

The criteria for selection of the law governing the competence of natural persons convinced by an international commercial arbitration agreement

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ABSTRACT

The selection of prevailing law confronts some challenges in international commercial arbitration. One of these challenges is the competence of natural persons convinced by the arbitration agreement which possessing it will strengthen the contract and the arbitral award. The purpose of this study is to review the criteria for determining the competence of natural persons convinced by agreement regarding arbitration. For this purpose, it has been studied through documentary methodology, explanation, and description of the criteria for determining the law applicable to the aforementioned field in Iranian law and other legal systems. The findings suggested that; the competence and eligibility of individuals to conclude an arbitration contract is assessed according to the relevant law or place of residence or place of the conclusion of the contract. At the same time, the observance of national and transnational public peace (rules of jurisprudence) is inviolable. Nevertheless; the spirit of fairness and justice of the law indicates that it is important that, where appropriate, arbitration, as the case may be, examines the various criteria according to the conflict resolution rules and applies the one it deems appropriate.

Keywords: International Commercial Arbitration, Prevailing (Governing) Law, Arbitration Agreement, Qualification and Jurisdiction of Individuals

1.Introduction

For investigation and dispute settlement of international commercial Claims, the issue of selecting the prevailing law reliable on the competence of the natural persons convinced by the arbitration agreement is of great importance. This means that, in the event of arising any differences over the contractual competence of an individual to be settled through arbitration, their criteria for arbitration (negatively or affirmatively) will be assessed according to which criteria. Because, the competence of the mentioned persons to refer to arbitration, should be insisted according to the applicable law so that in addition to the firmness of the arbitral award in terms of having legal validity, its implementation does not confront any restrictions on national and transnational public peace from the point of view of litigants. The basic question of the research

is that according to what criteria the competence of natural persons to refer to international commercial arbitration to resolve a current or probable dispute is evaluated?

2. Theoretical foundations of ascertaining the capacity and competence of natural persons who are parties to the arbitration contract

Mabani (Fundamentals) the plural form (base), from the root "bani", means the foundation and everything that is put on it and relying on it (Ragheb Esfahani, 1412 AH) and its customary meaning refers to the roots and basic matters of a subject and includes the main matters. And the meaning of "principles" in this position is the criteria based on which the competence and capacity of natural persons who are parties to the arbitration contract are formed.

Several factors impair the validity of the arbitration agreement. The extent of the impact of these factors is subject to the law governing the arbitration agreement. And "the consequences of defects related to the form or content of the arbitration agreement are subject to the rights of the arbitration agreement" (Sammartano, 1991).

Therefore, natural persons who want to be a party to the contract must have full authority and competence to conclude and execute the subject of the contract because "the arbitration procedure indicates that natural persons and private companies in the first place constitute a large majority of the litigants (Sammartano, 1991).

The contract may be concluded between one or two people or more. Therefore, everyone should know with whom he wants to conclude a contract. Suppose an Iranian enters into a contract with a British person for the transaction of a car and then they disagree on the execution of the contract. The Iranian buyer refuses to pay the price of the transaction and a British seller in Iran files a lawsuit against him. The buyer claims under Iranian law that he was incompetent at the time of concluding the contract and the transaction was essentially void and that he should not pay anything. The seller claims that because the transaction took place in the UK, according to English law, the buyer has the competence at the time of the transaction, so the transaction is valid and he is obliged to pay the price of the transaction (Abbasi Dakani, 2007).

According to paragraph 2 of Article 2 of the International Commercial Arbitration Law and Article 454 of the Code of Civil Procedure of Iran; all persons can refer their dispute to one or more arbitrators if they have the following conditions:

- 1) The parties can file a lawsuit. Cases of the incompetence of lawsuits such as lack of growth, insanity, the prohibition to seize property as a result of bankruptcy and¹
- 2) They have a dispute with each other.
- 3) Whether or not the dispute has been raised in court.
- 4) In case of litigation and dispute in court, at any stage of the proceedings.
- 5) The litigants agree to refer the matter to arbitration.

It means that in International Commercial Arbitration, the main principle is that all the individuals who have the competence for lodging a claim, have authority to settle their current or probable disputes by referring to the arbitration.

¹ In addition to the cases mentioned in paragraph 2 of Article 2 of the International Commercial Arbitration Law and Article 454 of the Code of Civil Procedure of Iran, the conditions set forth in Article 190 of the Iranian Civil Code, which includes intent and consent, competence of the parties (mentioned in above article), specific subject and legitimacy will be considered.

Also, the Iranian legislator, according to Article 455 of the same law, has specified the jurisdiction of natural persons convinced by the arbitration agreement in such a way that the parties to the transaction (seller and buyer) can refer their dispute to arbitration if the following conditions are met.

- A) Be bound during the transaction. (It means that this matter is mentioned in the contract concluded as a condition of arbitration and has been signed by them.)
- B) To agree on this matter according to a separate contract.
- C) Appoint their arbitrator or arbitrators before or after the dispute.

Note - In all cases of recourse to arbitration, the parties can leave the selection of the arbitrator to a third party or the court.

In other legal systems it seems that there is a similar regulation, since the French legislator according to Article 2059 of the Civil Code stipulates that "all persons may agree to arbitrate the rights in which they are free to exercise, after a dispute has arisen."

Also according to Article 1 of the 1996 Brazilian Arbitration Act stipulates that "persons who can enter into a contract may settle disputes concerning their rights through arbitration."

The common ground of all such rules is the emphasis on the principle of free will in arbitration with an emphasis on personal criteria. That is, what has always been emphasized in various amendments and expressions is that persons who can act or persons who have the right to bargain, or persons who have the competence of transaction, have the right to go to arbitration to resolve their disputes.

Of course, in the laws of many countries, there is no emphasis on personal criteria. Countries such as China, the United States, Germany, and the Netherlands, which have merely emphasized the thematic criterion of arbitration, have implicitly accepted the free will of the parties to the treaties and disputes to refer the dispute to arbitration (Elmi et al., 2015).²

The International Convention on the International Sale of Goods, approved in 1980, and the UN Convention on the Law Applicable to contracts for International Sale, approved in 1986³, do not address the fundamental requirements for the validity of transactions, including competence, and are left to the domestic law of the Contracting States.

Article 4 of United Nations Convention on the contracts for the International Sale of Goods, approved in 1980⁴, only provides that: "the provisions of this Convention shall not be specifically relevant to the following matters unless otherwise specified: A: Validity of the contract or any of its terms or the validity of any relevant custom. B: The effect that the contract may have on the ownership of the goods.

However, Article 11 of the Treaty of Rome, concerning contractual capacity, provides: "Legal incapacity in a contract concluded between persons in a country, a natural person who is qualified under the law of that country can only invoke his incompetence under another law if the other party is aware of his incompetence at the time of concluding the contract or is not aware due to negligence." Consequently, according to this article, the principle is to implement the law of the place of contract regarding the determination of the competence of the parties.

Therefore, whenever a contract is concluded between persons who are in a country, whether they reside there, or who have come to that country only to conclude that particular transaction, If both parties can conduct the transaction according to the law of the place of the contract but, after concluding the transaction,

For example, Article 2 of the Arbitration Law of China (1994) states: "Contractual disputes and other disputes regarding the rights and interests of property that arise between citizens, legal entities and organizations can be referred to arbitration under this law."

³ UN convention on the Law applicable to contacts for international sale of goods, 1989 (the Huque)

⁴ United Nations Convention on Contracts for the international Sale of Goods, 1980 (CISG).

one of them claims that according to another law, whether it is the law of his respective government or the law of his place of residence or the law of the country in which his place of business is located and/or the law of the place of performance of the obligations arising from the contract or other laws related to the subject has not been qualified to perform the transaction, According to Article 11 of the Treaty of Rome, this claim will be accepted only if:

- A. The other party is aware of his incompetence at the time of concluding the contract.
- B. Or is unaware of this issue due to his negligence.
- C. Otherwise, the law of the country where the contract took place will be enforced.

This is accepted to prevent the abuse of the appearance of persons and persons based on the principle of good faith prevent to do business with such a person who knows that according to the law appropriate or related to him is incompetent, even if according to the law of the place where the contract took place, he is qualified. It should be noted, however, that the provisions of this Convention apply only to countries that have acceded to it (Abbasi Dakani, 2007).

However, according to Article 962 of the Civil Code of Iran, "the determination of the competence of each person to trade will be according to the law of his respective government. Therefore, if a foreign national in Iran do a legal action, if he is not qualified or has incomplete qualifications, that person will be considered qualified to perform that action if, regardless of his foreign citizenship, according to Iranian law, he can be recognized qualified to perform that act. The ruling does not apply to legal acts relating to family or inheritance rights or to the transfer of immovable property which is located outside Iran"

The rule contained in Article 11 of the Treaty of Rome has not been taken into account in the Iranian Civil Code, and contrary to its provisions, Article 962 of the Iranian Civil Code stipulates that it is up to each government to determine the competence of each person to trade. Therefore, whenever a contract is concluded between two people with different nationalities and then leads to a dispute and one party files a lawsuit against the other in an Iranian court and asks him to fulfill the obligations arising from the contract, but, the defendant declares that he is incompetent, according to the law of the respective government. The Iranian court must accept this claim based on the beginning of Article 962, and if his incompetence is established, according to the law of his respective government, the contract must be annulled.

The provisions of Article 11 of the Treaty of Rome are also accepted in Article 36 of the Private International Law of Switzerland, but the difference is that the law of the place of residence of the person is taken into consideration. Article 36 stipulates: "Any party to a transaction who is incompetent under the law of his country of residence may not invoke it if he is competent under the law of the country where the transaction took place unless the other party is aware of his incompetence or make him aware of it."

3. Criteria for ascertaining of competence of natural person party to the International Commercial Arbitration Agreement

Articles 35, 154, and 155 of the Switzerland Private International Law, the law governing the competence of natural persons, state the law of their place of residence (with the explanation that subsequent changes to the residence will not affect the law governing the competence of individuals (Jafarian, Bitá).

Further to Article 35 of the Switzerland International Law, the eligibility for the transaction is generally subject to their place of residence. And Article 35 is somewhat similar to the beginning of Article 962 of the Civil Code of Iran, and in both articles, a general principle for recognizing the qualifications of individuals is accepted but the difference is that in Article 35 of the Switzerland Law on Residence and Article 962 of the Civil Code of Iran, the ruling persons are included, but Article 36 of the Switzerland Private International Law is similar to Article 962 of the Civil Code of Iran because despite the differences between the laws of Iran and Switzerland in considering the law of the government of the foreign national

or the law of his place of residence, in determining the transactional capacity of persons, the sentence of both articles is the same and both articles stipulate that the law of the place of the contract if it is other than the domicile or country of the parties, will govern their eligibility.

According to the recent law, if the parties to the contract are eligible for the transaction that transaction will be valid even if the parties are not eligible under the law of their respective government or place of residence. The difference is that the provision of Article 962 is more limited than the provision of Article 36 and only applies to contracts or legal acts performed in Iran.

On the other hand, it can be said that Article 36 of the Switzerland International Private Law, like Article 11 of the Treaty of Rome, puts the principle on the implementation of the law of the place of the contract regarding the recognition and verification of transactional competence of the parties. And only in exceptional cases does it prescribe non-implementation of the regulations of the mentioned law concerning the subject matter, and that is if one party to the contract invokes his incompetence under the law of his place of residence and the other party is aware or must be aware of his incompetence under the law. These conditions are almost similar to those contained in Article 11 of the Treaty of Rome, while in Article 962 of the Civil Code of Iran there are no such restrictions (Abbasi Dakani,, 2007).

Internationally, paragraph 1 (a) of Article 5 of the New York Convention (1958) One of the cases in which the enforcement of the arbitral award can be rejected is the lack of competence of the parties to the dispute. The criterion set in this case is the national law of the parties to the dispute.⁵Article 34 paragraph 1 (A 1) of the UNCITRAL Model Law merely declares in this case that if one of the parties to the dispute is incompetent, the arbitrator's decision may be rejected, but it does not determine the law governing the competence of the parties to the dispute.⁶

Paragraph 1 (a) of Article 33 of the International Arbitration Law of Iran stipulates that if one of the parties is incompetent, the arbitrator's decision may be revoked.

It can be seen that the solution of the International Commercial Arbitration Law and the UNCITRAL Model Arbitration Law are the same regarding the competence of the parties, and both have remained silent about the law governing the competence of individuals.

The arbitrator needs a criterion to determine the law governing the competence of individuals. The silence of the International Commercial Arbitration Law on this issue will confuse the arbitrators. On the other hand, the International Commercial Arbitration Law deals with international disputes, and therefore, in cases of silence and its synopsis, the standards of Iranian domestic law cannot be used. Also, in the case of the law governing the competence of persons at the international level, there is no uniform procedure by which arbitrators can find a solution (Jafarian, Bit).

According to Article 962, the determination of the eligibility of persons to conduct a transaction is subject to the respective competence law of the transacting party and the law of the place of contract or other laws related to the foreign person has no effect on the matter and as a result, the provisions of Article 962 of the Iranian Civil Code is in contrary to the provision of Vienna Convention from this respect.

However, citing incompetence according to a law other than the law of the place of contract is subject to informing the opposing party of his incompetence during the transaction, or his negligence and failure

*5*Article 5 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

"1 The request for identification and enforcement of arbitral awards can only rejected at the request of someone against him according to the law, if the said party to the competent local authority where the request for identification and enforcement of the order is requested, offer positive reasons and evidence based on:

A) The parties to the arbitration agreement referred to in Article 2, in accordance with their respective law, are in some way incompetent, ... \"

*6*Article 34 of the UNCITRAL Model Arbitration Law:

The arbitral award may be revoked only in the following cases by the court referred to in Article 6

The party making such a request shall provide reasons as to:

His party to the arbitration agreement referred to in Article 7 did not have the necessary qualifications

to obtain this information and awareness are not considered in Iranian law. These are new legal institutions that are gradually being accepted in the field of private international law.

However, in the continuation of Article 962, only in one case, the place of the transaction or legal action is considered to affect the qualifications of foreign nationals around the contract, and that is in the case that a foreign national performs legal action "in Iran", which in such a case if according to his respective government law, he is not qualified or incomplete to perform that action, in a way that, regardless of his foreign nationality, he is qualified to perform that act according to Iranian law, that person will be deemed qualified to perform that act.

As can be seen, the provision in Article 962 of the Civil Code is based on the implementation of the law of the respective government of foreign nationals to determine their eligibility to conduct a transaction, and exceptionally only if the legal action is taken by them in Iran and according to Iranian law have the legal capacity to do so, irrespective of the fact that according to the law of his respective government he is not qualified to perform that act, his qualification will be determined according to Iranian law, whether the foreign national or his opposing party claims his qualification or incompetence and he doesn't need to claim incompetence.

Furthermore, if the transaction is carried out remotely and the parties to the transaction are not residing in the same country, it will not be possible to implement the provisions of the 11 treaties.

Besides, the provisions of Article 962 are applicable only if legal action is taken in Iran, otherwise, the presence of the two parties to the transaction in a third country contract does not cause the law of that country to be enforced by an Iranian court in cases of dispute. As a result, Article 11 of the Convention paves the way for a person who is harmed by the transaction to invoke the ineligibility to enter into a transaction, and he can refuse to fulfill his contractual obligations under this article.

And the reason for this rule, as mentioned, is to prevent the violation of the rights of individuals due to the inability to defend their rights and the necessity for the other party to observe the principle of good faith in dealing with him if he is aware of his incompetence due to other rules.

However, in Article 962, the legislator, with the same arguments, to prevent the abuse of the subject of incompetence by the law of his respective government to the detriment of the persons with whom he deals, whether citizens of Iran or citizens of other countries have ruled that if a foreign national performs legal action in Iran and is qualified under Iranian Law even if it is incompetent under the law of its respective state, that legal action will be considered valid and the foreign party will be obliged to fulfill its obligations under the said contract or legal act.

By comparing these two articles, it becomes clear that the lawgivers of Article 11 of the Convention, precisely according to provisions such as Article 962 of the Iranian Civil Code, have concluded that applying the law of the place of the contract concerning the competence of the parties to the contract in cases where the parties are present in a country and the contract is concluded in the same country is a general principle, Contrary to the provisions of Article 962 of the Civil Code of Iran, which has exceptionally accepted this, and the general principle regarding the competence of individuals to conduct a transaction is based on the application of the law of their respective government. And only in one case, exceptionally, does govern the law of the place of the contract.

As it was observed, to prevent the abuse of individual who is aware or could have been informed of the incompetence of their party to the transaction under national law or their place of residence or other relevant law, so, for gaining profit at their determinant, They make a deal with them hoping that the domestic courts of the country where the contract took place, to protect its domestic law, will recognize the other party as competent and condemn him to fulfill his contractual obligations, Article 11 of the Treaty of Rome, to prevent such unfair methods, gives the aggrieved party the right to invoke his incompetence under a law other than the law of the place where the contract took place and to request the annulment of the contract.

But there are also differences between the provisions of Article 11 of the Convention and Article 36 of the Switzerland International Law.

Firstly, Article 11 of the Convention establishes the principle of recognizing the contractual capacity of individuals according to the law of the place of the contract. Contrary to Article 35 of the Switzerland law, which puts the principle on the application of the law of the residence of individuals and only in the case that the transactions have conducted in other countries, according to Article 36 of the law, the place of contract, except if the person is recognized competent according to the mentioned law, governs concerning competence of the parties. In other words, in the Treaty of Rome, there is only one rule regarding the transactional capacity of individuals, and that is related to concluding contracts, which is subject to the law of the place where the contract took place, but the general rule on the capacity of individuals to perform other legal acts is not set, the treaty has no rule in this respect. However, in the Switzerland International Private Law and the Iranian Civil Code, there is a general rule for determining the eligibility of individuals to perform legal acts, and only in exceptional cases, the law of the place of the contract applies to the eligibility for resignation. In other words, the recognition is subject to the domestic laws of the countries, not the treaty.

Secondly, Article 11 emphasizes that the contract must be concluded between individuals who are in the same country, but Article 36 does not contain such a restriction, so even if the contract is concluded between two persons who reside in different countries and/or the transaction is made in absentia. In any case; the law of the place of the contract will govern the competence of the parties to the transaction, except in the cases mentioned in the continuation of the article.

It is noteworthy that, in all three cases, the principle law is based on the competence of individuals and not their incompetence because the strength and stability of contracts and the continuation and implementation of their provisions is more important for the legislature than termination and cancellation of the contract. Unless, according to the circumstances in each particular case, the annulment of the contract is preferable to its continuation, in which case the court will issue an appropriate verdict in the case according to all the circumstances (Abbasi Dakani, 2007).

According to what happened; there are three criteria for determining the eligibility of the parties to the arbitration agreement: nationality, residence, and place of contract.

As a person's citizenship is less subject to change, by application of national law on the competence of individuals, the status of persons who are required to establish social relations is further established. Therefore, to benefit from this advantage, national law can be considered as governing the competence of individuals. In the case of dual citizenship, the arbitrator will obtain the dominant citizenship of the individuals according to the available reasons (Jafarian, Bitá).

However, the expression of the rules governing contracts in transnational business practice is also worth considering. The rules of this legal system are of great importance in the context of international trade agreements. Because international trade relations are based on the contractual system and therefore transnational trade rules have a special richness in this field.

The international arbitrator, in the position of enforcing the rules of this transnational system, follows a certain principled approach. First, in the position of concluding the contract, he examines the competence of the parties to the transaction and the scope of their authority and then examines the legality of the obligation and the absence of mistakes, reluctance, cheating, and fraud in the transaction. But what distinguishes the arbitrator from the domestic judge in this legal analysis is his over-reliance on assumptions that originate from him or are common to some of the legal systems that have been used as the basis of business relations.

When the arbitrator is in a position of competence and scope of the powers of the parties to the contract, rather than focusing on these two elements, according to the theory of emergence, it uses the performance

of natural persons and the actions of legal representatives as a piece of circumstantial evidence in the course of (principle of accuracy).⁷

In this view, if the person who is a party to the contract is qualified or has not made any reference to the scope of his authority during the conclusion of the contract, in this case, the contract is valid and later cannot be annulated due to lack of required authority and based on the domestic law (Prohibition of speech and actions of the opponents) (Emmanuel et al., 1999).

The necessity of respect to the trust evoked by the other party during the conclusion of the contract (Mayer, op. Cit. 448) as well as (observing a truly international peace in business relations) requires that they trust this (appearance) and consider the contract to be correct, even in some theories go beyond this and provide a broad interpretation of the principle of accuracy, in a way that, in international trade relations, the mere entry of an individual into contractual relations, the principle is based on having qualifications and having authority, and the excuse of incompetence and lack of authority cannot be invoked against third parties (Iranpour, 2008).

Of course; Article 11 of the Treaty of Rome and Article 962 of the Iranian Civil Law "Application of the law of the place of contract" regarding the qualification of the parties to the contract, in cases where the parties are present in a country and the contract, is concluded there, have been accepted.

Concerning the criteria for determining the competence and jurisdiction of the parties to the arbitration agreement, "it can be said that the international conventions related to arbitration and the procedure of international commercial arbitration are fully in line with private international law in terms of criteria for determining the competence." Because according to the well-known principle of private international law based on the governing of personal law,⁸ they ratified the competence. By personal law, we mean the general term which, depending on the different legal systems and whether the competence of the natural person is considered or the legal person can be a national law, residence or the law of the main center of business or the law of the company (Joneidi, 2009).

Part "A" of Article 5 of the New York Convention⁹ and Article 2 out of article 6 of the European Convention provides that the competence of the parties shall be examined according to the law applicable to them. This phrase is comprehensive enough because it encompasses all national legal systems. These legal systems can be broadly divided into two categories:

(A) National law considers the competence of natural persons according to their nationality and the competence of legal persons according to their principal place of business.

B) National law (mainly the Commonwealth) which examines the competence of natural persons according to the law of their place of residence and the competence of legal persons according to the law of their place of establishment. (Of course, in these systems there is now a tendency to measure the

⁷ *Estoppel by representation*, E. Gaillard, L. interdicton de se contredire au detriment d, autruicomme Principe du droit du commerce international, Rev. arb., 1985, p. 241 et s. non concedit venire contar factum proporium. In, p. pinsolle, Distinction entre le principe de l'estopple et le principe de bonne foi dans le droit du commerce international, Clunet 1998, p. 905 ets.

⁸ Personal law is a law that has a permanent aspect and follows the person wherever he is. In France, Belgium, Italy, Spain, Germany, the Netherlands and Iran, the personal law of individuals is their national law. In the United Kingdom and the Anglo-Saxon countries, the law of residence (lex domicile) is the personal law of individuals.

⁹ The competent authority from which the request for identification and execution of the sentence has been requested may refuse to identify and execute the sentence at the request of the party against whom the sentence has been documented and only if the said party provides the following reasons.

(A) The parties to the agreement referred to in Article (2) are incompetent in accordance with the law applicable to them in some cases, or the said agreement is not valid under the law to which the parties are subject, or in accordance with the law of the country of issue has no homologous there.

competence of the parties according to the law of the place of conclusion and even according to the new tendencies according to the appropriate contract (Mojarad Golkhoran, 2014).

4. Conclusion

The procedure governing International Commercial Arbitration emphasizes that the "competence and competence of the individual" for concluding the arbitration contract is assessed according to the relevant law or the place of residence or the place of concluding of the contract.

Different countries usually consider two criteria for determining the law governing competency: citizenship and residence.¹⁰ The first group, which considers the criterion of citizenship, considers the personal status of individuals as subject to the law of the respective state (or in other words, the national law) of that person. Iran is one of the countries that consider the competence of individuals subject to national law.¹¹

However, in the continuation of Article 962, only in one case, the place of the transaction or legal action is considered to affect the qualifications of foreign nationals around the contract, and that is in the case that a foreign national performs legal action "in Iran". In some other countries, including the United Kingdom, the qualifications of an individual are considered to be subject to the law of the government of the person's place of residence.

In some other countries subject to the common law system,¹² the competence of individuals is in some cases determined by another criterion. According to this criterion, if the subject of the dispute is related to the contract or document, the law governing the nature of that contract will also govern the competence of the parties to the contract (Sammartano, 1991). One of the disadvantages of these criteria is that it allows a person, according to the law determined by this criterion, to deny the ability to exercise the right of the other party while the other party, according to his national law, can do so. . Or, by appealing to this criterion, a person who is incompetent according to his national law can be considered competent to exercise the right.

Regarding the application of which of these two rules (the Rule of Residence Law and the Rule of National Law) is more appropriate for determining the law governing eligibility, it has been stated that "This is a relative matter and it is different in different countries. Of course, with the application of national law, the stability of family status and the competence of individuals are better ensured, but in some cases, applying the national law is not possible and the law of residence is usually enforced. In general, the preference of one of these two rules over the other is more subject to expedient reasons than legal reasons, and therefore we observe that immigrant states, in principle, tend to apply the law of residence. "(As in the case of citizenship, they apply the soil system) and while migrant states tend to apply the national law (as well as in the case of citizenship, they tend to apply the blood system)" (Almasi, 2004).

For further study of the reasons for agreeing with the criteria of citizenship and the criterion of residence, refer to Almasi, Najjad Ali, "Conflict of Laws", pp. 153-155.

- Sammartano, Mauro Rubino: *op. cit.*, pp. 117-120

Madi, Ferenc: "Competence of Arbitral Tribunals in Int'l commercial Arbitration", in *Essays on Int'l Commercial Arbitration*, edited by Petar Sarcevic, p.97.

Article 7 of the Iranian Civil Code stipulates that "foreign nationals residing in the territory of Iran shall be subject to the laws and regulations of their respective governments in matters relating to their personal status and competence, as well as in terms of inheritance rights."

¹ Common Law

According to Article 454 of the Code of Civil Procedure of Iran; Cases of the incompetence of lawsuits are lack of growth, insanity, the prohibition of seizure of property as a result of bankruptcy, and...¹³

Article 33 (1) (b) of the International Commercial Arbitration Law of Iran, according to Article 34 (a) (1) of the UNCITRAL Model Law, indirectly refers to the law applicable to the arbitration agreement, and stipulates that if "The arbitration agreement shall not be valid according to the law recognized by the parties to the agreement, and if the ruling law is silent, it shall be in direct violation of Iranian law".

The arbitral award may be quashed by the court referred to in Article 6. Article 34 (a) (1) of the Model Law is adapted from Article 5 (1) (a) of the 1958 New York Convention, which is the expression of a conflict resolution rule applicable to an arbitration agreement.

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References

- Abbasi Dakani, Kh. (2007). Law governing contractual competence. *Kanoon Magazine*, (76), 51-65.
- Almasi, N. A. (2004). *Private International Law* (Second ed.). Mizan Publishing.
- Elmi, H., Shahbazi Nia, M., & Tafreshi, M. (2015). Individual to refer to international trade law by emphasizing the Iranian Law" *"Principles of Arbitration of Arbitration. Comparative Law Research*, 16(4), 126.
- Emmanuel G., Savage, J., & Gaillard, F. (1999). *Goldman on International Commercial Arbitration*. Kluwer Law International.
- Iranpour, F. (2008). A brief look at the principle of the rule of will in the context of choosing the law governing the obligations arising from commercial contracts. *Journal of the Faculty of Law and Political Science, University of Tehran*, 55, 32.
- Jafarian, M. (Bita). Reflections on the International Commercial Arbitration Bill (1). *Parliament and Research*.
- Joneidi, L. (2009). Jurisdiction Court to annul the arbitrator's decision in international arbitration. *Law Quarterly Journal of the Faculty of Law and Political Science*, 38, 39.
- Mojarad Golkhoran, A. A. (2014). *Law Governing International Commercial Arbitration with Emphasis on the Arbitration Rules of the International Chamber of Commerce* (Master Thesis). Faculty of Law, Azad University, Central Branch.
- Ragheb Esfahani, H. M. (1412 AH). *Dictionary of the words of the Qur'an* (Research by Davoodi, A.). Dar al-Alam.
- Sammartano, M. R. (1991). *International Arbitration Law*. JurisNet, LLC..

¹ In addition to the cases mentioned in paragraph 2 of Article 2 of the International Commercial Arbitration Law and Article 454 of the Code of Civil Procedure of Iran, the conditions set forth in Article 190 of the Iranian Civil Code, which are intent and consent, competence of the parties (mentioned in the above article), specific subject and Legitimacy are considered.