pronunciation session ruling if both of them are present, except that if the judge pronounces the verdict, then no after that, he may present the conciliation to the litigants, because he has exhausted himself his authority to rule on the case.

As for the place of conciliation, the judge may attempt to reconcile between litigants in his office, or in the hearing room, provided that this attempt is made in their personal presence, or the presence of their agents with a special power of attorney ma'hm from the judge himself.

This and that the legislator gave the judge discretionary authority to make conciliation in the place and time it deems appropriate during the course of the dispute, unless there is one special provisions in the law decide otherwise. As is the case for conciliation in divorce, if the legislator enjoins it to take place within a period not exceeding three days months from the date of filing a divorce suit in accordance with the requirements of article 442/2 of the code of civil and administrative procedure.

It is indicated that the judge may not authorize someone else to make an attempt conciliation between the parties, because this task is one of his primary tasks the same is the case with the task of adjudicating the shepherd, which he may not delegate others to do it.

This was confirmed by the Supreme Court in several decisions[13].

Section three: The judge's ratification of the conciliation if

The parties submit to the judge a conciliation contract, the existing dispute between them shall be settled, the judge must approve it.

The judge's approval of the conciliation agreement is by proving this agreement in a report signed by him in accordance with the provisions of article 992 of the code of civil and administrative procedure.

Jurisdiction to ratify the conciliation rests with the judge competent to consider the original case in respect of which the conciliation was concluded, and if it is not competent to consider in the case, he may not prove the conciliation concluded by the parties.

But if the judicial authority before which the conciliation was submitted is composed of: several judges, as if it was an appellate body i think they should sign all of them are on the conciliation report, and the signature of the president on the report is not sufficient[14].

Section Fourth : **The form of ratification of conciliation**

Whether the parties have reached a settlement among themselves their own efforts and without the intervention of the court, or this conciliation had been concluded as a result of the court's assistance to them, and urging them to reach a settlement that will be resolved the sponsor[15], the judicial composition must be written in a report according to in accordance with the requirements of article 992 of the aforementioned code of civil and administrative procedure.

In the case in which the two parties appear before the court and decide that they have agreed to a conciliation, the

judge shall publish what the two parties have agreed upon in the minutes of the session in their presence, and he shall sign it, just as the two parties sign the minutes, and custodian of control.

In this case, the minutes of the session acquire the status of judicial conciliation.

It is considered an executive document as soon as it is deposited in the custody of the registry in accordance with the provisions of article 993 from the code of civil and administrative procedure mentioned above.

The question is referred to the moment when the conciliation contract is considered valid and is present.

Is it considered existing from the moment the parties agreed?

Orally the shepherd's distraction between them canceled?

Or is it only since it was edited? In the record of the meeting?

The jurisprudence went to the fact that the conciliation contract is considered to exist since the agreement of the parties orally against him, and not from the time he became aware of the minutes of the session, because the conciliation treaty was concluded my satisfaction, and does not need any special form for its existence. As for the judge by proving what the parties agreed upon in the minutes of the session, it is not necessary the existence of conciliation and grief is a necessary matter for the conciliation to acquire a judicial character and for it to be executive bond [16].

Second Subtitle :Traces of conciliation

The effect of conciliation is the resolution of the dispute over which it was signed, and conciliation reveals rights and does not create them, which we will present below:

Section one: Ending the dispute

The Algerian legislator stipulated in article 462 of the civil code that: "The conciliation treaty ends the disputes that they take for granted and are consequential rights and claims permanently relinquished by one of the parties".

And in article 220 of the code of civil and administrative procedures that: "The litigation is subject to the expiry of the case for conciliation".

The meaning of these two articles is that if a conciliation is concluded between the two parties, then this conciliation by deciding the sponsor between them by dropping the following rights and claims both parties relinquished it permanently, and each of the parties can to oblige the other to what has been made conciliation.

If the two parties dispute over the ownership of a mall, and land, then they reconciled on the condition that the home for one of them and the land for the other.

This conciliation is binding on both sides, and it obliges the one who took the slanderer to relinquish his claim ownership of the land, and the person who acquires the land is obliged to renounce his claim in home ownership. It is not permissible for the person who took the house to dispute the other party's ownership of the land, because when he does so, the other party may pay the compromise.

The argument for conciliation means that if the sponsor resolves the conciliation, it is not permissible for any of the two opponents to renew this sponsor, neither by filing a lawsuit against him, nor proceeding with it if it is raised, nor to renew it, as the other conciliator can pay conciliation in the lawsuit filed or required to proceed or renewed. Advocating conciliation is

not considered a general order, and it is not permissible to adhere to it for the first time before the Supreme Court.

If the case is terminated by conciliation, there is no remaining before the opponent, unless he files an independent case before the competent court he asks to nullify it because of a mistake in reality, or fraud, or coercion, or to nullify it because of lack of it legality of the place or reason.

The Algerian legislator stipulated in article 464 of the civil code: The following: "The terms of waiver contained in the conciliation must be interpreted no matter what those expressions are, the waiver includes only the rights that are it was clearly a matter for the shepherd who was settled by the conciliation agreement".

So, a judge the subject is the one who explains the conciliation in a narrow way[17], and then the effect is limited conciliation over the dispute that he dealt with without dealing with anything else.

Section two: The executive force of the conciliation

We have seen that when the composition contract fulfills the conditions for its validity, and is proven in a report signed by the litigants, the judge, and the custodian, then this report is considered an executive document as soon as it is deposited with the custody of the registry in accordance with the provisions of article 993 of the code of civil and administrative procedures, and it can be implemented and the agreed performances are required, them by means of forced implementation.

Section three: The revealing effect of conciliation

The conciliation has a revealing effect in relation to the rights it deals with, and this effect is limited to the disputed

rights exclusively in accordance with the requirements of article 463 of the civil code.

The meaning of this is that the right that is saved for the one who is reconciled by conciliation is based on its primary source is not to conciliation, so if two people buy a house in the common, then they disputed over the share of each of them in the house, then they reconciled on the condition that it be each of them has a specific share, each of them is considered the owner of this share, not by contract conciliation, but by the contract of sale in which they bought the marl in common[18].

Conciliation has a relative effect, and it is limited to the place on which it was signed, i.e. it is only on the dispute that it has dealt with, and that it has a relative impact on its parties, so the conciliation does not result in any benefit or harm to non-contractors, when if it falls on an indivisible whole.

CONCLUSION:

We saw in this research that conciliation is of paramount importance in ending disputes.

It is truly one of the alternative solutions to civil disputes

The Algerian legislator, when he realized the void that existed, and organized provisions. Conciliation in the new Civil and Administrative Procedures Code, where it was specified its procedures and its effects.

It would have enabled the judge to carry out his task. Conciliation in the manner required of him, and contributed to reducing the volume of cases, which is constantly increasing, as a result of the expiration of the case under the conciliation and shortening, time, effort and expense.

Bibliography List :

- Abd El Rezak Ahmed Al Sinhouri, Mediator in Civil Law, Part 5, Volume 2, Arab Heritage Revival House, Beirut, Lebanon.

- El Ansari Hassan Al Nidani, Judicial conciliation, New University Publishing House, Alexandria, 2001.

- Abdel Hamid El Chouarbi, Arbitration and conciliation in various legislations in light of jurisprudence and the judiciary Modern Book House, Cairo.

- Abdel Azziz Saad, Marriage and Divorce in Algerian Family Law, Third Edition, Homa Printing, Publishing and Distribution House, Algeria, 1996.

- Abdelouaheb Bouderssa, General and special conditions for accepting the case between theory and application, second edition, Homa Printing, Publishing and Distribution House, Algeria, 2006.

- Omar Ben Said, Jurisprudence in accordance with the provisions of civil law, first edition, National Office of Educational Works, Algeria 2001.

[1] Srah An-Nisa, Verse (128).

[2] Issued by Order No. 58/75 of September 26, 1975, containing the Civil Code, Official Gazette, No. 78, issued on: 09/30/75.

[3] Official,N 21, issued on: 23/04/08.

[4] The difference between the existing conflict and the possible dispute includes two things: conflict of interest and judicial claim.

A potential dispute involves conflicts of interest and the mere possibility of judicial claim, which has been met, but has not actually occurred, if there is no existing or potential dispute, the contract would not have been valid.

[5] Abd El Rezak Ahmad El Sanhouri, Mediator in The Civil Law Commentary, Part 5, Volume II, Arab Heritage Revival House, Beirut, Lebanon, p. 511.

[6] Supreme Court decision, file no. 2105602 dated 17/11/1998, published in 2000, p.180, which overturned the contested decision on the grounds that the ruling on the ratification of the reconciliation is not subject to appeal.

[7] If a person offers reconciliation to the injured person, he does not accept it, this person was not restricted by his offer, and he may discuss the principle of responsibility itself, and if the person refuses the reconciliation before him from another, the answer falls, and he does not accept to stick to it afterwards and the silence of one of the parties in the conciliation council is not considered acceptance because the rights are not dropped by conclusion and probability.

[8] Article 574 of the civil code states the following.“There is a need for a special agency in every act that is not a management business, especially in selling, mortgaging, donating, conciliating, acknowledging, arbitration, swearing in oath, and pleading before the judiciary.

A special agency in a certain type of legal business is valid even if the location of this work is not specifically specified.

Allocation, unless the work is from donations.

A special agency does not entitle an agent except the ability to undertake the matters specified therein and what these matters require.

Dependencies are necessary according to the nature of each command and to the current custom".

[9] Abd El Rezak Ahmad El Sanhouri, the mediator in explaining the civil law, previous reference, item 358, p .532.

[10] Al Ansari Hassan Al-Naidani, Judicial conciliation, New University Publishing House, Alexandria, 2001, p. 91.

[11] Abd El Rezak Ahmed Al Sanhouri, previous reference, item362, p 537

[12] Supreme Court Decision Nº. 71801 of 21/05/1991, published in the Judicial District, Nº 1, 1996, which states that: "it is legally established that matters of personal status and public order are not it is permissible to make conciliation with her shawl except by a special text. Hence, the judges of the matter, by relying on the conciliation document,

Assigning the girl's sponsorship without hearing her opinion and giving her the choice between staying with her nanny or going to her father despite either. If you have exceeded the age of discrimination, they have broken the law."

[13] Supreme Court Decision Nº. 102924 of 22/09/1993, unpublished, which reversed the decision. The contested on the grounds that the conciliation takes place before the judge, not in front of the expert.

[14] Al Ansari Hussain Al Naidani, Judicial conciliation, previous reference, p. 101.

[15] Article 990 of the code of civil and administrative procedure stipulates the following: "It is permissible to for opponents to reconcile automatically, or by seeking to the judge, at all stages of the litigation".

[16] Al Ansari Hassan Al Naidani, previous reference, item 82, p. 120-121.

[17] Supreme Court Decision, File No. 56186 dated 12/12/1989, published in Judicial District, Nº 1, 1994, p. 11, which states that: "It is legally established that the expressions of waiver contained in the conciliation it must be interpreted narrowly, whatever those expressions are, and it includes only the rights that were clearly the subject of the dispute that was settled by the conciliation, and therefore the judiciary, in violation of this principle, is considered a violation of the law".

[18] Abd El Rezak Ahmed Al Sanhouri, previous reference, item 391, P 582-583.