

GERMAN ARBITRATION DIGEST

GAD No.:	GAD 2026, 8	Decision date:	15 January 2026	Res judicata: Yes
Court:	German Federal Court of Justice (Bundesgerichtshof, BGH)			
Case No. :	I ZB 53/25 Case No. other instances: 1 Sch 3/24 (Higher Regional Court of Stuttgart (OLG Stuttgart)), see GAD 2025, 23			
Keywords:	Foreign arbitral award, declaration of enforceability, security deposit for the costs of the proceedings, legal costs security, sanctions, claim for reimbursement			
Key legal provisions:	Section 110 German Code of Civil Procedure (ZPO) Article 17 Hague Convention on Civil Procedure			

International law supersedes procedural risk: Federal Court of Justice confirms exemption from security for costs in arbitral award enforcement proceedings in times of political tension

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On 15 January 2026, the German Federal Court of Justice (BGH) rejected a motion to order the provision of security for legal costs as inadmissible, thereby emphasising the formal nature of German procedural law. The BGH held that the obligation of a claimant who does not have its habitual residence in a European Union (EU) Member State or a European Economic Area (EEA) Contracting State to provide security for legal costs at the defendant's request does not apply if it is formally exempt from this obligation under international treaties. Political tensions or practical difficulties in enforcing potential claims for reimbursement of costs against the claimant are irrelevant in this context.

Facts

The case concerns an application for a declaration of enforceability of a foreign arbitral award. The applicant is a company incorporated under Russian law and headquartered in the Russian Federation. The respondent is based in Germany. In 2021, the parties entered into a contract for the purchase of three machines, which the respondent was to supply to the applicant. In the contract, the parties agreed on an arbitration clause. Under this clause, all disputes were to be resolved before the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow (MKAS). Following the outbreak of the war in Ukraine, the respondent ceased its business relations with Russia. Further deliveries still to be made by the respondent failed to materialise. Following failed negotiations, the claimant withdrew from the contract and initiated arbitration proceedings before the MKAS. In these proceedings, the MKAS upheld the claimant's claim. Subsequently, the claimant applied to the Higher Regional Court of Stuttgart for a declaration of enforceability of the Russian arbitral award. In those proceedings, the respondent applied for an order requiring the claimant to provide security for costs.

The Higher Regional Court of Stuttgart (OLG Stuttgart) rejected this application by way of an interim order. On the merits of the case, the OLG Stuttgart dismissed the application for a declaration of enforceability as currently unfounded and held that the arbitral award was not currently recognised in Germany.

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The applicant lodged a complaint on points of law against this decision with the BGH, in which the respondent again requested that the applicant provide security for the costs of the proceedings.

Key findings

The BGH dismissed the application for security for costs as inadmissible and used the decision as an opportunity to comment on the nature of Section 110 German Code of Civil Procedure (ZPO), which in German court proceedings serves to protect defendants against the risk of unenforceable cost claims when being sued by plaintiffs who are habitually resident outside the EU/EEA.

First, the BGH upheld the decision of the OLG Stuttgart that the annexation of Crimea, which contravenes international law, and Russia's war of aggression against Ukraine do not justify the imposition of security for costs under Section 110(1) ZPO.

Second, the BGH found that the provision of security for costs is not to be ordered because it is precluded by international treaties within the meaning of Section 110(2) No 1 ZPO. With regard to the Russian Federation, in which the applicant is domiciled, the Federal Republic of Germany is obliged under Article 17(1) of the Hague Convention on Civil Procedure (HZPÜ) to waive the requirement for security. The fact that Russian courts might not declare any German orders for reimbursement of costs issued against the respondent to be enforceable is irrelevant. This is because the provision of Section 110(2) No 1 ZPO is based solely on the obligation under international law and not on the actual enforceability of any claims for reimbursement of costs.

The BGH thereby confirms previous rulings of German courts (Higher Regional Court of Cologne, 17 February 2025, 19 Sch 24/24 (*see* GAD 2025, 27)) and aligns itself with the case law of other international supreme courts (Austrian Supreme Court of Justice, 31 January 2024, 3 Ob 6/24i, JusGuide 2024/12/21620 (OGH)).

This conclusion is not precluded by the no-claims provision of Article 11(1) of Regulation (EU) No 833/2014, which is intended to prevent the enforcement of claims arising from transactions subject to sanctions. The BGH reasoned that the case under Section 110(2) No 1 ZPO and Article 17 HZPÜ would at most give rise to a procedural claim not covered by the provision.

Since it saw no indication that Germany had terminated or withdrawn from the HZPÜ pursuant to Article 65 of the Vienna Convention of 23 May 1969 on the Law of Treaties (Vienna Convention), the BGH left open whether the annexation of Crimea, which contravenes international law, and the Russian war of aggression against Ukraine, fulfil the requirements of Article 62(1) or Article 63 of the Vienna Convention. Since it had found no obligation to provide security for costs, the BGH also did not have to address whether a potentially difficult enforcement of cost orders in the Russian Federation would preclude an exemption from the obligation to provide security for costs pursuant to Section 110(2) No 2 ZPO and Article 18(1) HZPÜ.

Comment

The decision is to be welcomed because it ensures access to the enforcement of foreign arbitral awards in Germany even in a politically tense world, as obligations under international law are strictly complied with and not relativised by sanctions.