

# GERMAN ARBITRATION DIGEST

<b>GAD No.:</b>	GAD 2025, 10	<b>Decision date:</b>	15 October 2024	<b>Res judicata:</b> Yes
<b>Court:</b>	Highest Regional Court of Bavaria (Bayerisches Oberstes Landesgericht, BayObLG)			
<b>Case No. :</b>	102 Sch 118/23e			
<b>Keywords:</b>	public policy, domestic arbitral award, declaration of enforceability, acknowledgment, bias, right to be heard, lack of legal reasoning, fraudulent misrepresentation, iura novit curia, assessment proprio motu			
<b>Key legal provisions:</b>	Section 1059 German Code of Civil Procedure (ZPO) Section 307 ZPO			

## Highest Regional Court of Bavaria reviews award regarding violation of public policy irrespective of acknowledgment by Respondent

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On 15 October 2024, the Highest Regional Court of Bavaria (BayObLG) declared an arbitral award and a supplementary award, rendered by a sole arbitrator with the seat of the arbitration in Munich, partially enforceable. The court held that it had the power to review the award regarding an alleged violation of public policy (Section 1059(2) No 2(b) German Code of Civil Procedure (ZPO)) irrespective of respondent's acknowledgment of applicants' request to declare the awards enforceable. On the merits, however, the court found no violation of public policy.

### Facts

The three applicants had initiated arbitral proceedings against respondent before a sole arbitrator, with the seat of the arbitration in Munich. Preceding the arbitration, the parties had tried unsuccessfully to settle their dispute through conciliation choosing the individual who later became the sole arbitrator as conciliator. The subject matter of the arbitration was a dispute concerning the construction of a medical practice building by respondent.

In his final award rendered on 5 April 2023, the sole arbitrator ordered respondent to pay EUR 118.454,18 to applicant 2 and EUR 94.325,35 to applicant 3 and ordered applicant 1 to pay EUR 274.548,09 to respondent. The award also included a decision on cost, later amended by the supplementary award of 7 April 2023. The applicants requested the partial enforcement of the award of 5 April 2023 and the supplementary award of 7 April 2023.

Respondent requested the court to reject the partial declaration of enforceability of the awards. Respondent argued that the awards violated Section 1059(2) No 1 lit. d ZPO. According to respondent, the sole arbitrator was biased. Furthermore, respondent argued that the arbitral award was contradictory and incomprehensible in its reasoning. Finally, respondent submitted that the arbitral award should have been set aside due to intentional immoral damage pursuant to Section 826 German Civil Code (BGB).

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During the oral hearing before the court, respondent acknowledged the applicants' application (to declare the awards partially enforceable) pursuant to Section 307 ZPO.

The court then declared the awards partially enforceable as requested by the applicants without omitting the “facts” and “legal reasoning” sections pursuant to Section 313b(1) sentence 1 ZPO.

## **Key findings**

The BayObLG held that neither the award nor the supplementary award violated public policy.

First, the Court noted that a declaration of acknowledgment pursuant to Section 307 ZPO was also admissible in a proceeding concerning the declaration of enforceability of an arbitral award. In consequence of respondent's acknowledgement, the court held that it no longer has the power to assess a violation of Section 1059(2) No 1 ZPO. Courts can only assess the grounds of annulment listed in Section 1059(2) no. 1 ZPO upon parties' respective submission if raised by a party. The court further concluded that respondent's acknowledgment did not prevent the court from assessing the awards under the standard established by Section 1059(2) No 2 ZPO. The grounds of annulment listed in Section 1059(2) No 2 can be assessed by a court ex officio. The court further concluded that under these circumstances it could not omit the “facts” and “legal reasoning” sections of the decision pursuant to Section 313b(1) sentence 1 ZPO.

The court then assessed respondent's original objections, particularly the allegation of the arbitrator's bias. The court held that the sole arbitrator's acts did not violate public policy.

## **Comment**

The decision of the BayObLG shows that parties in proceedings of declaration of enforceability of an arbitral award may exclude a court's review of the arbitral award pursuant to Section 1059(2) No 1 ZPO. However, courts will in any case review arbitral awards under the standards established by Section 1059(2) No 2 ZPO. The court still has the power to assess the award before it regarding arbitrability of the dispute and violation of public policy. Such power of the court is disputed among scholars, as the BayObLG itself admits. It will be interesting to see how courts will assess this legal issue.