

German group wins Turkish plant dispute

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Cosmo Sanderson



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A German construction group has won an ICC dispute with an Istanbul-based fertiliser manufacturer over outstanding payments for the construction of a plant in Turkey, receiving a €24.5 million award from an all-Swiss tribunal

Thyssenkrupp Industrial Solutions was handed the award against Bandirma Gubre Fabrikalari AS, known as Bagfaş, on 23 August by the Zurich-seated tribunal.

The tribunal was chaired by **Hansjörg Stutzer**, founder of Thouvenin Rechtsanwälte, with **Roland Hürlimann** of Baur Hürlimann and **Gabrielle Nater-Bass** of Homburger sitting as co-arbitrators. All three are based in Zurich.

Thyssenkrupp was represented by a team from Lenz & Staehelin led by partner **Harold Frey** and counsel **Martin Aebi** in Zurich while Bagfaş's representation is unknown.

In the wake of the award, Thyssenkrupp provided a short statement stating that the tribunal had found that it handed over the plant to Bagfaş at the start of 2016 “as contractually agreed” and “obliged Bagfaş to pay all outstanding amounts”.

Bagfaş released a statement on 28 August saying that it expects Thyssenkrupp to apply for enforcement of the award in the Turkish courts and is preparing to defend itself against such an action.

Bagfaş awarded Thyssenkrupp a €140 million tender to construct the calcium ammonium nitrate fertiliser plant, which was to be integrated into a pre-existing facility in the town of Bandirma on the coast of the Sea of Marmara in western Turkey, in 2012. Thyssenkrupp claimed that it completed work on the plant three years later but Bagfaş rejected its work as defective and kept outstanding payments.

Bagfaş's chairman Kemal Gencer is quoted in *Bloomberg* as saying in May 2016 that his company would fight Thyssenkrupp's claim, saying that the group had "asked for tolerance on some specifications and full payments despite these. When we refused, they went to court."

Gencer said that the plant, which was designed to produce 600,000 tons of fertiliser per year, suffered from persistent mechanical problems and high dust emissions and was generally substandard. He continued that Bagfaş had begun to fix some of the issues itself, in some cases with Thyssenkrupp's assistance.

"The longer this takes, the better our chances of winning," Gencer said with reference to the arbitration

Thyssenkrupp is currently facing a €2.2 billion contractual claim from the Greek government in connection with the majority interest it previously held in one of the country's largest commercial shipyards. Disputes over the shipyards with various parties have led to [multiple arbitrations](#) under ICC and ICSID rules.

Thyssenkrupp Industrial Solutions v Bandirma Gubre Fabrikalari

Tribunal

- **Hansjörg Stutzer** (Switzerland) (Chair)
- **Roland Hürlimann** (Switzerland)
- **Gabrielle Nater-Bass** (Switzerland)

Counsel to Thyssenkrupp

- Lenz & Staehelin

Partner **Harold Frey** and counsel **Martin Aebi** in Zurich

Counsel to Bagfaş

Unknown

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