

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2025, 28	Decision date:	7 May 2025	Res judicata: Yes
Court:	Highest Regional Court of Bavaria (Bayerisches Oberstes Landesgericht, BayObLG)			
Case No. :	101 Sch 25/23 e			
Keywords:	Setting-aside of an award, public policy, executor by will, right to be heard, inclusion of heirs			
Key legal provisions:	Section 1059 German Code of Civil Procedure (ZPO) Article 103(1) of the German Constitution (GG)			

Highest Regional Court of Bavaria confirms restrictive approach of German courts to public policy violations, deciding on the necessity of an oral hearing and the individual naming of heirs

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On 7 May 2025, the Highest Regional Court of Bavaria (BayObLG) upheld a domestic partial arbitral award in setting-aside proceedings and thereby confirmed the German courts' restrictive approach to violations of public policy. The BayObLG held that Article 103(1) German Constitution (GG) does not by itself establish a right to an oral hearing. An arbitral tribunal declining to hold a further oral hearing and instead decides in written proceedings does not automatically violate public policy if the parties had an adequate opportunity to present their case. In addition, the court ruled that heirs do not need to be explicitly named in the designation of the parties if they can be reasonably identified, and that the absence of individual naming does not violate public policy.

Facts

In 2004, the parties concluded a joint practice agreement containing an arbitration clause. After the dissolution of their partnership in 2006, disputes arose over their settlement.

In 2011, the plaintiff initiated arbitration proceedings. Following an oral hearing, the arbitral tribunal issued a first partial arbitral award in 2013. However, the version served on the parties had been signed only by the presiding arbitrator. One of the arbitrators passed away in 2015 and was replaced. In 2019, a newly executed version of the partial award was issued and served – again only with the presiding arbitrator's signature. In 2020, the Higher Regional Court of Munich (OLG Munich) held that no valid arbitral award exists.

After one of the respondents passed away in 2020, an executor entered the proceedings on behalf of the respective respondent's heirs. In January 2022, the arbitral tribunal cancelled a scheduled oral hearing due to health reasons of one of the arbitrators and then decided to continue in written proceedings.

In November 2022, the arbitral tribunal issued a new partial arbitral award mainly in favor of the plaintiff. The arbitral tribunal duly signed and served the arbitral award.

In 2023, the respondents applied for the arbitral award's setting-aside. They argued, among other things, a lack of oral proceedings, unclear designation of the parties, and violations of public policy.

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The BayObLG rejected the applications and held that the arbitral award was valid, the heirs had been correctly included, and the arbitral tribunal was entitled to continue proceedings in writing.

Key findings

The BayObLG considers the application for setting aside to be admissible, but unfounded.

First, the BayObLG held that not every violation of mandatory provisions of German law constitutes grounds for setting-aside under Section 1059(2) No 2(b) German Code of Civil Procedure (ZPO). It held that unacceptable contradiction to German notions of justice and fundamental principles of the legal system would qualify as violation of public policy. The court held that the lack of naming heirs in the designation of the parties would not violate such fundamental principles.

Second, the BayObLG decided that the right to be heard was not violated and that the failure to conduct a further oral hearing did not constitute a procedural error or a violation of public policy. Since there is no general principle of oral hearings in arbitration proceedings, it is left to the arbitral tribunal to decide, in accordance with Section 1047 ZPO, whether and to what extent oral hearings will be held. In addition, the BayObLG clarified that Article 103(1) GG does not give rise to a direct right to oral hearings. The refusal to repeat or continue a previous oral hearing does not violate public policy, provided that the parties were given sufficient opportunity to comment on the facts of the case. The arbitral tribunal was not required to schedule further oral hearings before issuing the partial arbitral award: (i) an oral hearing had already taken place in 2012, and (ii) the arbitration agreement between the parties included a clause under which the arbitral tribunal could determine the date of oral proceedings at its own discretion.

Comment

This decision emphasises the high threshold for setting aside arbitral awards in Germany, especially in cases involving alleged violations of the right to be heard and public policy. The court confirmed the extensive procedural discretion of arbitral tribunals. It clarified that the oral hearing stipulation in Section 128(1) ZPO is not mandatory in arbitration. Arbitral tribunals may therefore decide in written proceedings or dispense with a further hearing, provided that the parties are treated equally and have a fair opportunity to present their case.