

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 3	Decision date:	14 October 2025	Res judicata: No, appeal pending before the BGH, I ZB 84/25
Court:	Higher Regional Court of Frankfurt am Main (Oberlandesgericht Frankfurt am Main, OLG Frankfurt)			
Case No. :	32 Sch 4/25			
Keywords:	enforceability, grounds for refusal, equality of arms, equal treatment, public policy, right to a fair hearing, written witness statement			
Key legal provisions:	Sections 1027, 1042(1), (4), 1050, 1059 German Code of Civil Procedure (ZPO) Article 103(1) of the German Constitution (GG)			

Higher Regional Court of Frankfurt am Main on the fundamental principle of the procedural equality of arms as part of public policy

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The Higher Regional Court of Frankfurt am Main (OLG Frankfurt) declared an arbitral award enforceable even though the arbitral tribunal had refused to examine one of the respondents whose examination as a party or as a witness had been requested by the respondents, but had examined a witness nominated by the applicant. The court found that neither the principle of equal treatment, including the principle of equality of arms derived therefrom, nor the right to a fair hearing or public policy was violated.

Facts

The arbitration concerned a post-M&A dispute and was conducted in Frankfurt am Main in accordance with the DIS Arbitration Rules, including the rules on expedited proceedings.

Procedural Order No. 1 issued by the arbitral tribunal provided: "The Parties shall submit written Witness Statements for all witnesses on whose testimony they intend to rely. [...] Witness Statements shall contain the following information: [...] In the event a Party is unable to file a Witness Statement for a witness whose testimony it requires, it shall justify such absence, describe the facts regarding which the witness' testimony is sought and why they are relevant to the case and material for its outcome. The Arbitral Tribunal shall then decide, at its discretion, whether and how the proposed witness shall be heard".

The applicant nominated a witness and requested the arbitral tribunal's approval for evidence to be taken in accordance with Section 1050 of the German Code of Civil Procedure (ZPO) by the Local Court of Frankfurt am Main, to examine the witness. Pursuant to Section 1050 ZPO, assistance in taking evidence may be requested from a state court. The applicant argued that the witness had refused to testify before the arbitral tribunal and had also refused to sign a written witness statement. The applicant also submitted a draft of a written witness statement which, according to the applicant, was prepared on the basis of two interviews with the witness. The arbitral tribunal then approved the examination of the witness which subsequently took place before the Local Court of Frankfurt am Main.

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The respondents invoked the principle of equality of arms and requested that one of the respondents also be examined as a party or as a witness. Although the arbitral tribunal expressly referred the respondents to the requirement for written witness statements pursuant to Procedural Order No. 1, the respondents did not submit such a statement. Nor did the respondents explain the absence of a written witness statement. The arbitral tribunal then refused to examine the respondent as a party or as a witness.

Key findings

The OLG Frankfurt ruled that neither the refusal to examine the respondent as a party nor the refusal to examine him as a witness would preclude the enforcement of the arbitral award.

Regarding the refusal to examine the respondent as a party, the court first clarified that the rejection of a request for evidence cannot, in principle, be reviewed, as this is contrary to the principle of *revision au fond*, meaning that the courts cannot examine the merits of a dispute when reviewing an arbitral award. In any case, the arbitral tribunal had considered it sufficiently proven, based on a variety of other evidence, that the latter had intentionally breached his pre-contractual obligations. And since the principle of full exhaustion of evidence does not apply in arbitral proceedings, meaning that the examination of a party is not mandatory, the OLG Frankfurt found that the refusal to examine the respondent as a party did not violate public policy or the right to a fair hearing. The court also did not see any violation of the principle of equality of arms, as the arbitral tribunal had correctly assumed that the respondent could in principle be examined as a witness and that the respondents thus had at their disposal a means of evidence that was equivalent to the means of evidence available to the applicant — namely, witness examination.

Nor did the refusal to examine the respondent as a witness, in the court's view, violate the right to a fair hearing or the principle of equality, and in particular the principle of equality of arms. The requirement for a written witness statement in accordance with Procedural Order No. 1 applied equally to all parties of the arbitral proceeding. Although the applicant had also failed to submit such a written witness statement for its witness, unlike the respondents, it had sufficiently justified the absence of such a written statement. The arbitral tribunal's decision was therefore, in the court's view, precisely the result of equal treatment of the parties. The decision was also not surprising, since the arbitral tribunal expressly referred the respondents to the requirement for written witness statements pursuant to Procedural Order No. 1, and did not violate public policy. In any case, the respondents could not invoke the refusal to examine the respondent as a witness before the OLG Frankfurt, as they did not raise this objection immediately in the arbitral proceeding.

Comment

The decision reaffirms the high threshold for refusing the recognition and enforcement of arbitral awards in Germany. Objections must generally be raised without undue delay in the arbitral proceedings in order to be considered by the courts. Moreover, the principle of equal treatment, particularly the principle of equality of arms, the right to a fair hearing and public policy do not require that all parties be examined as parties or witnesses. It is sufficient that the parties have, in principle, access to the same means of evidence under identical prerequisites.