

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 15	Decision date:	30 March 2026	Res judicata: Yes
Court:	Higher Regional Court of Stuttgart (Oberlandesgericht Stuttgart, OLG Stuttgart)			
Case No. :	21 SchH 4/25			
Keywords:	Security for costs of the proceedings, request for a decision on the inadmissibility of arbitration proceedings, enforcement			
Key legal provisions:	Section 110 German Code of Civil Procedure (ZPO) Section 1032 German Code of Civil Procedure (ZPO) Article 17 Hague Convention on Civil Procedure (HZPÜ)			

Higher Regional Court of Stuttgart denies motion for security for costs against Russian applicant in arbitration admissibility proceedings despite practical enforcement concerns

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On 30 March 2026, the Higher Regional Court of Stuttgart (OLG Stuttgart) denied a German respondent's motion to order a Russian applicant to provide security for costs in proceedings under Section 1032(2) German Code of Civil Procedure (ZPO). The OLG Stuttgart held that such a request is admissible in proceedings concerning the admissibility of arbitral proceedings, but unfounded where Article 17 Hague Convention on Civil Procedure 1954 (HZPÜ) exempts the applicant from providing security. The court thus followed the German Federal Court of Justice's (BGH) decision of 15 January 2026 (BGH, 15 January 2026, I ZB 53/25, SchiedsVZ 2026, 87 paras. 26 et seq., see GAD 2026, 8), which held that the exemption provided for in Section 110(2) No 1 ZPO, in conjunction with Article 17 HZPÜ, remains applicable regardless of the current geopolitical situation.

Facts

The applicant, domiciled in Russia, applied for a declaration that arbitral proceedings were inadmissible. The respondent, seated in the district of the OLG Stuttgart, requested security for all expected costs. It argued that Sections 110 et seq. ZPO applied by analogy in proceedings under Section 1032(2) ZPO and that any treaty-based exemption should not apply because, considering the geopolitical situation, sanctions and reduced judicial cooperation, the enforcement of German cost decisions in Russia was not guaranteed.

The applicant objected. It argued that the request was unfounded because Article 17 HZPÜ exempted it from providing security for costs.

Key Findings

The OLG Stuttgart held that the request for security for costs was admissible but unfounded.

The court found that such a request is admissible in proceedings concerning the admissibility of arbitral proceedings. It held that Section 110 ZPO applies by analogy in proceedings under Section 1032(2) ZPO, relying on the same considerations that the BGH developed for arbitral award enforcement proceedings: Section 1063 ZPO contains only selected procedural rules, which is why the general rules governing first-instance proceedings apply supplementarily. The purpose of Sections 110 et seq. ZPO also extends to proceedings under Section 1032(2) ZPO because the respondent may similarly face difficulties in enforcing a claim for reimbursement of costs abroad.

However, the court denied the motion as unfounded. It held that, under Section 110(2) No 1 ZPO, security for costs cannot be ordered if an international treaty exempts the foreign applicant from providing security. The HZPÜ constitutes such a treaty, to which both the Federal Republic of Germany and the Russian Federation are parties. Article 17 HZPÜ exempts nationals of one contracting state who are resident in any contracting state from providing security for costs in court proceedings in another contracting state where security is requested solely on the basis of their foreign nationality or lack of domestic residence.

The OLG Stuttgart followed its previous approach, recently confirmed by the BGH's decision of 15 January 2026 (BGH, 15 January 2026, I ZB 53/25, see GAD 2026, 8), and rejected the respondent's argument that the ongoing war, sanctions or practical enforcement obstacles deprived the treaty exemption of effect. Since the HZPÜ had not been suspended and diplomatic relations between Germany and Russia formally continued, the HZPÜ remained in effect. Article 63 Vienna Convention on the Law of Treaties confirmed that even a severance of diplomatic or consular relations generally does not affect the continued application of an international treaty. The court further held that actual enforcement difficulties are irrelevant under Section 110(2) No 1 ZPO; the decisive factor is the continued existence of the treaty obligation.

Comment

The decision confirms that a respondent may request security for costs not only in proceedings for the recognition and declaration of enforceability or setting aside of arbitral awards (as previously recognised by the BGH (BGH, 12 January 2023, I ZB 33/22, SchiedsVZ 2023, 228), but also in proceedings under Section 1032(2) ZPO concerning the admissibility of arbitration proceedings (in line with an earlier decision by the Higher Regional Court of Cologne (Higher Regional Court of Cologne, 16 July 2024, 19 SchH 5/24, BeckRS 2024, 18018)).

The decision further applies the BGH's recent approach to international treaties in general and the HZPÜ specifically in the context of geopolitical tensions. Article 17 HZPÜ continues to exempt Russian applicants from the provision of security for costs despite sanctions and practical enforcement concerns due to the geopolitical situation. The ruling emphasises the rule of (international) law and enhances predictability: absent a suspension or termination of the relevant international treaty, German courts will not replace the treaty-based exemption with a case-by-case assessment of practical enforcement risks.