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Fair Arbitration in International Lawsuits from the Perspective of Human Rights: With an Overview of Arbitration in the Maritime Environment

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Abstract

Today, arbitration has become the most popular means of resolving maritime disputes. Arbitration as a binding dispute resolution method is proposed and recognized in the seventh appendix of the 1982 Convention on the Law of the Sea. One of the important requirements of arbitration is the observance of fair proceedings, which according to the New York Convention of 1958 and the European Convention on Human Rights, is under judicial supervision at the stage of identifying and implementing arbitration decisions and at the stage of protesting the arbitration decision. Considering that arbitration is a type of private judgment, it is required to observe fair proceedings, as a human right, therefore, identifying the fair arbitration and guaranteeing the implementation of its non-compliance is of great importance. Identifying the principle of fair arbitration as a human right and guaranteeing its non-compliance in various cases, in order to violate the human rights of the parties, needs to be read. In the current research, with the analytical and descriptive method and using library sources and judicial procedure and according to the basics of human rights and international documents as well as international judicial procedure, the principle of fair arbitration to it has been recognized as an inalienable human right. And it can be said: the agreement on the cancellation of the right to object to the arbitration award has no effect on the possibility of requesting the annulment of the arbitration award due to non-compliance with the principles of fair arbitration. The request to cancel the arbitrator's decision that is outside the deadline can also be accepted by relying on the principles of fair arbitration, and in case of a request to implement the arbitrator's decision, the arbitrator's decision will not be able to be recognized and implemented.

Keywords: Maritime Arbitration, Human Rights, Right to a Trial, Non-Waivable Rights, Fair Arbitration

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Introduction

The history of international trade began with maritime trade and maritime transport. The first contracts were created in the field of sea transportation and between transport operators and owners of goods. Along with the two institutions of the 1982 Convention on the Law of the Sea and the International Maritime Organization (IMO), one of the most popular methods in resolving maritime disputes, both commercial and non-commercial, is arbitration. Arbitration as an international dispute resolution method has been used in the English-French continental shelf arbitration case in 1977, the Muscat barges case in 1905, and the North Atlantic coast fisheries cases dated 1910 and many other cases. In some cases, it is even possible to form a court or a permanent arbitration board with the authority to settle disputes between the states under the treaty. This situation can be seen in the formation of the Public Claims Commission of the United States and Panama, which commented on the resolution of the David case in 1933. It is also possible to conclude agreements to resolve disputes by special arbitration methods, such as the 1964 Convention on European Fisheries and the 1969 Convention on Interference in the High Seas. On June 26, 2018, the Singapore Convention was approved by the United Nations Commission with the aim of creating a binding legal system and an efficient legal framework for the implementation of international agreements resulting from mediation, which shows the importance of resolving disputes through arbitration.

Although arbitration is a type of "private" judgment, but the course of its developments, as well as attention to the human rights obligations of governments on the one hand, and on the other hand, the issue of the right to a hearing and its basic examples, that is, a fair hearing and the independence and impartiality of the arbitrator, It shows that fair arbitration is related to human rights.Arbitration and human rights as two disciplines, one related to the field of private law and the other related to the field of public law, appear to be independent on the surface, but in many cases, the connection between these two fields can be imagined; The principles of independence and impartiality of the arbitrator, equality in the treatment of the litigants, the openness of the arbitration, the legality of the arbitrations, the arbitrariness of the proceedings, the principle of the sovereignty of litigants, the principle of justifying the decision and the principle of the

right to protest the decision are among the principles that are among the documents between International human rights, such as Article 10 of the Universal Declaration of Human Rights approved on December 10, 1948, and Article 14 of the International Covenant on Civil and Political Rights, which came into effect on March 23, 1976, and Article 6 of the European Convention on Human Rights, can be inferred. In other words, although these rules are related to proceedings and courts, today the belief that "arbitration" is a type of private but very important judgment and equal to official judgment is of interest to legal systems.

The connection between arbitration and human rights is not unrelated to the discussion of the influence of human rights in private rights; the influence of human rights in private rights or the fundamentalization of private rights is also one of the new topics in the discussion of legal reasoning. The relationship between human rights and arbitration is completely related to the discussion of the principle of sovereignty of will and the principle of contractual freedom and the limitations imposed on this principle. Among the principles of private rights that are influenced by human rights is the principle of freedom of contract; But the idea of sanctity of contracts is not as common in modern law as it was in the past (Brownsword, 2001: 183).

It has been said that the principle is contractual freedom unless we have good reasons to limit it, and human rights are among the good reasons. Therefore, concepts such as human dignity, which is rooted in human rights, can be used today as a criterion for evaluating contractual terms and defending inalienable rights, and it can be used as a good reason to limit freedom of will in contract rights. Another issue that is related to the topic of discussion is the human rights obligations of governments. In discussing the government's responsibility, the nature of human rights obligations must be specified; Protection and supporting human beings is the central goal of human rights, and recognizing and respecting human rights is everyone's duty, and the main duty in the international human rights system is on the shoulders of the government. The government's obligations towards human rights are of the type of public obligations (Erga Omnes) and public obligations or obligations towards everyone are rooted in the common interests that exist in observing public order for everyone.In other words, the commitment of governments to support basic human rights is in line with respecting human dignity and establishing public order among the governments of the world; Therefore,

protesting its violation is defending common values that create peace and solidarity. According to a classification, governments have three duties related to human rights, which are: respect, protect and fulfill. The normative structure of human rights is focused on the responsibility of the government, and except for a few specific human rights documents, there is no direct obligation for individuals. Despite this, efforts are underway to not only recognize the person as having an obligation to respect human rights, but also to hold him criminally responsible in case of violation. Undoubtedly, the recognition of individual responsibility in the international human rights system can be considered an improvement in the state of human rights. The process of humanization of international law has led to the emergence of the doctrine of human security and desirable governance, and security in the new concept is the requirement of collective rights, which implies responsibilities and obligations for citizens towards each other. A good life and social welfare can be achieved in the shadow of human security and good governance, and international obligations in the field of human rights can be justified on this basis. Paying attention to the claims of human rights in the decisions of the arbitrators is not only a judicial opinion that goes beyond the demands of the lawsuit and does not increase the competence of the arbitrators. It seems that the judicial procedure and foreign doctrine are tending in this direction with the developments of fundamental rights and human rights concepts.

The right to fair trial in arbitral tribunals is known as "fair arbitration". The principle of due process as a fundamental principle and human rights has also been the subject of many cases submitted to national courts and the European Court of Human Rights. In this respect, the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted in 1953) and the procedure of the European Court of Human Rights (established in 1959) have a special place. Because unlike many of the existing regulations in the field of human rights, the mentioned convention has provided the possibility of people to request the annulment of votes in order to violate the rights contained in this treaty before the European Court of Human Rights, and this issue has made it a very valuable legal procedure regarding the limits and manner of applying the human rights mentioned in this convention.

The right of access to judicial authorities and violation of proceedings has been the subject of more than half of the claims submitted to the European

Court of Human Rights. (Ra'i Dehghi and et al, 2018: 188) Many questions can be asked in this regard. For example, is the principle of fair arbitration a human right, like a fair trial? In case of violation of fair arbitration, is the mentioned situation considered against the right of the litigants to have a hearing as one of the examples of human rights? What is the guarantee of the violation of fair arbitration from the perspective of human rights? Assuming an agreement to waive the parties' right to object to the arbitrator's decision, what is the effect of this agreement on the violation of fair arbitration? Is the appeal against the arbitration decision accepted outside the deadline based on the violation of fair arbitration? And what is the status of the acceptance of the application for the implementation of the arbitration award that does not have the above-mentioned description?

In this research, considering the above, the following topics are examined and analyzed: the concept of fair arbitration, the basis and scope of fair arbitration from the perspective of human rights and the guarantee of the implementation of the violation of the mentioned principle in these cases. According to the foundations of human rights and international documents and domestic regulations of many countries, as well as international judicial practice, especially the practice of the European Court of Human Rights, the principle of fair arbitration has been recognized as a human right, And according to the guarantee of the implementation of the violation of fair arbitration in various cases, including the assumption of agreement on the withdrawal of the right to object to the arbitration award, the objection to the arbitration award outside the deadline based on the violation of fair arbitration, and the duty of the courts to not accept the request for the implementation of the arbitration award that lacks the mentioned description, the investigation and finally this result was obtained: The agreement on the cancellation of the right to request the annulment of the arbitration award does not affect the right to object to the arbitration award based on the violation of fair arbitration. Also, the objection to the arbitration award outside the legal deadline is accepted in order to violate fair arbitration, and in case of a request to enforce the arbitration award that lacks the above-mentioned description, due to the obligation of the courts to comply with human rights standards in the position of controlling the arbitration award, The arbitration award cannot be recognized and enforced.

1. The concept of fair arbitration

A fair trial is one of the results of the "right to trial" along with the principle of access to an independent and impartial court. A fair proceeding is based on compliance with the principle of proportionality and arbitral proceedings, and proper notification and giving the opportunity to defend is also one of the pillars of arbitral proceedings. Both in the common law procedural law and in the written judicial system such as France, the arbitrariness of the proceedings is considered as one of the conditions for the realization of a fair settlement and resulting from natural justice, equality of arms and related to the right of defense, as a general principle. And it must be observed in all proceedings like arbitration. (Hornle, 2009: 132) Considering that arbitration is also a type of private judgment and an example of "legal references", it can be said that each of the parties should be able to announce their claims and arguments to the arbitrator and find out what the opponent has presented in defense And if necessary, they can challenge it. Arbitration that has the characteristics of human rights, such as observing the aforementioned principles, is known as "fair arbitration" in arbitration tribunal.

Due to the fact that the right to fair arbitration is one of the examples of the right to trial, and on the other hand, the objection to the arbitration decision is also a kind of procedural right because it is done through courts and public authorities, so the right to fair arbitration can be a human right. Knew therefore, it is necessary to monitor the arbitration decisions by the courts in order to prevent the occurrence of injustice towards the litigants. This is why the European Court of Human Rights in several cases (Switzerland v Tabbane and Suovaniemi and others v Finland) considered the withdrawal of the right to request the annulment of the arbitration decision in order to violate the fair arbitration to be consideration a form of waiving the human rights of the parties to the dispute and considered such an agreement invalid (Krūmiņš, 2020: 272).

Regarding the need to observe fair arbitration as a human right, it should be said that considering that the main basis of this method of dispute resolution, i.e. arbitration, is the agreement of the parties, in some regulations, the agreement to revoke the right to request the annulment of the arbitration opinion absolutely (even to In order to violate fair arbitration), it is recognized that as an example, the following can be mentioned: Paragraph 1 of Article

192 of the Swiss Private International Law, Paragraph 1 of Article 1522 of the French Code of Civil Procedure, Article 51 of the Swedish Arbitration Code, Article 7 of the Belgian Code of Civil Procedure, Paragraph 1 of Article 40 of the Finnish Arbitration Code, Paragraph 2 of Article 1059 of the German Code of Procedure, Article 107 of the Colombian Arbitration Law, Paragraph B of Article 59 of Article 4 of the Mauritanian Arbitration Law, Article 63 of the Mauritanian Arbitration Law, Article 63 of the Peruvian Arbitration Law, Article 78 of the Tunisian Arbitration Law and Article 15 of the Turkish International Arbitration Law (Krūmiņš, 2020: 131). Such an approach can be seen in some organizational arbitration rules, such as clause 8 of article 26 of the arbitration rules of the London International Court of Arbitration. In the aforementioned provisions, the agreement to revoke the right to request the annulment of the arbitration opinion absolutely (even for the violation of fair arbitration) is recognized and the mentioned procedure may cause the violation of the right of the parties to the proceedings or their right of access to judicial authorities, to become one of the examples of human rights.

For this reason, the ambiguity may arise that what is emphasized in human rights rules is the right to a hearing, while arbitration, as one of the alternative methods of dispute resolution, is an institution completely independent from the proceedings or recourse to the courts. Also, in arbitration as an agreed and contractual method of litigation, the parties have the authority to determine its various issues and aspects, and their agreement cannot be questioned due to the violation of human rights rules. In response to the aforementioned doubt, it should be stated that in addition to the limited contractual freedom of the parties, arbitration receives its legitimacy from the legal system that foresees the possibility of using it. For this reason, arbitration awards can always be overturned by the courts after they are issued, but the legal system of the country where the arbitration award is implemented or objected to can consider such an award as invalid or enforceable. As a result, arbitration is related to the parties' right to trial (as their human right) that objections to the results of the arbitration process, including fair arbitration, are made before the courts and through proceedings.

The right of the litigants to a fair trial is considered one of their human rights. In this sense, arbitration, like a trial, is considered as a dispute resolution method, and the parties also expect the trial to be conducted in a

fair manner. Since a fair trial is recognized as one of the fundamental human rights and governments also implement arbitration decisions in their jurisdictions and the realization of a fair trial is also dependent on the observance of the principles of the trial by the investigating authority; Therefore, it must be said that the arbitrator must adhere to the principles of fair arbitration in arbitration proceedings.

The right to fair arbitration in some international regulations (such as Article 18 of the UNCITRAL Model Law), national laws (such as Article 1510 of the French Code of Procedure, Article 33 of the English Arbitration Code, Article 18 of the Danish Arbitration Code and Article 1699 of the Belgian Code of Civil Procedure) and the rules of arbitration organizations (such as paragraph 4 of article 22 of the arbitration rules of the International Chamber of Commerce 2021 and paragraph 5 of article 14 of the arbitration rules of the London International Court of Arbitration 2020) The said right includes a wide range of fundamental rights of the parties in arbitration proceedings (Grabenwarte,2014:134).

Although the examples of the right to fair arbitration have not been explicitly specified, according to the procedure of the European Court of Human Rights, in some cases (Avoti¸nš v. Latvia, App. No. 17502/07, ECtHR, 23 May 2016), the principle of procedural equality of the parties (equality of arms) and the right to adversarial proceedings are among the most important Examples of the right are mentioned (Krūmiņš, 2020, 277). According to Article 18 of the UNCITRAL Model Law and Article 18 of Iran's International Commercial Arbitration Law and Clause 4 of Article 22 of the Arbitration Rules of the International Chamber of Commerce 2021, compliance with the arbitral nature of the proceedings means that the parties to the arbitration case have an appropriate and equal opportunity to state their claims and arguments, should be given to them, proper notice should be given to them, and the parties could be informed about the other party's defenses and provide their answers.

The right to fair arbitration is one of the examples of public order at the transnational level and is considered a universally accepted principle regarding arbitration. For this reason, the lack of compliance with the aforementioned principle, even if the parties agree, is considered as a request for annulment and non-implementation of the arbitration award. (Born, 2014: 299) Such an approach has emerged in the practice of national

courts and the aforementioned authorities refuse to recognize and implement the arbitration award in case of violation of the right to fair trial, citing paragraph b of paragraph 2 of article 5 of the New York Convention. As an example, we can refer to the opinion of the French Court of Appeal in the case of Societes BKMI ET Siemens c. societe Dutco, Cour de cassation[1], and the opinion of the German Federal Supreme Court in the Bundesgerichtshof (BGH) case[2]. Also, the European Court of Human Rights in the case of Tabbane v. Switzerland believed that the cancellation of the right to request the annulment of the arbitration opinion is not included in the violation of the right to fair trial (not employing an expert by the arbitration court). As a result, despite the agreement of the parties regarding the cancellation of the right to request annulment, the court still dealt with the violation of the said right. In fact, the aforementioned court considered fair arbitration to be a minimum criterion in arbitration and believed that the removal of the right to request annulment by the parties has no effect on the fulfillment of the aforementioned criteria (Born, 2014:87).

2. The basis of fair arbitration from the perspective of human rights

What is the basis for identifying fair arbitration as a fundamental principle and human right? And why is the arbitrator required to comply with this principle? The arbitrator is considered a private judge and a fair trial is a requirement for the execution of justice. With the explanation that Procedural justice is one of the aspects of justice and a fair trial is one of the examples of Procedural justice, and in addition, the right to access justice is necessary to preserve the human dignity of individuals. Therefore, it can be said that this right cannot be waived, and in other words, it is related to public order. Therefore, the fair arbitration must be observed in all stages of arbitration, because it is considered a basic and necessary principle for arbitration and a part of the transnational public order, which, in case of absence, provides a direction to violate the arbitration award and refuse to recognize and implement the arbitration award (Krūmiņš, 2020: 267).

[1] Societes BKMI et Siemens c. societe Dutco, Cour de cassation, 7 January 1992, Rev.arb. 470 (1992).
[2] Decision of the German Federal Supreme Court in Case III ZB 83/07, 15 January 2009, SchiedsVZ 2009, 126.

The recognition of the principle of fair arbitration as a transnational principle and related to the international public order is because it is considered a common basic value for all civilized nations and there is an international consensus on the recognition of this right and is considered a requirement of public trust in the judicial and arbitration system. The principle of fair arbitration has been recognized and approved in the UNCITRAL model law and all the national laws of countries that have modeled this model law, and due to the connection between this right and the right to trial, it is considered an inalienable human right. In order to identify the principle of fair arbitration as a human right, the position of this right in international documents and national regulations of countries and international and national judicial procedure should be examined. The principle of fair arbitration is reflected in many provisions mentioned earlier. Therefore, in general, it can be claimed that fair arbitration is an important and accepted principle in arbitration (Caron & Caplan, 2009: 220; Born, 2014: 61).

From the point of view of judicial procedure, in the cases of Transado-Transportes Fluviais Do Sado, S.A. v. Austria; Bulut v. Portugal; McGonnell v. the United Kingdom; Öcalan v. Turkey; Pfeiffer and Plankl v. Austria, the European Court of Human Rights emphasized that fair arbitration is of such importance that it cannot be dependent on the will of the parties to the dispute, and the agreement to revoke the right to request the annulment of the arbitration opinion will not violate the principle of the necessity of fair arbitration because the violation of fair arbitration is a violation of procedural public policy (Mayer & Sheppard, 2003: 249). Some even consider the mentioned principle to be transnational and believe that the mentioned rule is part of the global standards and accepted behavioral norms regarding arbitration and there is an international consensus about it (Briner & Schlabrendorff, 2005: 166). In fact, the principle of fair arbitration has a purpose beyond protecting the interests of the litigants and is one of the conditions that allows arbitration to be valid as an alternative method of dispute resolution. As a result, even if the right to request the annulment of the arbitration opinion is revoked, the parties still have the possibility to request the annulment of the arbitration opinion due to the violation of fair arbitration (Benedettelli, 2005: 122).

In addition, due to the dispute regarding the recognition of the principle of fair arbitration as a human and inalienable right, and the agreement on the absolute abrogation of the right to object to the arbitration decision has been accepted in some legal systems, the reasons should be He examined the opponents and supporters regarding the waiver of this right in the legal system of different countries and the effect of the agreement on the cancellation of the right to request the annulment of the arbitration opinion on the principle of fair arbitration. Some countries consider the agreement on revoking the right to annulment the arbitration a to be absolutely valid. In order to explain the reasons for accepting the validity of the said agreements, the regulations of the mentioned countries should be studied. In Austria, Romania, America, Brazil, Canada, Panama, Germany, Croatia, Egypt, Greece, Portugal, and Italy, the agreement to waive the setting aside an arbitral award is not valid, and on the other hand, Sweden, Russia, and the United Kingdom do have prescribed it. In India, the agreement can be accepted by observing the mandatory regulations (Moser, 2012: 356).

According to the European Court of Human Rights, in the Tabbane v Switzerland case, the aim of the Swiss legislature is to recognize agreements that revoke the right to request the annulment of an arbitration award, It was to prevent parallel judicial control over the arbitration award in the seat and place of execution of the arbitration award, to increase the attractiveness and impact of international arbitration in Switzerland, and to reduce the volume of cases requesting annulment of the arbitration award before the Swiss Federal Court. Belgium, Sweden and France also consider the mentioned agreements as valid because they are attractive countries to be considered as the seat of arbitration. It should also be noted that the agreements to revoke the right to request the annulment of the arbitration award have other advantages, such as increasing the certainty of the arbitration award, increasing confidentiality (due to the lack of need to review the arbitration award by the state court) and saving money and time (Krūmiņš, 2020: 258). In addition to the above issues, according to the principle of contractual freedom, the parties, in addition to determining how to conduct the arbitration process, can also decide on the possibility or impossibility of judicial supervision of the arbitration opinion. (Scherer, 2016, 448). It should also be noted that there is a difference between the non-implementation of the arbitration award by the court and the annulment of the arbitration award

in the court, and even if the right to request the annulment of the arbitration award is revoked, the parties can enjoy their rights before the court executing the arbitration award and prevent the implementation of the said vote (Shiravi, 2011: 275; Rezaei, 2019: 309).

On the other hand, many legal experts (Cordero-Moss, 2015, 186; Paulsson, 2013: 105) believe that depriving the litigants of the possibility of requesting the annulment of the arbitration decision (even in case of an agreement) they are against the parties' right to access judicial authorities and violate their human rights. That is why such agreements are not recognized as effective in most countries. It should be noted that freedom of contract and private justice have limitations and in addition to the will of the parties, arbitration also receives its legitimacy from the legal system that foresees the possibility of using arbitration and executive support of arbitration decisions by courts and for this reason, the freedom of the parties should be adjusted according to legal considerations and human rights.

Also, the request for annulment of the arbitration award and the request for non-implementation of the said award have fundamental differences, and the objections that the parties can raise during the implementation of the arbitration award are not a complete substitute for the possibility of annulment of the arbitration award. Because the decision issued by the seat of arbitration regarding the annulment of the arbitration decision is often considered to have an international effect and in many countries, the said decision will not be applicable. However, the court's decision to reject the request to enforce the arbitration award has no international effect (Rezaei, 2019: 309). Contrary to the intention of the legislators of the countries that consider the agreement to revoke the right to request the annulment of the arbitration opinion to be absolutely valid, such an approach has not led to the development of arbitration in these countries. For example, in Belgium, the acceptance of the agreement on the cancellation of the right to request the annulment of the arbitration decision, reduced the arbitration plan in this country and reduced the choice of Belgium as the seat of arbitration. Because the parties are not inclined to be deprived of the right to request the annulment of the arbitration decision as one of the examples of human rights. For this reason, the parties to the arbitration in Switzerland do not want to revoke the right to request the annulment of the arbitration award because, as emphasized by the Swiss Federal Court in the Cañas case, such

an approach deprives the litigants of their fundamental rights to request the annulment of the arbitration award due to the violation of the rules of order and public order, the rules of order are a form of arbitration and the right of the parties based on the hearing of their case in arbitration proceedings (Krūmiņš, 2020: 260).

3. The scope of fair arbitration from the perspective of human rights

According to the recognition of the principle of fair arbitration as a human right, its scope should be determined and the guarantee of the implementation of the violation of this principle and the effect of the agreement on the exclusion of setting-aside proceedings should be investigated, in this regard, it is necessary to study the judicial procedure, especially the procedure of the European Court of Human Rights. One of the important issues in arbitration is the discussion of the exclusion of setting-aside proceedings, and there is this question: is the principle of fair arbitration included in the aforementioned agreement? In order to answer the mentioned question, the validity of the agreement on the the exclusion of setting-aside proceedings and its exceptions must be examined from the perspective of human rights.

The procedure of the European Court of Human Rights has placed the principle on accepting the agreement on the exclusion of setting-aside proceedings, but it has foreseen the conditions for its validity and, in addition, it has determined exceptions, which includes the principle of fair arbitration and the principle of independence and impartiality of the arbitrator. Considering that the rights listed in paragraph 1 of Article 6 of the European Convention on Human Rights cannot be revoked in advance and without informing the parties, the parties are not able to fully exercise the right to request the annulment of the arbitration opinion arising from the above aspects (before issuing the opinion arbitration or information about the existence of the mentioned directions). It should be noted that the validity condition of revocation of the right to request the annulment of the arbitral award after the issuance of the said opinion, originates from the procedure of the European Court of Human Rights and is emphasized based on the rules of human rights, and in none of the legal systems that agree on revocation The right to request the annulment of the arbitration

opinion is considered valid, such a condition has not been mentioned. (Krūmiņš, 2020:258) Even in some legal systems (paragraph 1 of article 192 of the Swiss Private International Law, paragraph 1 of article 1522 of the French Code of Civil Procedure and article 1718 of the Belgian Code of Civil Procedure), it is clearly stipulated that in case of revocation the right to request annulment The arbitration opinion is considered valid at the time of concluding the arbitration agreement or in the arbitration process of such an agreement.

In order for the agreement to revoke the right to request the annulment of the arbitration opinion to be considered valid and not to violate the human rights of the parties, there must be certain criteria and conditions regarding the said agreement; Among these criteria, which can be deduced based on the practice of the European Court of Human Rights, are the condition of knowledge, the condition of openness and the condition of being free (Krūmiņš, 2020: 258) Regarding the condition of "awareness", according to the procedure of the aforementioned court, the parties must be aware of the existence of the right subject to revocation, and in this respect, the main criterion is the time of revocation of the right. According to the aforementioned necessity, the revocation of the right to request the annulment of the arbitration opinion is only valid after its issuance, and the revocation of the said right is invalid if it occurs before the issuance of the arbitration opinion (at the time of concluding the arbitration agreement or during the arbitration process) (Besson, 2011: 137). Such an issue by the European Court of Human Rights in the case of Finland. v others and Suovaniemi, and according to this rule, a person who abrogates his human rights according to the convention, must be reasonably aware of the right subject to the abrogation and its results. What if possible future events may violate the fundamental rights of the parties? Therefore, according to the opinion of some jurists Considering that the rights listed in paragraph 1 of Article 6 of the Convention cannot be revoked without prior notice to the parties, the parties are not able to fully exercise their right to request the annulment of the arbitration award arising from the above aspects (before the issuance of the arbitration award or notification) (Krūmiņš, 2020:258).

The condition of "clarity", which is known as the "The The Condition of Unequivocally" in the European Court of Human Rights' jurisprudence, means that the revocation of the right to request the annulment of the

arbitration opinion must be clear and without any ambiguity. For this reason, in the case of considering the validity of the agreement to revoke the right to request the annulment of the arbitration opinion, in the regulations of most countries, the condition of the existence of the explicit will of the parties is also mentioned, For example, Article 192 of the Swiss Private International Law, Article 1522 of the French Civil Procedure Code, Article 1718 of the Belgian Civil Procedure Code, Article 51 of the Swedish Arbitration Law, Article 107 of the Colombian Arbitration Law, Paragraph B of Article 4 59 Mauritanian Arbitration Law, paragraph 8, article 63, Peruvian Arbitration Law, paragraph 6, article 78, Tunisian Arbitration Law, article 15, Turkish International Arbitration Law.

The "freedom" of arbitration, which is known as "The Condition of Absence of Constraint" in the proceedings of the European Court of Human Rights, means that the agreement to deny the right to request the annulment of the arbitration opinion has been concluded with the free will of the parties and in the agreement As mentioned, the parties voluntarily and without any pressure have waived the right to request the annulment of the arbitration opinion regarding the possible subsequent lawsuit, In most cases related to arbitration, the European Court of Human Rights has emphasized the existence of this condition and it can be considered one of the mandatory conditions. According to the procedure of the mentioned court, this condition is violated when there is serious reluctance on the part of the litigants. For example, in the case of Sweden. v others and Axelsson and Sweden. Hedland, simply having special economic conditions or emergency due to the financial situation, was not considered to invalidate the right to request annulment (Petrochilos, 2004: 124).

Now, considering the conditions that were stated for the validity of the agreement on the withdrawal of the right to object to the arbitration decision, if the aforementioned agreement has such conditions, does it also fall under the principle of fair arbitration or not? To answer this question, it is necessary to see if the mentioned condition is absolute or not. From the point of view of human rights, despite the confirmation of the will of the parties to withdraw the right to request the annulment of the arbitration opinion and to grant validity to the aforementioned agreement by the law of the seat of arbitration, still according to the rules of human rights, the effect of such an agreement is not absolute and has limitations, Because the removal of

examples of human rights must be done by observing the minimum standards that are proportional to the importance of the said rights. The will of the parties to the dispute regarding some aspects of requesting the annulment of the arbitration opinion is not valid, due to the connection of the mentioned aspects with the interests of the society. To explain that according to the procedure of most arbitration regulations (including paragraph 2 of Article 34 of the UNCITRAL Model Law and paragraph 2 of Article 5 of the New York Convention), In the case of non-arbitrability of the dispute and the conflict of the arbitration opinion with public order, the will of the parties has no effect on the invalidity of the arbitration awards.

In this regard, it seems that the removal of some aspects of the request for annulment of the arbitration opinion due to the violation of human rights standards is not effective. Some rights are of such importance that according to the principle of the necessity of justice and fair trial as one of the basic human rights, no person should be deprived of them and such rights cannot be revoked even with the agreement of the parties, In fact, if the agreement to revoke the right to request the annulment of the arbitration opinion is valid, the minimum standards regarding the access of the parties to judicial authorities are observed and their procedural rights are not grossly violated. In this sense, the European Court of Human Rights also in the cases; Oberschlick v. Belgium; Compte Le and Albert v. Austria; Pfeiffer and Plankl v. Austria; Frommelt v. Liechtenstein; Galstyan v. Armenia; Zakshevskiy v. Ukraine; Rostovtsev v. Ukraine, stated that the inalienability of some rights contained in the convention is certain (Krūmiņš, 2020: 288).

According to the rules of human rights and the principle of access of individuals to judicial authorities (Paragraph 1, Article 6 of the European Convention on Human Rights), it seems that even in the case of giving credit to the agreement to revoke the right to request the annulment of the arbitration opinion, it is necessary to protect human rights Support the parties. According to the procedure of the aforementioned court, the rights contained in the convention that are related to arbitration include the right to access to a state court, the right to a fair trial or arbitration, the independence and impartiality of the arbitrator, the right to a public hearing, and the right to make a decision within a reasonable time, and these rights It is divided into waivable rights and non-waivable rights. (Krūmiņš, 2020: 286) That is, some of the rights listed in paragraph one of article 6 of the aforementioned convention cannot be

waived. In other words, the agreement of the parties and even the arbitration award and its implementation cannot violate these rights. Among the aforementioned rights, the right of access to the state court, the right to a public hearing, and the right to make a decision within a reasonable time, as it is in support of the parties to the dispute, can be waived by observing the mentioned preconditions, but the right to have an independent and impartial court. and the right to a fair trial and the right to have an independent and impartial arbitrator in the arbitration, and the right to a fair arbitration, because they have a higher purpose than the rights of the parties and are considered to be related to the transnational public order, they cannot be waived in advance and only later If the parties are aware of the violation, they can be waived. Therefore, withdrawing the right to protest against the arbitration decision is giving up the right to protest against the arbitration decision in order to violate the fair arbitration; What is more, these cases are incompatible with human dignity, and consequently, giving up these rights is not binding because it is related to the general order of arbitration (Krūmiņš, 2020, 79).

Therefore, the conditions of valid exclusion (agreement on revoking the right to object to the arbitration decision) in addition to the official conditions, i.e. knowledge, freedom and openness, is that it is not against public order and has the minimum guarantees of fair arbitration and the independence and impartiality of the arbitrator. Therefore, an Therefore, the conditions of valid removal (agreement on revoking the right to object to the arbitration decision) in addition to the official conditions, i.e. knowledge, freedom and openness, is that it is not against public order and has the minimum guarantees of fair arbitration and the independence and impartiality of the arbitrator. Therefore, an exclusion contract that does not have these conditions is a gross violation of the basic principles of rights, that is; Morality, justice and fairness are not binding contract that does not have these conditions is a gross violation of the basic principles of rights, that is; Morality, justice and fairness are not binding (Krūmiņš, 2020: 115), As a result, firstly, the objection to the violation of the said right has been accepted outside the deadline, secondly, the exclusion agreement has no effect on the acceptance of the objection to the arbitration decision for the violation of the said right, and thirdly, in terms of recognizing and enforcing the arbitration award, it is not possible to recognize and enforce the arbitration award because of the non-alienability of the said right and against the international public order.

4. Maritime arbitration and fair arbitration

Maritime arbitration, on a broad level, usually has as its subject matter or context something to do with goods carried by sea, or a ship carrying goods. Historically, it has been split into so-called "wet" (collision, salvage, wreck removal, etc.) and "dry" (disputes arising out of bills of lading, charter parties, and various other types of maritime contracts). Dry disputes, are in the long-term increasing, what with the ever-growing volumes of goods being carried by sea (even if fewer much bigger ships might be carrying those goods). In the modern context, maritime arbitration can encompass cross-over areas such as the building of ships or offshore installations. The numbers of those types of disputes also seem to be increasing over the long term.

Maritime arbitration has some differences from other types of commercial arbitration. First and foremost, perhaps, is the historical dominance of ad hoc arbitration. Whilst in other types of commercial arbitration, institutional arbitration is clearly dominant, the reverse is true in maritime arbitration. Institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC) do have some cases which could broadly be described as maritime each year, but the numbers are relatively small compared to the diet of organisations, such as the London Maritime Arbitrators Association (LMAA).

Arbitration is particularly suited to the maritime industry. Parties involved in maritime business face complex, specialised, and international disputes, which they have chosen to resolve outside of state courts since ancient times. One of the first arbitration clauses in the maritime world dates back to 323 BC, in a case referred to as "Against Dionysodorus."

The principles of equality of arms and adversarial proceedings are fundamental components of the right to a fair hearing within the meaning of Article 6(1) of the ECHR.(Krūmiņš, 2020: 276) The particular significance of the principles of equality of arms and adversarial proceedings in arbitration proceedings has been equally stressed in most national arbitration laws, arbitration rules of major arbitral institutions and international instruments, such as the UNCITRAL Model Law. the right to a fair hearing have been generally recognized as pertaining to procedural public policy and even said to constitute

principles of transnational procedural public policy—those universal standards that represent an international consensus and must therefore always apply. Therefore, also the most fundamental guarantees of a fair hearing constitute fundamental and indispensable elements of every arbitration and as such must be adhered to during all stages of arbitration (Born, 2014: 3225). As a result, in maritime arbitration, which is a type of international arbitration, it is necessary to observe fair arbitration. Violation of fair arbitration is considered as a violation of a human right, and depending on the causes of invalidity and non-recognition and implementation of the arbitration award.

5. Conclusion

The right of access to judicial authorities or the right to trial according to international and national regulations can be considered as an absolute human right that must be respected. The mentioned right has different aspects, which include the right to access to the government court, the right to a fair trial, the right to access to an independent and impartial court, the right to a public hearing, and the right to make a decision within a reasonable time, and these rights are divided into waivable rights and non-waivable rights. Among the above-mentioned rights, the right to access the government court and the right to a public hearing and the right to make a decision within a reasonable time because it is in support of the parties to the dispute, they can be waived with the observance of preconditions, but the right to have an independent and impartial court and the right to a hearing Fair, which is known as the principle of fair arbitration in arbitration courts, because they have a higher purpose than the rights of the parties and are considered to be related to the transnational public order, they cannot be ignored in advance. Therefore, the withdrawal of the right to protest against the arbitration decision is a violation of the principle of fair arbitration, because these cases are incompatible with human dignity, and consequently, the withdrawal of these rights is not binding because it is related to the general order of arbitration. Therefore, it should be said: the possibility of requesting the annulment of the arbitration decision before the national courts as another human right should be interpreted in the direction of guaranteeing the aforementioned rights. Considering that some countries consider the agreement on revoking the right to request the annulment of the arbitration opinion as valid, in general, according to the

aforementioned regulations and the procedure of the European Court of Human Rights (as the most important judicial institution for explaining and interpreting the rules of human rights), It seems that due to the non-violation of the human rights of the parties to the dispute, the validity of the agreement on revoking the right to request the annulment of the arbitration opinion is not absolute and faces several important limitations: First of all, the clear and free will of the parties to revoke the right to request the annulment of the arbitration decision must be clear, and the use of general terms or mere reference to the arbitration rules including the possibility of revocation of the aforementioned right is not sufficient; Secondly, the agreement on the cancellation of the right to request the annulment of the arbitration opinion should be made after knowing the existence of the reasons for annulment of the said opinion; Thirdly, the aforementioned agreement has no effect on the possibility of requesting the annulment of the arbitration decision due to non-compliance with fair arbitration, and accordingly, the request for annulment of the arbitrator's decision that is outside the deadline can also be accepted by relying on the principles of fair arbitration, and in case of a request for enforcement The arbitrator's decision will not be able to be recognized and implemented unless the exclusion agreement is made after the issuance of the arbitration decision.

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