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**United Nations Commission on  
International Trade Law**CASE LAW ON UNCITRAL TEXTS  
(CLOUT)**UNCITRAL Model Law on International Commercial Arbitration (MAL)****Case 2189: MAL 31(1); 34(1)**

Germany: Federal Court of Justice

Case No. Bundesgerichtshof (BGH), I ZB 34/23

11 July 2024

Original in German

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Available at: [https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?](https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgf&Art=en&az=I%20ZB%2034/23&nr=138501)[Gericht=bgf&Art=en&az=I%20ZB%2034/23&nr=138501](https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgf&Art=en&az=I%20ZB%2034/23&nr=138501)Abstract prepared by Sebastian Gratz<sup>1</sup>[keywords: *arbitral awards; arbitrators; formal requirements; procedure; signatures*]

The decision concerns the legal implications of the absence of one arbitrator's signature on an arbitral award issued by a three-member arbitral tribunal, with an accompanying note stating that the "signature could not be obtained".

The dispute between the plaintiff and the respondent arose following a multi-million sale of assets and global business by the plaintiff from the respondent in 2018. The underlying contracts provided for ICC arbitration seated in Frankfurt (Main). The plaintiff claimed EUR 1.6 billion in damages from the respondent, alleging misrepresentation. The arbitral tribunal dismissed the plaintiff's claims in August 2022 and ordered the plaintiff to pay EUR 15 million in costs. The arbitral award was signed by two arbitrators, but the third arbitrator's signature was omitted with the note "signature could not be obtained".

The plaintiff applied to the Higher Regional Court of Frankfurt to set aside the award under Section 1054(1) of the German Code of Civil Procedure (ZPO) (corresponding to Art. 31(1) MAL), arguing that the missing signature lacked an adequate explanation. The court ruled that the omission of a signature must include a specific reason for the failure to sign and that the statement "signature could not be obtained" was insufficient.

The German Federal Court of Justice (BGH) overturned this ruling, holding that Section 1054(1) ZPO only requires a reason for the missing signature and not for the arbitrator's refusal to sign. The BGH found that signing an award distinguishes it from

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<sup>1</sup> Case provided by Provided by the German Arbitration Institute (DIS) as part of the German Arbitration Digest, a joint DIS/DIS40 project. For the German Arbitration Digest see [www.disarb.org/en/resources/german-arbitration-digest](http://www.disarb.org/en/resources/german-arbitration-digest).



a draft and serves to indicate finality. A missing signature does not invalidate the award as long as the majority of the tribunal has signed and provided a reason for the missing signature, such as “signature could not be obtained”, thus preventing an obstructive arbitrator from undermining the process. The BGH emphasized that such a statement does not require additional explanation or a separate signature.

The BGH referred the case back to the lower court for further consideration on other grounds related to the set-aside request.

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