

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 10	Decision date:	15 October 2025	Res judicata: Yes
Court:	Higher Regional Court of Frankfurt am Main (Oberlandesgericht Frankfurt am Main, OLG Frankfurt)			
Case No. :	32 SchH 2/25			
Keywords:	Challenge of arbitrators, challenge for bias, impartiality, error review, procedural oversight, preliminary ruling			
Key legal provisions:	Section 1036(2) first sentence German Code of Civil Procedure (ZPO) Section 42(2) ZPO Section 1040(3) first sentence ZPO Article 15.1 DIS Arbitration Rules			

Higher Regional Court of Frankfurt further clarifies that challenges for bias serve neither as error review nor as procedural oversight, thereby safeguarding the independence of arbitral tribunals from ordinary courts

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On 15 October 2025, the Higher Regional Court of Frankfurt (OLG Frankfurt) dismissed an application seeking a declaration that a challenge for bias was well-founded. The OLG Frankfurt decided that challenges for bias serve neither as error review nor as procedural oversight. The court further confirmed that arbitral tribunals may defer jurisdictional decisions to the final award.

Facts

The applicant was a former partner of a law firm partnership with limited professional liability. In the arbitration, the partnership claimed payment from the applicant based on excess withdrawals and cost reimbursement. The proceedings took place before the Permanent Arbitral Tribunal at the Frankfurt Bar Association in accordance with the arbitration clause and the Bar Association's Arbitration Rules.

The applicant challenged the arbitrators for bias. The board of the Frankfurt Bar Association unanimously dismissed the challenge. The applicant applied to the OLG Frankfurt to set aside the board's decision and to declare the challenge for bias to be well-founded. The OLG Frankfurt dismissed the application.

Key Findings

The OLG Frankfurt applied the standard under Section 1036(2) first sentence German Code of Civil Procedure (ZPO), and Section 11(1) of the Arbitration Rules. The test mirrors that of Section 42(2) ZPO for ordinary courts. Bias requires objective grounds that, from the challenging party's perspective and upon reasonable consideration, give rise to the apprehension that the arbitrator lacks impartiality.

The court held that incorrect decisions, unfavourable legal views or procedural errors do not, in principle, suffice to establish bias. A challenge for bias serves neither as error review nor as procedural oversight. Exceptions apply only where the judicial act lacks a sufficient legal basis or is so grossly unlawful that it

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appears arbitrary, or where the flawed reasoning clearly shows an improper attitude towards the party. Applying this standard, the court addressed each of the applicant's grounds for challenge.

The court emphasised that the arbitral tribunal did not commit a procedural error by declining to render a preliminary ruling. While Section 1040(3) first sentence ZPO provides that the arbitral tribunal rules in general by means of a preliminary ruling, the arbitral tribunal may also rule on its own jurisdiction only in the final award. The decision to defer should be based on procedural economy and is particularly appropriate where the objection to jurisdiction is manifestly without merit. This does not curtail the parties' legal remedies, as the jurisdictional ruling in the final award remains subject to review in setting-aside proceedings or in proceedings for a declaration of enforceability.

The court also clarified that a particular notice by the arbitral tribunal to a party does not, in principle, give rise to bias. Under its duty of substantive case management, the arbitral tribunal must draw attention to decisive issues. A notice that the claimant's submissions do not show a cause of action is not merely permissible but procedurally required. Bias may only be established where grounds show that the arbitrator's conduct reflects arbitrariness or an improper attitude towards the challenging party.

The court held that extensions of time limits fall within the arbitral tribunal's discretion under the Arbitration Rules and were neither unreasonable nor unusual, also under Section 224 ZPO. The arbitral tribunal extended, upon the applicant's request, a time limit that had previously been shortened. This demonstrates that the tribunal neither intended nor achieved any restriction of procedural rights.

The court also rejected the applicant's submission that the arbitral tribunal's decision to sever and not to serve the applicant's counterclaim established bias. The arbitral tribunal had properly exercised its discretion to require an advance on costs and had sufficiently discussed the matter at the oral hearing. The OLG Frankfurt likewise held that a change in legal position during the proceedings without providing reasons did not constitute a sufficient ground for challenge.

Having found no procedural error in any of the individual grounds, the court held that the circumstances were also in aggregate insufficient to establish bias. It therefore left open whether time-barred grounds may be considered in such an overall appraisal.

Comment

The German Federal Constitutional Court (BVerfG) and the German Federal Court of Justice (BGH) have already clarified that a challenge for bias cannot serve as error review in respect of incorrect legal views (see BVerfG, 3 June 2019, 2 BvR 910/19, para. 15; BGH, 26 June 2024, StB 35/24, para. 10). The OLG Frankfurt extends these rulings to hold that procedural oversight is also impermissible. The decision thereby safeguards the independence of arbitration from ordinary courts.

Regarding the possibility of deciding on jurisdiction only in the final award, the judgment is consistent with the existing literature and case law (see also Münch, in Münchener Kommentar zur Zivilprozessordnung, § 1040 para. 27 with further references).