

# GERMAN ARBITRATION DIGEST

<b>GAD No.:</b>	GAD 2025, 31	<b>Decision date:</b>	6 November 2025	<b>Res judicata:</b> Yes
<b>Court:</b>	German Federal Court of Justice (BGH)			
<b>Case No. :</b>	I ZB 33/25 Case No.(s) other instances: 12 SchH 1/24 (Higher Regional Court Berlin, KG Berlin)			
<b>Keywords:</b>	Scope of Arbitration Agreement, Assigned Rights, Warranty Claims, Legal Succession, Product Liability, Tort Law, Expert Report on Foreign Law, Legal Interest			
<b>Key legal provisions:</b>	Sec. 1032 ZPO; Sec. 293 ZPO			

## **German Federal Court of Justice on the Scope of Arbitration Agreements in Case of Assigned Claims, and the Simultaneous Possibility of Raising the Arbitration Objection in State Court Proceedings (Sec. 1032(1) ZPO) as well as Filing an Application under Sec. 1032(2) ZPO**

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On 6 November 2025, the German Federal Court of Justice (BGH) overturned a ruling by the Higher Regional Court of Berlin (KG) declaring arbitration proceedings admissible and referred the case back to the KG. In its judgment, the BGH emphasized that when considering an application under Sec. 1032(2) of the German Code of Civil Procedure (ZPO), it is crucial to carefully assess whether the subject matter of the intended legal dispute (whether before the arbitral tribunal or the state court) falls within the scope of the arbitration agreement – particularly where the case involves a multiple assignment scenario.

### **Facts**

The applicant is a manufacturer of marine engines based in Augsburg, Germany. The respondent is an insurance company based in Norway.

In 2007, the applicant entered into a purchase agreement with I. Ltd., based in Australia, for the delivery of four marine engines manufactured by the applicant. The applicant and I. Ltd. agreed to the application of English law. Disputes were to be resolved by arbitration (ICC Rules), with the seat of arbitration in London. The purchase agreement furthermore contained provisions concerning warranty claims in clause 3.8. Subsequently, I. Ltd. installed these engines into a vessel.

Later, I. Ltd. sold the vessel to A. Ltd., who, in turn, chartered it to M. A/S. During the sale of the vessel from I. Ltd. to A. Ltd., the former assigned its warranty claims against the applicant to M. A/S.

In addition, M. A/S arranged for the continuous maintenance of the engines at the applicant's branch in Denmark, entering service and maintenance contracts governed by Danish law. The contracts also included an arbitration clause, providing for disputes "out of or in connection with the present Contract" to be settled by an arbitral tribunal seated in Copenhagen.

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Later, two of the applicant's engines, which had been maintained in Denmark, suffered a failure of the connecting rods, causing damage to the respective vessel. The respondent, as the insurer of M. A/S, settled the damage in favour of M. A/S. Subsequently, both M. A/S and A. Ltd. assigned their claims against the applicant to the respondent.

The respondent then filed a claim for damages amounting to EUR 8,606,406.34 before the Regional Court of Augsburg (LG Augsburg). However, the applicant raised the arbitration objection.

In addition to its arbitration objection (Sec. 1032(1) ZPO), the applicant filed a request with the KG under Sec. 1032(2) ZPO, seeking a declaration that all the respondent's claims asserted before the LG Augsburg were excluded from state courts' jurisdiction. The LG Augsburg therefore suspended the state proceedings. The KG finally granted the application.

The respondent opposed the decision and filed a complaint on points of law ("Rechtsbeschwerde") under Sec. 1065(1) sentence 1 ZPO before the BGH.

## **Key findings**

The BGH made two key findings:

First, the application under Sec. 1032(2) ZPO is not lacking legal interest ("Rechtsschutzinteresse") simply because the party against whom the lawsuit is brought in the state court proceedings (the applicant) has already raised the arbitration objection under Sec. 1032(1) ZPO in the state court proceedings.

The BGH favours this approach, as involving the respective Higher Regional Court at an early stage ensures that questions regarding the admissibility of the arbitration procedure were addressed before such Higher Regional Court, rather than being delayed until a later set-aside or enforcement proceedings of the arbitral award.

Second, the BGH examined the scope of the arbitration clauses in dispute. According to the BGH, under Sec. 1032(2) ZPO, arbitration may still be inadmissible even if the arbitration agreement is valid. This is the case if the legal dispute brought before the state court is not covered by the scope of that arbitration agreement.

If the respondent was asserting original claims of M. A/S (e.g., tort or product liability claims) before the LG Augsburg, these would concern a different subject matter ("Streitgegenstand"). The BGH did not definitively conclude whether such claims were not covered by the arbitration agreement between I. Ltd. and the applicant. However, it states the KG had failed to make sufficient findings regarding the subject matter. This constitutes a violation of the respondent's right to be heard.

Regarding the arbitration agreement in the service and maintenance contract between the applicant and M. A/S, the KG incorrectly assumed that it also covered tort claims according to the Danish Supreme Court's interpretation. The KG should have more thoroughly examined the detailed submissions from the respondent concerning Danish law. In particular, the KG wrongly dismissed the legal opinion of a Danish lawyer submitted by the respondent, based on an erroneous exercise of discretion (Sec. 293 ZPO).

## Comment

The clarification of the relationship between Sec. 1032(1) and Sec. 1032(2) ZPO is not groundbreaking. The fact that one of the parties can still file an application under Sec. 1032(2) ZPO even after raising the arbitration objection in the state court proceedings had already been clarified by the BGH itself (see BGH, 9 May 2018, I ZB 53/17, NJW-RR 2018, 1402, para. 9).

But the BGH took the chance to further define its standard of review for the scope of the arbitration agreement. The key issue under Sec. 1032(2) ZPO is whether the (procedural!) subject matter ("prozessualer Streitgegenstand") of the (intended) dispute before the arbitral tribunal or the state court is covered by the arbitration agreement. This point had been hinted at in previous rulings (see BGH, 19 September 2019, I ZB 4/19, SchiedsVZ 2020, 50, para. 11), but it had not been explicitly stated by the BGH itself until now.