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Court:	Higher Regional Court of Cologne (Oberlandesgericht Köln)			
Case No. :	19 Sch 10/23			
Keywords:	Foreign arbitral award, declaration of enforceability, révision au fond, public policy, right to be heard			
Key legal provisions:	Section 1061 German Code of Civil Procedure (ZPO) Article V New York Convention			

Higher Regional Court of Cologne affirms enforceability of Dutch arbitral awards in Germany

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The Higher Regional Court of Cologne (OLG Cologne) was tasked with determining whether an arbitral award could be declared enforceable in Germany, despite objections from the losing party regarding alleged violations of procedural fairness and public policy.

On 19 January 2024, the court declared two Dutch arbitral awards enforceable (dated 31 July 2019 and 19 August 2022), which were issued in arbitration proceedings under the NAI (Netherlands Arbitration Institute) rules in the Netherlands. The dispute arose from the delivery of allegedly defective heat exchangers for a waste incineration plant, leading to arbitration and subsequent recognition and enforcement proceedings in Germany.

The court reached the conclusion that neither the parties' right to be heard nor public policy of the Federal Republic of Germany had been violated. A substantive review of the arbitral awards is not permitted in enforcement proceedings (prohibition of révision au fond).

Facts

In 2016, the applicant ordered two heat exchangers from the respondent for use in a waste incineration facility.

After delivery, the applicant raised repeated complaints about the equipment, leading to several remedial actions by the respondent. In September 2017, the applicant terminated the contract and initiated arbitration proceedings under the NAI rules, seeking repayment of the purchase price and damages.

The arbitral tribunal found that the heat exchangers did not conform to the contractual agreement, as significant deformations occurred shortly after commissioning – well beyond what could be expected from new industrial equipment. The respondent argued that the defects were due to the applicant's operating conditions, particularly an excessively strong and non-uniform gas flow, and that the functionality of the heat exchangers was not impaired. The arbitral tribunal, however, placed the burden of proof for these claims on the respondent, who failed to provide sufficient evidence.

GERMAN ARBITRATION DIGEST

Two arbitral awards were issued: a partial award in July 2019 and a final award in August 2022, ordering the respondent to pay substantial sums, including damages, interest, legal fees, and arbitration costs. The applicant then sought to have these awards declared enforceable in Germany pursuant to Section 1061 German Code of Civil Procedure (ZPO). The respondent objected, claiming procedural irregularities and violations of public policy. They argued that the arbitral tribunal had disregarded evidence, made contradictory findings, and committed errors in interest calculation.

Key findings

The OLG Cologne declared both arbitral awards enforceable in Germany pursuant to Section 1061 ZPO. The court found that all formal requirements for enforcement were met and that it had jurisdiction under German law. Substantively, the court determined that there was no violation of the respondent's right to be heard ("Recht auf rechtliches Gehör").

The arbitral tribunal had duly considered the parties' main arguments and evidence. The court emphasized that it was not permitted to review the substance of the arbitral awards (prohibition of *révision au fond*), being limited to a check for procedural fairness and compliance with public policy.

The respondent's objections – such as alleged disregard of evidence, contradictions in the arbitral reasoning, and errors in interest calculation – were all rejected. The court found that the arbitral tribunal had sufficiently addressed the core issues and that the awards did not conflict with German public policy, stating that "the tribunal ... must comment on the parties' main defences in its reasoning, but does not have to deal with every point raised by the parties", being in line with the Federal Court of Justice's decision of 9 December 2021 (file no. I ZB 21/21).

The calculation of interest and costs was also confirmed to be in line with Dutch law. As a result, the applicant was granted the right to enforce the arbitral awards in Germany, underscoring the high threshold for refusing recognition of foreign arbitral decisions and the importance of arbitration in international commercial disputes.

Comment

The decision reaffirms the German courts' general stance on maintaining the high threshold required to refuse the recognition and enforcement of foreign arbitral decisions. The court's refusal to engage in a substantive review of the arbitral awards (prohibition of *révision au fond*) highlights the respect for the autonomy of arbitration proceedings and the finality of arbitral decisions.