GERMAN
ARBITRATION
DIGEST

GAD No.:	GAD 2026, 16	Decision date:	23 January 2026	Res judicata: Yes (complaint withdrawn – BGH I ZB 15/26)
Court:	Higher Regional Court of Cologne (OLG Cologne)			
Case No.:	19 Sch 11/25			
Keywords:	Foreign arbitral award, declaration of enforceability, recoverability of in-house counsel costs, public policy, right to be heard, prohibition of overcompensation, secrecy of deliberations, dissenting opinions			
Key legal provisions:	Section 1061 German Code of Civil Procedure (ZPO) Article V New York Convention (NYC) Article 38(1) ICC Arbitration Rules 2021 Section 43 German Judiciary Act (DRiG)			

Higher Regional Court of Cologne upholds restrictive approach of German courts to public policy violations deciding on recoverability of in-house counsel costs, dissenting opinions and alleged hearing deficiencies

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On 23 January 2026, the Higher Regional Court of Cologne (OLG Cologne) declared an ICC arbitral award enforceable. First, the OLG Cologne held that the reimbursement of in-house counsel costs calculated on fictitious hourly rates does not, in itself, violate public policy. Second, the court found that the existence of a dissenting opinion does not constitute a ground for refusal of recognition. Third, it decided that the respondent was precluded from raising a right-to-be-heard objection because it had failed to raise the issue during the arbitration.

Facts

The applicant, a South Korean company, and the legal predecessor of a German company entered into an agreement concerning the supply of combustion ventilators.

After the applicant had asserted certain rights under the contract, the respondent initiated ICC arbitration against the applicant. The seat of the arbitration was Abu Dhabi. The arbitral tribunal dismissed the respondent's claims and ordered the respondent to reimburse the applicant's legal costs and expenses. However, attached to the arbitral award was a dissenting opinion of one of the three arbitrators.

The applicant had been represented by in-house counsel in the arbitration. It claimed costs at hourly rates of USD 950 for its principal representative and USD 450 for a second in-house lawyer. Since, under the agreed procedure, the cost submissions were to be filed at the same time as the closing submissions, the respondent argued that it had no opportunity to comment on the cost submissions of the applicant.

Key findings

The OLG Cologne declared the arbitral award enforceable, finding no grounds for refusal of recognition under Article V New York Convention (NYC).

First, the OLG Cologne held that in-house counsel costs are, in principle, recoverable under Article 38(1) ICC Arbitration Rules 2021. A calculation based on fictitious hourly rates does not, as such, violate public policy if there is no indication that the calculation is unreasonable. The court noted that under German law, there is no general principle that costs are only recoverable where external counsel has been retained. For example, in cases of self-representation of attorneys, fictitious costs of external counsel may be recoverable, even if this results in overcompensation. The rationale is that the respondent should not benefit from the fact that the applicant conducted the proceedings on its own rather than retaining external counsel.

Second, the OLG Cologne held that the existence of a dissenting opinion does not, in itself, constitute a violation of public policy. The court noted that under German law, exceptions to the secrecy of deliberations exist, as stated in Section 43 German Judiciary Act (DRiG) – for example, in Section 30(2) of the Act on the Federal Constitutional Court (BVerfGG). In international arbitration, dissenting opinions have long been common and recognised. It is for this reason that Section 1054a of the new draft bill on the modernisation of arbitration law proposes an express statutory provision permitting dissenting opinions. Additionally, the court found that the respondent had not sufficiently demonstrated that the award was based on the alleged public policy violation, given that the dissenting arbitrator had communicated his views to the other arbitrators and a further deliberation had taken place before the dissenting opinion was issued.

Third, the OLG Cologne found no violation of the right to be heard. The parties had expressly agreed on a procedural timetable providing for the simultaneous filing of closing submissions and cost submissions. The respondent had neither requested an opportunity to comment on the applicant's cost submission nor objected to the agreed procedure during the arbitration. Furthermore, despite some communication difficulties that arose during the cross-examination of witnesses from Korea, the respondent did not request the assistance of an interpreter. The court held that the respondent was precluded from raising such objections for the first time in the enforcement proceedings, as parties to an arbitration may not reserve procedural objections for the event of an unfavourable result.

Comment

The decision strengthens the restrictive approach of German courts to public policy violations. It provides noteworthy guidance on the recoverability of in-house counsel costs in international arbitration and the treatment of dissenting opinions in enforcement proceedings before German courts. The court's reasoning on dissenting opinions aligns with the prevailing view in international arbitration practice and anticipates the proposed legislative reform.

The fact that the OLG Cologne did not follow an obiter dictum of the Higher Regional Court of Frankfurt am Main (OLG Frankfurt) dated 16 January 2020 (Case No. 26 Sch 14/18, IWRZ 2020, 233) – according to which dissenting opinions are presumably inadmissible, at least in domestic arbitration proceedings – represents a welcome development from the perspective of domestic and foreign arbitration practice.

The decision also reaffirms the well-established preclusion principle, underscoring that parties must raise procedural objections during the arbitration rather than reserving them for enforcement proceedings.