

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 13	Decision date:	27 March 2026	Res judicata: Yes
Court:	Highest Regional Court of Bavaria (Bayerisches Oberstes Landesgericht, BayObLG)			
Case No. :	102 Sch 104/25 e			
Keywords:	contractual penalty, digital arbitral award, electronic signatures, enforcement proceedings, public policy, révision au fond, right to be heard, stay of proceedings			
Key legal provisions:	Section 1061, 1064 German Code of Civil Procedure (ZPO) Article IV, V, VI New York Convention (NYC)			

Digital arbitral awards and public-policy review: BayObLG on enforcement of a Czech award

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On 27 March 2026, the Highest Regional Court of Bavaria (BayObLG) declared the monetary portions of an award rendered by the Arbitration Court attached to the Czech Chamber of Commerce and the Agrarian Chamber of the Czech Republic (CAC) enforceable, dismissing all objections raised under the New York Convention (NYC). The court took a recognition-friendly approach to issues arising from digital arbitral awards and electronic proceedings, while affirming the high threshold German courts apply to public policy objections. It denied applications to stay proceedings pending the Czech set-aside application and related criminal investigations and ordered the respondent to bear the costs of enforcement.

Facts

The dispute arose from a share purchase agreement dated 31 May 2022 between the shareholder of a Czech casino holding company (the applicant/seller) and a Bavaria-based purchaser (the respondent). Under the agreement, the respondent was obliged to promptly relocate the seats of three affiliated companies, secured by a contractual penalty of EUR 5,000 per day of delay. The respondent did not adopt the necessary corporate resolutions until mid-November 2022, resulting in a delay of 152–154 days. The applicant sued for the accrued penalties, and the tribunal awarded a reduced penalty, which the applicant sought to enforce in Germany. The respondent opposed enforcement and sought a stay.

First, the BayObLG held that partial enforceability declarations are permissible for foreign awards where the enforced portion is severable, applying principles governing partial claims. It further found the applicant had submitted the required documentation, applying the most-favorable-law principle ("Meistbegünstigungsprinzip") to conclude that domestic law – Section 1064(1) and (3) German Code of Civil Procedure (ZPO) – rather than the stricter Article IV(1) NYC, governed the formal prerequisites.

Second, the respondent argued that the award, issued digitally and electronically signed by all arbitrators, was insufficient absent an original or certified paper copy under Section 1064(1) or (3) ZPO. The BayObLG rejected this: since the award was issued digitally, no handwritten-signature paper version could be expected, and the applicant was not required to produce eIDAS validation logs, hash values, or delivery/version histories to establish authenticity.

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Third, the respondent alleged violations of its right to be heard and of public policy, arguing that non-examination of a witness infringed its right to be heard, and that the arbitral tribunal ignored the objective impossibility of the secured obligation while awarding a disproportionate penalty. The BayObLG dismissed both concerns, citing the arbitral tribunal's broad discretion over evidence-taking, the respondent's own responsibility to secure witness attendance, and the strict prohibition of a *révision au fond*. The arbitral tribunal had engaged with the respondent's arguments and reduced the penalty to an amount it deemed appropriate.

Last, the respondent sought a stay to avoid conflicting decisions with the Czech set-aside proceedings and a filed criminal complaint. The BayObLG denied this, finding insufficient prospects of success in the set-aside proceedings, and holding that staying enforcement pending every foreign set-aside application would be inconsistent with the NYC's framework, and that the respondent retained a remedy under Section 1061(3) ZPO if the set-aside application succeeded. The court found no basis to stay for the criminal complaint either, noting an earlier, materially identical complaint had not prompted an investigation, and that the NYC's narrow suspension provisions could not be circumvented via Sections 148 and 149 ZPO.

Key findings

On the digital award issue, the BayObLG applied the most-favorable-law principle, referring to Section 1064(1), (3) ZPO but clarifying this is not a condition of admissibility but merely a rule of evidence. Where an award is rendered digitally, no paper original exists, so the submitted copy need not bear handwritten signatures. The NYC does not prohibit electronic proceedings; whether digital awards with qualified electronic signatures are permissible is determined by applicable foreign procedural law, and enforcement may not be refused based on stricter domestic formal requirements.

On public policy and the right to be heard, the BayObLG confirmed German courts' restrictive approach, emphasizing the prohibition of *révision au fond* and holding that the right to be heard is violated only where it is clear that the arbitral tribunal failed its duty. There is no duty of full evidence exhaustion; arbitral tribunals have wide discretion over sufficiency of information and lack coercive powers over witnesses. While arbitral tribunals must engage with submissions, an incorrect application of law alone is no ground for refusal, and a differing legal assessment – if neither arbitrary nor incomprehensible – does not violate the right to be heard. The reduced penalty was not wholly disproportionate to the purchase price and thus indicated no public-policy violation.

Finally, a stay under Section 1061(1) ZPO in conjunction with Article VI NYC lies within the arbitral tribunal's broad discretion and requires concrete prospects of success in parallel proceedings; strict stay requirements cannot be circumvented via domestic procedural provisions.

Comment

The decision reaffirms the German courts' restrictive review and high threshold for public policy violations by arbitral tribunals, recognizing their broad evidentiary discretion. The BayObLG's clear endorsement of electronically signed awards and liberal approach to digital arbitration issues is particularly noteworthy ahead of the forthcoming reform of German arbitration law.