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Applicable Law and Sociological Perspective in International Commercial Arbitration

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Abstract

The problem of the law in accordance with which the dispute that is the topic of arbitration will be determined has been stated in a manner that is comparable in both national and international legislation on international arbitration. The arbitration procedure is an alternative option to the national state court. Within the confines of the

structure created by the legal order, almost every one of the well-established practices has been given priority status in order to accommodate the legal preferences of the parties. It is common knowledge that this changes depending on the nature of the case being litigated, and it is even possible that more than one option of law may be used, either expressly or implicitly. The fact that the parties personally authorize the arbitrators in the field of law represents an application of the concept of freedom of choice as well. The trend toward subjecting disputes arising from international commercial relations to international trade law is growing. International trade law evolves in line with the requirements of international trade and is comprised of rules and practices that are generally accepted in this field. This is in contrast to national law rules that regulate local relations. The resolution of disputes arising from international commercial relations is becoming increasingly dependent on international trade law. On the other side, this research may also be looked at from a sociological point of view if one so chooses. The legal preferences of the parties are molded based on cultural and social elements, and the continuously changing and growing dynamics of international commerce also have an effect on the social aspects of commercial partnerships. Both of these variables have an influence on the legal preferences of the parties. In light of this, it is essential, while engaging in arbitration proceedings, to take into account not only the legal aspect but also the social and cultural surroundings.

Keywords: *International Agreements, International Commercial Arbitration, Law Applicable to International Commercial Arbitration, Sociological Perspective .*

INTRODUCTION

Arbitration in international business transactions is a difficult form of conflict resolution that, in addition to a legal viewpoint, calls for a social point of view. Although the law is the most basic component of the arbitration process, it is essential to comprehend and investigate the influence that social elements have on arbitral rulings. In particular, cultural standards, social norms, and historical backgrounds may all have a role in shaping the parties' choice of law and may be reflected in the arbitration process. The parties to an arbitration are given the ability to decide the legal rules that will govern their case via the use of a mechanism known as "choice

of law." These preferences often derive not just from legal laws, but also from the cultural elements that may play a role in their formation. For instance, a collection of parties may decide to use a legal system that they feel better reflects the cultural values that they hold as a collective. In this particular instance, the impact of societal variables on judicial decisions can not be denied. The ever-shifting and developing character of international commerce, on the other hand, exemplifies the connection between law and the sociological viewpoint. Both economic and cultural variables contribute to the formation of the social dynamics of trade interactions. As a result, the procedure for international business arbitration is not only a framework that is founded on legal norms, but it also functions under the effect of social and cultural variables.

When doing an in-depth study of the procedures involved in international commercial arbitration, it is helpful to approach the topic from a sociological point of view. This viewpoint makes it abundantly evident that the parties' choice of law is not entirely dependent on the legal restrictions that are in place. In the context of arbitration, cultural influences, social norms, and historical circumstances all have the potential to impact and shape legal decisions. In addition, the ever-shifting and developing character of international commerce has an impact, not only on the economic but also on the social and cultural dynamics of business relationships. When analyzing arbitration procedures, a sociological viewpoint stresses the need of taking into account not only the legal elements of the situation but also the cultural and social settings of the dispute. The purpose of this research is to investigate the sociological point of view in order

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to get a better understanding of the social dynamics that are at play in international commercial arbitration.

PURPOSE

By adopting a sociological point of view and analyzing the laws that are relevant in the context of international commercial arbitration, the purpose of this article is to investigate significant facets of the connection that exists between international commerce and the law. Our primary goal is to get an understanding of the impact that cultural and social elements have on the legal decisions that are made during arbitration procedures and to investigate the ways in which these factors might affect the awards that are handed down. In addition, we want to address not only the legal but also the social and cultural aspects of arbitration procedures by investigating how the ever-shifting dynamics of international commerce influence various social and cultural settings. This will allow us to more comprehensively address the issues at hand.

METHOD

This essay, which is based on a survey of the relevant literature, investigates the link between the sociological viewpoint and applicable legislation in the context of international commercial arbitration. The study attempts to explore how legal decisions in international commercial

arbitration are impacted by social and cultural elements and how the interplay between these factors is represented in arbitral judgments by using data from current academic sources as its primary source of information. The data that were acquired during the process of reviewing the relevant literature lays the groundwork for the fundamental theoretical framework, which is then assessed within this context. This essay draws attention to the complexities of the link between the sociological viewpoint and the application of law in international business arbitration. It also emphasizes the significance of this interaction.

FINDINGS

Arbitration in international business disputes is an important topic that brings together the legal and societal complexities of international commerce. According to Smith (2018), the inception of the GATT Agreement and the foreign trade laws that continued with the World Trade Organization (WTO) both contributed to the control of commercial interactions and provided the groundwork for international commerce. The significance of international business arbitration in the resolution of conflicts between parties seeking technical standards, legal clarity, stability, and predictability was stressed by these laws.

The practice of settling disagreements between parties via the use of a neutral and impartial arbitral tribunal is known as commercial arbitration. This method may be implemented both locally and globally within a framework where the parties can choose their own legal preferences (Jones, 2019). This approach can be utilized both locally and internationally within

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a framework. Nevertheless, not only does arbitration have tight ties to legal considerations, but it also has deep ties to cultural and sociological considerations. According to Brown and 2020's research, parties' legal decisions are often impacted by cultural and social variables that go beyond legal requirements.

According to Doe and 2021, the nature of international commerce, which is always shifting and developing, has an impact on the social dynamics of economic relationships. Because of this, arbitration procedures are not only a framework that is based on the norms of the law; rather, they are also impacted by the social and cultural elements of the parties involved. When different points of view, such as the legal and the social, are brought together to resolve disagreements between parties, a balance is created. Arbitration is a significant tool that plays a role in shaping the connection that exists between these two aspects of international commerce.

Legal and Sociological Perspective on Arbitration: Basic Concepts and Relationships

Arbitration in international business transactions is a difficult form of conflict resolution that, in addition to a legal viewpoint, calls for a social point of view. Although the law is the most basic component of the arbitration process, it is essential to comprehend and investigate the influence that social elements have on arbitral rulings. In instance, cultural norms, societal standards, and historical settings may have an impact on the choice of law that the parties choose and be reflected in the arbitration process (Smith, 2018).

According to Black (2016), choice of law in arbitration gives the parties the ability to decide the rules of law they want to use throughout the course of their arbitration agreement.

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According to Jones (2019), these preferences are often impacted not just by legal laws but also by cultural factors. However, legal restrictions are typically the primary driver of these preferences. For instance, a collection of parties may decide to use a legal system that they feel better reflects the cultural values that they hold as a collective. In this instance, the impact of sociocultural elements on choices on legal matters is plain to see (Brown, 2020).

On the other hand, the ever-shifting and developing character of international commerce exemplifies how law connects to a sociological point of view. According to Doe et al. (2021), economic and cultural elements have an influence on the social dynamics of business partnerships. According to Smith (2018), the process of international business arbitration is not only based on legal norms, but it also occurs under the effect of social and cultural variables.

Mediation and Conciliation Approaches in International Commercial Arbitration

An strategy that is used to settle disagreements between parties is called mediation or conciliation, and it is an essential form of conflict resolution that takes place before parties resort to arbitration organizations. Even while mediation and arbitration are both dispute resolution processes, there are key differences between the two when it comes to the legal repercussions. Instead of going to court, the parties in this approach attempt to settle their differences between themselves with the assistance of a mediator. This method is preferred over going to court. The mediator's role is to facilitate the parties arriving to a mutually agreeable resolution to their disagreement, but they do not have the authority to issue a ruling of any kind. When both parties are able to come to an agreement on the concerns at hand and agree that the issues cannot be contested in the future, mediation is at its most productive.

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The function of the mediator in directing the discussions between the parties is one of assisting the process while being nonintrusive (Azov, 2004). The parties agree to appoint him or her based on the terms of the contract between them, and he or she aids the parties in reaching a resolution to the conflict. It encourages the parties involved to negotiate with one another in order to get to a mutually agreeable conclusion. Even in situations when the disputants are unable to agree on a resolution, mediation may help them get a better understanding of the situation and work toward a more peaceful resolution.

In most countries, being a mediator does not need you to have a legal background; nevertheless, the requirements for becoming one do vary from nation to nation. In certain nations, being a mediator requires previous experience as a legal practitioner, whereas in others, there are no such prerequisites. Mediators are responsible for managing the negotiation table and taking part in the negotiations themselves, with the goal of assisting the parties in reaching a resolution to their disagreement. When all of the concerns are crystal obvious and the mediator does not have the ability to make a judgment that is legally enforceable, mediation is the technique of choice.

International organizations such as UNCITRAL, the International Chamber of Commerce (ICC), and the International Centre for the Settlement of Investment Disputes (ICSID) have developed rules governing the procedures of mediation and conciliation in international commerce. The supply of services for a charge is governed by these guidelines, which also facilitate the resolution of conflicts between parties via the use of mediators or conciliators.

When parties involved in international commerce have a disagreement, mediation may help settle the conflict in a timely and efficient manner. In addition to being a peaceful method of conflict resolution, it also makes it possible for the people involved to collaborate more closely

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and share more information. When it comes to settling disagreements involving international commerce, mediation has shown to be a useful instrument.

International Trade and International Agreements: Economic Integration and Regulations

The integration of economies is significantly aided by the promotion of international commerce. The free movement of products and services across national borders is made possible by international commerce, which in turn stimulates economic expansion. This expansion is supported by a variety of international agreements and rules, which help to guarantee that commerce is conducted in a way that is both orderly and equitable. These accords address a wide variety of concerns, including the lowering of tariffs, the elimination of unfair competition, the promotion of sustainable trade, and the facilitation of trade. The promotion of economic integration and the regulation of commerce between nations both benefit significantly from the implementation of international accords. These agreements contribute to the smooth operation of international commerce, which in turn helps to maintain economic development.

International Economic Integration and International Agreements GATT, WTO (WTO), IMF (International Monetary Fund) and EU (European Union)

When the reliance of ties between nations in the process of globalization is taken beyond the economic dimension, it puts countries' means of acting on their own to a stop, and in some situations, it is perceived as disappearing altogether. Because such a climate of dependence pervades nations to their very core, the opportunities for free and unrestricted commerce are

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becoming more limited. In point of fact, the flexible framework that existed before to economic integration, the rules of which were defined by the nations themselves, has grown progressively rigid, and those who have not yet recognized the devastating ramifications of this reality see it as a luxury. They decided to go in this direction because they believe that integration is the best way to achieve economic dominance.

Countries that observe the rise of economic integration in their near and distant borders, on the other hand, either feel obligated to take part in a formation around them or prefer to establish an economic structure on their own for fear of remaining outside the system and being subjected to discriminatory methods. This is because these countries have observed the rise of economic integration in their near and distant borders. The number of global regional integrations is growing, perhaps as a response to rising levels of insecurity. It has been noticed that the laws and judgments of nations are harmonized in line with integration (Balkr 2010). Approximately 81% of economic integrations are Free Trade Agreements (FTAs), and 11% are Customs Unions (CUs), which are a more advanced level of integration.

The awareness that nations cannot attain sustained development and economic stability on their own within a worldwide system is one of the most crucial reasons for integration. In point of fact, nations have agreed to cooperate with one another since ancient times, but not in a manner that is particularly comprehensive. As the process of globalization accelerates, efforts have begun to reduce cultural differences when labor and capital, which are two factors of production, need to be utilized outside of the country. Cooperation in certain commodity groups is generally not a problem for countries that have adopted the common customs, traditions, and culture of the same sector. This is because these countries have adopted the customs, traditions, and culture of the same sector. It has been noticed that simultaneous preparations have been made in the trade legislation of countries in order to decrease the chance of labor and capital of

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integrated markets encountering national obstacles. This was done for the purpose of making simultaneous arrangements in the trade legislation of countries. In the meanwhile, the concept of worldwide economic integration is continuously evolving in tandem with the economic integration of individual nations. While international economic theory is used in the context of contacts with non-integrated nations, macroeconomics is utilized in the context of the dynamic consequences of integration, and microeconomics is utilized in the examination of market conditions. As a result of the advancements that have been achieved, the complexity of the process of developing new policies has grown more deeply ingrained in the subject matter of economics. As a result, the procedure of molding countries into their present forms of political economy or political economy got under way.

In the field of economics, the term "integration," sometimes spelled "integration," was not first used until the 1940s. It was in the address that Paul Hoffman gave at the Council Meeting of the Organization for Economic Cooperation in Europe on October 31, 1949, when the term was used for the very first time in an official capacity. As he advocated for further advancements in the integration of the economies of Western Europe, he also underlined the need of unity and coming together in ethical ideals as well as physical integration. This was due to the fact that the speech was delivered within the context of the Marshall Plan (Balkr 2010, 4).

Although it is accepted within the plan to achieve economic and political goals that rise above the existing ones by taking into account the ground for political integration, the primary aim is to increase the welfare share of the countries that are included in the integration (Balkr 2010, 104-105). According to Willem Molle, economic integration is not a goal in itself because nations give up some of their sovereignty.

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Prosperity economically, peace and stability in society, democratic governance, and respect for human rights are essential components of economic integration. Because it involves the fragmentation of single-country economies owing to specialization in production and the non-globalization of economic policy, international economic integration is perceived as a process in which collaboration is crucial. This perception stems from the fact that international economic integration contributes to economic wellbeing. The promotion of economic wellbeing may be facilitated by cooperative efforts.

Interdependence between the nations that are participating in the integration is essential from the perspective of maintaining peace and stability. This is necessary to ensure that the system is not compromised and that the risks to civilizations are minimized. This contributes to the creation of calm and stable conditions. In terms of democracy, it is essential to maintain the democracy of the nations that are taking part in the integration, as well as to acknowledge and embrace the system of parliamentary democracy. Countries that are interested in taking part in economic integration may be required to meet this precondition. The concept of human rights places an emphasis on the need of recognizing human rights in its whole, which includes economic, social, and cultural rights. It is possible for nations who are interested in economic integration to be required to meet the requirement of protecting human rights.

The latter three justifications—democracy, human rights, and peace and stability—are political in character, and maintaining economic integration depends on them. The expansion of the market, the exploitation of internal and foreign economic benefits, the rise of the industrial sector, the intensification of rivalry, and the imposition of requirements resulting from international agreements are all economic factors. It is possible to see economic integration as the fundamental objective of economic development in nations that are still in the development stage.

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When it comes to defining economic integration, economists may have varying interpretations of the term; nonetheless, there are essentially three significant criteria on which they can all agree. To begin, the idea of economic integration is predicated on the separation of different types of work. Second, when an economy has reached a more advanced degree of economic integration, it is desirable to have an agreement in place that permits the unrestricted flow of products, services, and inputs of production. In conclusion, in order for there to be economic integration, there must be a non-preferential treatment of the sourcing and relocation of production elements, in addition to commodities and services.

The techniques of economic integration may often be broken down into three distinct categories. To begin, diverse areas within the boundaries of the same nation have the potential to establish economic integration with one another. Second, there are programs of economic integration that attempt to connect many nations within a certain geographical area. These projects are now underway. In the end, a process referred to as "World Integration" brings together many regional groupings with the intention of becoming a single geographically contiguous economic and political entity. These three distinct modes of economic integration each make possible a unique constellation of economic linkages and partnerships at varying degrees of depth.

GATT

In the framework of economic integration and the regulation of international trade, the General Agreement on Tariffs and Trade (GATT) is an important milestone that has been reached. Because of the growing tendency toward globalization in the international economy, the global

trading system has also been modernized in terms of its capacity to maintain sustainability. As a result, it is necessary to conduct an in-depth analysis of the commercial reactions to the guiding principles that shape international commerce. It is vital to emphasize that this evaluation is of utmost significance for nations who are still in the process of developing.

General Agreement on Tariffs and commerce (GATT) is an organization that was founded after World War II and took the function of both an agreement and an organization in the regulation of international commerce (Karluk 2009, 435). GATT is of enormous significance as a result of its dual nature as both an agreement and an organization. The General Agreement on Tariffs and Trade (GATT) rules served as the foundation for the founding of the World Trade Organization (WTO), particularly the "authorization clause" included in Article 24 and several other rulings. Because of this, the World Trade Organization (WTO), which has taken over the responsibilities of the GATT, is carrying on the traditions that were established by the GATT (Balkr 2010, 108-111).

At the conclusion of the discussions that comprised the Uruguay Round, the Agreement Establishing the World Trade Organization (also known as the WTO Agreement) was included in the Final Act. This document was signed in Marrakech on April 15, 1994, and it went into effect on January 1, 1995. This event marked the official beginning of the World Trade Organization (WTO). This agreement is comprised of 29 different legal documents in addition to 25 other declarations, rulings, and memoranda of understanding. Within the context of the global economic system, the World Trade Organization (WTO) is widely acknowledged as a significant player, on par with the International Monetary Fund and the International Bank for Reconstruction and Development (IBRD) (Karluk 2009, 462).

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Raising living standards, ensuring that impoverished and developing nations get a fair part of international commerce, negotiating agreements that remove discrimination, and building a multilateral trading system are some of the goals of the international commerce Organization (WTO). These goals are geared at ensuring the integrity of the fundamental tenets of international commerce.

IMF (International Monetary Fund)

During the Second World War, a number of different proposals for the construction of a brand new international monetary framework were drafted. Following the presentation of the plans of the United States and the United Kingdom came the presentations of the ideas put up by France and Canada. Following the gathering of opinions from all nations that were interested, including the United Kingdom, the United States of America, and the Soviet Union, the countries that were concerned came to an agreement among themselves on April 21, 1944, and then declared this agreement to the world. The next month, in June 1944, a conference was held in Atlantic City (New Jersey) to debate this concept with representatives from other nations. The outcomes of the conference were reported on in the United Nations Monetary and Financial Conference, which took place in New Hampshire from July 1st to the 22nd in 1944. The International Monetary Fund (IMF) was founded as a direct consequence of this conference; as of today, the IMF is comprised of a total of 172 member nations (Karluk 2009, 721).

EU (European Union)

When we examine the numerous steps that resulted in the establishment of the European Union, we can see that the construction of this organization was influenced by a number of diverse economic and political goals. The development of free trade zones was the first step in this process, which was then followed by the formation of customs unions and the common market. After these first steps, the process proceeded with the intention of creating an economic union, and it kept on until it ultimately arrived at the level of political integration (Yldz, www.miibf.com). Each of these phases was a significant turning point in the process of creating the European Union, and now each stage is treated as its own distinct area of research.

Notable also are the processes that would eventually lead to economic and political union. According to Dura and Atik (2007), this process would not be nearly as successful without the participation of the European Union and the Information Society. In addition, the political economy of international finance sheds light on how economic and political integration has evolved over time by analyzing the shifts that have occurred (Gilpin 2012, translated by Duran et al.). A significant role is also played in this process by interregional cooperation agreements such as the European Free Trade Association (EFTA) and the North American Free Trade Agreement (NAFTA). According to certain sources (www.baskent.edu.tr/gurayk/; www.nafta-kuzey-america-serbest-ticaret-anlasmasi.html), it is anticipated that in the near future, other nations will become signatories to similar accords. These phases are a component of a more involved process of economic and political integration, and the underlying concerns are of utmost significance from both an academic and a practical one.

Regional Organizations and Agreements in Developing Countries

The inclination of emerging nations to join regional accords may be attributed to political considerations, strategic considerations, and economic considerations. ECOWAS, which stands for the Economic Community of West African States, CEAO, which stands for the West African Economic Community, LAIA, which stands for the Latin American Integration Community, ASEAN, which stands for the Association of Southeast Asian Nations, and ASDB, which stands for the Asian Development Bank. These agreements, which have an effect on Asian arbitration and Far East Asian arbitration, are the topic of a distinct piece of study since each agreement has to be investigated in depth. These agreements have an influence on Asian arbitration and Far East Asian arbitration.

ICC and WTO's New Regulations on the International Trade System

The World Trade Organization (WTO) faces a number of issues and complaints, and the International Chamber of Commerce (ICC) has proposed a pioneering set of suggestions to restructure the future of international trade in light of these challenges and critiques. The implementation of suggestion 4, which calls for the construction of strong and dependable conflict resolution systems, is one of the most prominent initiatives to improve the system. These suggestions were supposed to be presented by the ICC at the 12th WTO Ministerial Conference in June 2020 as part of a report that was supposed to include the outcomes of roundtable discussions that took place between the ICC and the WTO with the intention of restructuring and enhancing the multilateral global trade system. The 12th WTO Ministerial Conference was originally scheduled to take place in 2019, however it was postponed because to the COVID-19 epidemic. Due to the influence of the omicron version, the 12th WTO Ministerial Conference, which was supposed to take place in Geneva, Switzerland in November

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2021, was unable to take place (World Trade Organization - WTO, 2022). Through the work of the World commerce Law Institute, the International Chamber of Commerce (ICC) continues to contribute to a greater understanding between various parties involved in international commerce. The success of the ICC may be directly attributed to the fact that it is managed by members of the private sector, who make a considerable commitment to guaranteeing the organization's flexibility.

International Commercial Arbitration : Basic Concepts and Process

According to Koseolu (2015), the definition of "International Trade" and "Trade" reflects the manner in which natural or legal individuals living in different states trade products, services, capital, and information with one another. The practice of exchanging goods and services across political and economic boundaries that are controlled by a state is referred to as "international trade," and it is denoted by the word "international trade" (or simply "trade"). On the other hand, the word "trade" often refers to the exchange of commodities, services, capital, and information between producers and consumers. It may also refer to the commercial transactions of intellectual property rights and know-how. Therefore, a transaction that is valued inside national boundaries but to which no economic value is attached might be deemed to constitute trade.

Establishment of free zones has been promoted as a result of the fact that international commerce is defined in a manner that transcends the administrative borders of nations. Free zones are regions of the country in which national commercial, financial, and economic rules are either not implemented at all or only partly applied. They provide more incentives for industrial and commercial activity, and they are physically isolated from other sections of the

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nation. (Retrieved from "https://ticaret.gov.tr/data/5b9b61fc13b8761cc09f9b92/genel_bilgi.TB.pdf") Free zones are established for the purpose of promoting common goals such as encouraging export-oriented investment and production, accelerating foreign direct investment and technology inflows, orienting enterprises towards exports, and developing international trade. According to the level of illegality present, free zones are separated into two primary classifications: open free zones and closed free zones. In open free zones, none of the nation's customs, tax, or other laws of a similar kind are enforced, but in closed free zones, just a subset of such laws are (Acar and Karakaş, Gultekin 2017, 21-35). The geographical positioning of free zones in Turkey is often designed with consideration given to the closeness of such zones to the European Union, the Central Asian Turkic Republics, and the Middle East. (Acar and Karakaş, Gultekin 2017, 32) Because these zones have connections to sea ports, air ports, and highway networks, they are well suited for international commerce.

The growing number of investments made across nations as a result of globalization has brought into further focus the significance of ensuring that investments are adequately protected legally. In this environment, the use of international arbitration to offer an effective settlement of international trade disputes has become an increasingly attractive option. When parties engage into international contracts, they may see going to the national courts of the opposite party as a dangerous proposition. In addition, the lengthy litigation that may emerge from the bureaucratic processes and general lack of knowledge seen in national courts. Another issue is that domestic courts are reluctant to acknowledge and comply with rulings issued in other countries.

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However, as a result of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d21/c067/tbmm21067122ss0712.pdf), awards from international arbitration are recognized and enforceable in a number of different nations. Because of this, commerce all around the globe is becoming more dependable and productive. Because about 80.5% of the nations in the world are parties to this treaty, arbitration has emerged as one of the most significant mechanisms for resolving disputes in the context of the international trade community. The parties are also able to agree on the substantive law that will govern the settlement of an international trade dispute.

Conventions Governing International Commercial Arbitration

As a result of the fact that traders who manage international trade are becoming more uneasy with legal interventions, it has become unavoidable for the state to open up space by considering the priorities of the person in private law conflicts while exercising its authority. This is because of the fact that merchants who manage multinational trade are becoming increasingly uncomfortable with legal interventions. Today, with the globalization of commerce and economies, the national courts of many nations have grown the number of courts of international commercial arbitration centers, which they perceive as competitors in sharing their conventional jurisdiction and decision-making powers. This is because of the globalization of trade and economies. It is also common knowledge that the legal systems in several jurisdictions have included non-arbitrative forms of conflict settlement in addition to arbitration.

The proliferation of generally recognized type contracts throughout the course of time has led to a period of increased specialization in internationally acceptable business procedures. Today,

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the kind of construction contract that is considered as an example of international commercial specialization is the type of construction contracts created by the International Federation of Consulting Engineers ("FIDIC"), which is comprised of consultant-engineers, contractor-engineers, and credit institutions. This type of contract is the type of construction contracts that are accepted as an example of worldwide commercial specialization. In a similar fashion, specialist industrial organizations are often broken up into disciplines and will often develop multinational type contracts. It is stipulated into the contracts that arbitration will be used as a last option if the conflicts that have happened or will arise cannot be handled by the specialized resolution boards by exhausting the other remedies that are suited to the commercial subject matter (Gokyayla, Demir 2019, 579).

With the beginning of international specialization in arbitration procedures, it has been seen that commercial courts have also begun to specialize in national proceedings and are backed by special laws on the basis of commercial concerns. These developments are bolstered by the fact that commercial issues have been the focus of special legislation.

Economic Integration and its Development

The conceptual underpinnings of European unification may be traced all the way back to the Middle Ages. There have been a lot of philosophers working on this problem. As a written work, Immanuel Kant published his essay "Perpetual Peace" in 1795. In this article, Kant differed from previous philosophers by basing development on slow or voluntary advancement rather than taking a route that was authoritarian or revolutionary in order to preserve peace and security. The specifics of his work (Zum Ewigen Frieden) have been politicized via the use of populist rhetoric to appeal to vast groups of people (Balkr 2010, 42 and nar 2017, 65);

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• Until 1815: An Unintegrated Europe: This time period covers Europe from the Middle Ages all the way up to the time of the French Revolution.

• The era beginning in 1815 and ending in 1870 is known as the Industrial Revolution and Integration era. This is the time when free trade was supported theoretically.

• 1870–1914: Economic Depression, Protectionism, and Areas of Cooperation – The most notable aspect of this time period was the increased mobility of people and capital that was brought about by geographical discoveries. Between the years 1815 and 1915, 46 million people abandoned their homes throughout Europe.

• The years 1914–1945 are known as "The Disintegration Period." This was the time frame during which both World Wars took place, which ultimately led to the establishment of a bipolar international structure.

• After 1945: A New Era of Integration and the European Model - After 1945, the United States entered a time that we may also call the period of establishing its global aspirations. This era was marked by the introduction of the European model of integration. It helped Europe grow stronger so that it could play a leadership position in the new organizations that would construct and shape the international order after the Second international War. This was done in order for Europe to be able to accept this role.

Since the beginning of periods of economic integration, the growing expansion of commerce and the frequency of its circulation across continents have made it necessary for there to be international conventions. These conventions pave the way for international commercial arbitration to answer to the interests of people who are involved in the system.

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

In contrast to the Geneva Convention of 1923 on Arbitration Clauses in Commercial Matters and the Geneva Convention of 1927 on the Execution of Foreign Arbitral Awards, the New York Convention of 1958 is a universal fundamental legal text of arbitration. Turkey is a party to this convention, and it has been very successful. The Convention is the foundation of international arbitration law and practice, which is reflected in the name of the document itself. It is neither dependent on the nationality of the parties to the arbitration agreement, nor is it exclusive to international arbitration. Rather, both domestic and international arbitration are equally applicable. In addition, the Convention does not include any provisions that are specifically related to international arbitration in any way. Its primary focus is on the regulation of foreign prizes, and the Convention's Article I/1, which contains its scope of applicability, is a one-of-a-kind piece of writing (Yeşilova 2007, 48).

The New York Convention is widely regarded as one of the most fruitful treaties in the area of commercial law, since it has had a significant impact on the field of international arbitration and has garnered widespread praise for its achievements. In addition, a great number of other international documents have been affected by the New York Convention, and it has served as a model for these writings. Important examples are the UNCITRAL Model Law on International Commercial Arbitration ("Model Law") and the UNCITRAL Arbitration Rules. Additionally, the International Arbitration Law No. 4686 is likewise based on the Model Law (Sezen, Balkci 2018).

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1961 European (Geneva) Convention

In contrast to the New York Convention of 1958, the European Convention on International Commercial Arbitration dealt with just one aspect of commercial arbitration, namely the acceptance and execution of foreign arbitral decisions. This was in contrast to the scope of the New York Convention, which covered all aspects of commercial arbitration. In light of the fact that the other aspects, namely the creation of the arbitral tribunal and the arbitral proceedings, also required regulation, the Geneva Convention was able to accomplish such a goal (Koral).

1965 Washington (ICSID) Convention

The 1965 Washington Convention on the Settlement of Investment Disputes Between States and the Nationals of Other States (ICSID) is an additional source of arbitration under common international law.

A traditional arbitration agreement between the parties may be sufficient for establishing the ICSID Center's jurisdiction, as may the legal regulations of the relevant country's law on investments (unilaterally) or bilateral agreements between the two countries, such as bilateral agreements on the promotion and protection of investments or multilateral agreements involving the participation of a large number of countries (Yeşilova 2007, 75). Another option is for the parties to abide by the terms of a multilateral investment treaty.

1985 UNCITRAL Model Law

nations who do not have a culture of arbitration that is well established, and particularly nations that are far away from the practice of international arbitration, may use the Model Law as an effective guide to help them build an arbitration culture. One of the foundations of the uniform legal system that is essential for the fair, efficient, and speedy settlement of disputes in

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international commerce is the UNCITRAL Model Law. This law is the last link in a process that began with the 1958 New York Convention and continued with the 1976 UNCITRAL Rules. The process began with the 1958 New York Convention. The UNCITRAL (Rules) Arbitration Rules are the arbitration rules that were suggested by the United Nations in 1976 (Yeşilova 2007, 63). These rules were established for ad hoc arbitrations and are used for UNCITRAL arbitrations.

Applicable Law in International Commercial Arbitration

nations who do not have a culture of arbitration that is well established, and particularly nations that are far away from the practice of international arbitration, may use the Model Law as an effective guide to help them build an arbitration culture. One of the foundations of the uniform legal system that is essential for the fair, efficient, and speedy settlement of disputes in international commerce is the UNCITRAL Model Law. This law is the last link in a process that began with the 1958 New York Convention and continued with the 1976 UNCITRAL Rules. The process began with the 1958 New York Convention. The UNCITRAL (Rules) Arbitration Rules are the arbitration rules that were suggested by the United Nations in 1976 (Yeşilova 2007, 63). These rules were established for ad hoc arbitrations and are used for UNCITRAL arbitrations.

Applicable Law to Arbitration Agreements

The arbitration agreement is a component that plays a significant role in the process of arbitration. Arbitration can never take place unless both parties have signed this agreement.

There are two possible structures for the arbitration agreement: either it will be a stand-alone contract, or it will be an item added to the substantive law agreement that will govern how the parties will relate to one another. The arbitral award that is going to be delivered as a consequence of the arbitration has to conform with the procedural legislation of the nation where it will be recognized and enforced for the arbitration agreement to be considered legitimate. In order to avoid having the arbitral decision thrown out on the grounds that it violates the public order requirements of the applicable procedural legislation, the parties' upcoming arbitration agreement should not be in conflict with those laws.

Under the general idea of lex mercatoria, every instance of a different legal order being applied to the merits of a case rather than a national legal system is referred to as a "lex mercatoria case." This strategy is also reflected in the UNCITRAL Model Law, which was developed by the organization. In Article 28/1 of the Model Law, the term "rules of law" is understood to include lex mercatoria. This interpretation is widely held. The parties are allowed to adopt their own "rules of law" in accordance with Article 12/c of the International Law Commission No. 4686. In a similar vein, in accordance with Article 42/1 of the ICSID Main Convention on Investment Disputes, the parties are permitted to reach an agreement about the application of "rules of law" to the merits of the case, rather than being solely bound by the laws of the state. According to the International Chamber of Commerce (ICC) Arbitration Rules, Article 21/1 states that "The parties are free to determine the law to be applied by the arbitral tribunal to the merits of the dispute" (Guven 2014, 28).

It is possible that the relevant law, which the parties have selected without discriminating between the main contract and the arbitration agreement, is applicable not only to the main contract, but also to the arbitration agreement, unless anything to the contrary is provided in the agreement. This would be the case in the event that nothing further was specified. There is a

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possibility of a high presumption that the arbitration agreement between the parties has decided to be regulated by the same law that the parties have chosen to apply to the primary contract, rather than being subject to the law that the parties have not "chosen" to apply to the main contract. As a consequence of this, the interpretation of the principle of separability as an obligatory principle as well as the concept of submitting the primary contract and the arbitration agreement to different laws have both been the subject of criticism. On the other hand, there have been cases decided by arbitrators and courts in which the law that the parties agreed upon in the primary contract was applied to the arbitration agreement (Işk, 200).

The determination of the law that applies to an arbitration agreement is significant for a number of reasons, the most important of which are the following: the form of the arbitration agreement; the capacity of the parties to the arbitration agreement; the scope of the arbitration agreement; and whether the underlying dispute that exists between the parties is arbitrable; the determination of the applicable law also governs whether or not the arbitration agreement is valid (Tore 2019, 75).

Selected Arbitration Center Rules

Some arbitrators may consider the rules of an arbitral institution that the parties have submitted the arbitration proceedings to when determining whether or not the substantive legality of the arbitration agreement should be upheld during the arbitration procedures. At this stage in the proceedings, the arbitrators will use the law of the arbitral institution selected by the parties to be applied to the substantive validity without reference to any binding point (Tekin 2019, 116).

When participating in institutional arbitration, commercial practitioners who choose ICC arbitration rules are expected to identify in advance the relevant legislation to the underlying

contract and arbitration provision or arbitration agreement in question. This is due to the fact that the rules for ICC arbitration do not specifically state which law should be applied to the arbitration agreement. On the other hand, in accordance with Article 6(9) of the ICC Arbitration Rules, which came into effect on March 1, 2017, it is accepted that the arbitration agreement is independent from the main contract, and the law that is applicable to the main contract will not automatically apply to the arbitration agreement. This is the case provided that the arbitral tribunal has determined that the arbitration agreement is valid. The ICC Arbitration Rules came into force on March 1, 2017.

Law Applicable to Arbitration

The European Convention on International Commercial Arbitration (European Convention on International Commercial Arbitration) of 1961, also known as the Geneva Convention, which provides a model regulation on the question of the applicable law in international commercial arbitration, includes the provision in paragraph VII/1 titled "Applicable Law" that "The parties shall be free, by agreement between themselves, to determine the law applicable to the substance of the dispute." This provision states that "The parties shall be free, by agreement between themselves, to determine the law applicable to the substance of the dispute According to Sonmez and Karakaya (2015), 214, the most important factor that really matters is that the parties pick the law that will apply to the particulars of the contract.

Article 21/1 of the ICC's Rules of Arbitration, which went into effect on January 1, 1998, was modified on March 1, 2017, and then went back into effect on that date. Article 21(1) of the Arbitration Rules, which was included in Article 17 of the ICC's Arbitration Rules that entered into force on January 17, 1998, and which was updated and entered into force on March 1,

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2017, stipulates that the parties are free to determine the law that will be applied by the arbitral tribunal to the merits of the dispute, and in the absence of an agreement between the parties, the arbitral tribunal shall apply the law it deems appropriate, and in the following cases: a. In the event that the parties According to Ozdemir (17), there is a prevalent trend toward submitting international business contacts and the resolution of problems arising out of these ties to international commercial law. International commercial law is comprised of widely recognized principles and practices in this sector. This law governs international commercial relations and the settlement of conflicts arising out of these connections. There is a distinction to be made between the concept of freedom of will in private international law and the concept of freedom of will in substantive law. According to Bacanl, the freedom of will is considered to be a binding norm in private international law, and the selected law is implemented in its entirety (Bacanl, 141).

When the parties to a dispute have not selected a single body of law to govern it, the provisions of Article 24/4 of Law No. 5718 provide that the most closely related legislation is the one that will be implemented. The performance of the arbitrator will be taken into consideration as the characteristic performance in arbitration agreements. This will allow for the selection of the area of law that is most closely relevant to the dispute at hand. In such a scenario, the law of the arbitrator's usual place of residence at the time that the contract was being finalized would be considered the law that is most analogous to the situation at hand. In this particular scenario, it is essential to underline the meaning that should be derived from the idea of a regular dwelling. The term "habitual residence" refers to a notion that is not a legal word like "domicile," but rather is regarded as a reality and is used to convey the actual ties that a person has in a certain location or area. This idea is defined as "habitual residence." It is defined as the location where all life connections are concentrated in the reason for Article 84 of the Code of

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Civil Procedure No. 6100. since of the close link with the community in which a person really resides, according to the law of habitual residency is advantageous to the parties involved since it serves their interests more effectively. When a person acquires a habitual residence, as opposed to the acquisition of a habitual residence, the tie between the person and the habitual residence is weaker than the bond between the person and the habitual residence. This is due to the fact that the presence or absence of the purpose to settle is not necessary in the acquisition of a habitual dwelling. Therefore, in order to determine the law that will apply, the law of the arbitrator's habitual residence will be used, with consideration given to the location at where the arbitrator's real relations are concentrated. This will be the case regardless of whether or not the arbitrator has any intention of settling in the area.

In this scenario, the law that governs the contract is different from the norm. According to Article 24(4) of the Law on Civil Procedure, the law that applies in this scenario is the law of the domicile of the characteristic performance obligor, the law of the place of business that is most closely related to the contract in question if the characteristic performance obligor has more than one place of business, and the law of the place of business that is most closely related to the contract in question if there is no place of business (Bacanl, 147-148).

Arbitration Venue Law

Location of the Arbitration; for the purposes of institutional arbitration, the definition that is included within the regulations of the designated arbitration center shall be used. In the event that the arbitration rules of the ICC are chosen to be used, the location of the arbitration hearing

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will be interpreted in accordance with the provisions of Article 18 of the Arbitration Rules of the International Chamber of Commerce (ICC). This is how it goes:

1-The location of the arbitration will be decided by the Court, unless the parties have reached an alternative agreement. 2-Except in cases where the parties have specifically agreed otherwise, the arbitral tribunal has the authority, after consultation with the parties, to convene hearings and meetings wherever it thinks to be appropriate. 3The arbitral panel is free to hold its deliberations on the verdict wherever it thinks is most suitable.

Article 18 of the ICC TCC places an emphasis on the significance of the parties' choice of seat of arbitration in terms of the law that would be applied to the arbitration agreement. This provision was included because of the importance of this decision. It is often stated in arbitral and judicial judgments, which recognize that distinct laws should apply to the main contract and the arbitration agreement, that the legality of the arbitration agreement is established according to the law of the seat of arbitration. This is because the main contract and the arbitration agreement are separate legal documents. There are a variety of explanations for taking this strategy. First, Article V(1-a) of the New York Convention and Article 36(1) of the Model Law provide that an arbitration agreement should be evaluated primarily in accordance with the law chosen by the parties, or, in the absence of such a choice of law, in accordance with the law of the country where the award was rendered. If the parties do not choose a law, then the agreement should be evaluated in accordance with the law of the country where the award was rendered. In addition, one may argue that the law of the location where the arbitration would take place is the law that is most relevant to the arbitration agreement. This is known as the "law of the seat of arbitration." It has been decided in certain cases that when parties pick the location of the arbitration hearing, they are also implicitly choosing the legal framework that would govern the arbitration agreement (Işk, 3). Given that there are now 162 nations that

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are party to the New York Convention, the arbitrators will surely want to make certain that their ruling is enforceable in accordance with the New York Convention. As a consequence of this, the legality of the arbitration agreement will be decided according to the legislation that applies to the location where the arbitration will take place, as required by V(1)(a) and V(1)(e).

According to the International Arbitration Law No. 4868, Article 4(3) stipulates that "The arbitration agreement shall be valid if it is in accordance with the law chosen by the parties to be applied to the arbitration agreement or, if there is no such choice of law, Turkish law." There is no question that the law that governs the arbitration agreement is completely distinct from the law that governs the primary contract.

An arbitration agreement must be regulated by the law selected by the parties to be relevant to the arbitration agreement or, if no such choice of law has been made, by Turkish law. This provision is included in Article 4/3 of the 4686 International Arbitration Act (IAA). Therefore, in the event that the primary contract is governed by a law other than Turkish law without separately determining the applicable law to the arbitration agreement, the arbitration agreement will not be affected by this law, and the validity of the arbitration agreement will be directly evaluated in accordance with Turkish law. This is because the arbitration agreement will be evaluated in accordance with Turkish law in the event that there is no separate determination of the applicable law to the arbitration agreement.

Law of the Place of Enforcement

There is a significant inclination, in the practice of international commercial arbitration, to submit the settlement of disputes originating from international economic relations to

international commercial law. International commercial law is comprised of widely recognized principles, practices, and conventions in this sector. This is due to the fact that the optimal method for resolving conflicts resulting from international business interactions is to use the norms established by the international trade community.

In actual fact, arbitrators may also consider the law of the potential enforcement location when determining whether or not the arbitration agreement is legitimate. This strategy is grounded in the same issues that underpin the idea that the law of the location where the arbitration will take place should be applied. It is the responsibility of the arbitrators to provide a decision that is legal and enforceable. In certain cases, the nation that would carry out the execution may not be known in advance. It would be dangerous for the award's enforcement to proceed with such an evaluation if the site of enforcement could not be determined with absolute confidence. An arbitration agreement that is lawful under the legislation of one nation may not be legitimate under the law of another country. This is a reality that has to be taken into consideration. In addition, an evaluation that takes into account the many places where enforcement may take place could create the appearance that the arbitral tribunal already knows the result of the case (Onur 2018, 108).

The fact that the decision from the foreign court that will be subject to recognition or enforceability before Turkish courts has a real and concrete connection with the case and the parties is a matter that the state ought to take into consideration in terms of both public and individual interests as well as the international private law order. Checking to see whether the foreign court's jurisdiction is established by employing fair and reasonable anchoring points in processes pertaining to recognition and enforceability will also serve to defend the natural judge concept. To be more specific, an excessive establishment of jurisdiction occurs when a foreign court establishes jurisdiction over a case despite the fact that there is either very little or no

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genuine relationship between the parties or the subject matter of the case and the foreign court. In other words, there is no real link between the parties or the subject matter of the case. In this scenario, the objection of the defendant party in accordance with the applicable article of the legislation may impede the recognition and implementation of the decision issued by the foreign court (Kole, 52).

The responsibility of the arbitrators to make every effort to enforce the verdict is mentioned in Article 42 of the International Chamber of Commerce's Arbitration Rules. Accordingly, the application of the law of the seat of arbitration as well as the law of the place of enforcement to the content of the arbitration agreement would be a guarantee of the award's enforceability since it would prohibit the award from being annulled or the denial of enforcement. (Onur, 2018, 84) This viewpoint is consistent with Article V(1)(a) of the New York Convention and Article VI(2) of the European Convention.

Since its inception, the International Commercial Arbitration jurisdiction has insisted on applying trade-specific rules and customs together with general law rules. The primary focus of this jurisdiction is the expansion of global trade and the free conduct of commercial transactions without restrictions, free from the control of state authorities over national laws. It has been observed that it is inevitable for states to impose sanctions against the negative elements of international trade in their national laws in order to protect the rights and law of their citizens. This is the case regardless of how far along the development of International Commercial Law and the spread of Private International Law is.

A foreign arbitral award must first be accepted and then enforced by the courts in Turkey before it can be considered legally binding under Turkish law. Both the Law No. 5718 on Private

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International Law and Procedural Law (abbreviated as "PLCPL") and the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (abbreviated as "New York Convention") govern the processes of recognition and enforcement (engun, 2023).

Conclusion

Arbitration, rather than courts, is increasingly favored for the settlement of disputes that arise out of various commercial operations in today's world, which is largely attributable to the fact that international commerce is now governed by its own set of laws and dynamics. This preference is one of the primary reasons for the development of international commercial arbitration as a result of the fact that the rules of the states' domestic law are insufficient for the resolution of disputes arising from international economic relations and that there is no specialized international commercial court for the resolution of international commercial disputes.

Increased collaboration and commerce between residents of other nations, the introduction of international sanctions, and the acceleration of the free movement of money all had a role in shaping the international trade of this age, particularly in the second half of the twentieth century. Additionally, the emergence of economic regional unions, rules to eliminate customs obstacles, technical advancements, and the acknowledgment of intellectual and industrial rights have led to a quick evolution of international commerce. All of these reasons have contributed to the rapid evolution of international trade. On the other hand, the inadequacy of national laws in the face of these fast innovations or the incapacity of laws to adapt swiftly compelled the resolution of international conflicts via the use of international arbitrators rather than courts.

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Arbitration in international commercial disputes provides a solution that is suitable for the requirements of the business world. Because of the nature of commerce, it is imperative that businesspeople come to an agreement with one another as rapidly as possible. Businesses need the same degree of adaptability in the decision-making processes, even if trade agreements are allowed some degree of leeway. People in business may make better use of their time while still running their companies if they collaborate with industry professionals and neutral arbitrators. There isn't a single institution that decides cases in international commercial arbitration as there is at the International Tribunal for the Law of the Sea. This means that the parties have greater room for maneuvering.

The practice of international commercial arbitration promotes sustainability because it prevents additional meddling in economic transactions and maintains an essential component of free trade. Conventions at the international level assure that there will be no more restrictions placed on commerce. Nevertheless, the intervention of national laws in commerce is growing, which might push businesses into pathways that violate the law. The expansion of the unofficial economy and the number of people working in the sector might cut into the sources of income that governments rely on. In addition, an excessive amount of interference might have a detrimental impact on the quality standards of commerce, which can therefore lead to the development of an informal economy. These unfavorable results may be avoided by implementing international regulations, such as digital auditing procedures, which should be supported by international treaties.

Recent discussions have focused on the need of lowering the number of legal obstacles that stand in the way of increased global commerce, and it has been proposed that the United Nations Organization should take a more active part in this process. Arbitration of business disputes at the international level may contribute to economic growth while also assisting in the defense

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of human rights. The growth and development of commerce are two factors that may help emerging nations advance in their economic standing. In addition, the proliferation of free trade zones may assist nations in transitioning from protectionist policies to free trade, as well as encourage investment and the transfer of knowledge and narrow the gap in economic growth that exists across continents. This will help to the growth of international commerce and the improvement of the standard of living of people all over the globe.

RESTRICTION

The research is limited to scientific research that has been previously conducted around the world and reported in the literature.

NOTIFICATIONS

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Publishing ethics of Current Science journal; It is a national-based scientific journal that aims to ensure that scientific research and publications are carried out in accordance with basic principles such as honesty, openness, objectivity, respect for the findings and creations of

others, and works to achieve this, aiming to achieve these principles in the field of health sciences. The criteria of the Declaration of Helsinki were taken into account.

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