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Arbitrator stays afloat in Greek submarine dispute

[Cosmo Sanderson](#)

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The Papanikolis, one of the four submarines ordered by Greece, at a shipyard in Germany (Credit: Wikimedia Commons)

Greece has failed to disqualify Spanish arbitrator **Juan Fernández-Armesto** as chair in an €8 billion ICC claim it is pursuing over projects to replenish its navy's submarine fleet – months after the state reached a partial settlement with one of the respondents.

The state had sought to remove the arbitrator from an Athens-seated tribunal hearing claims against German engineering group ThyssenKrupp, Abu Dhabi-based shipbuilder Prinvest and their former subsidiary Hellenic Shipyards (HSY).

The ICC Court dismissed the challenge last month. The grounds of challenge have not been disclosed.

The other members of the tribunal are **Bernhard Meyer** of Switzerland and Canada's **Thomas Webster**, who replaced Austrian arbitrator **Andreas Reiner** last year. The tribunal members were appointed by the ICC Court.

Greece is represented in the arbitration by HFW, **Guy Blackwood QC** of Quadrant Chambers and state lawyers.

ThyssenKrupp is using Swiss firm Lenz & Staehelin, ArbLit in Milan and Greek firm KLC Law Firm in Athens. Privinvest is using Busse Disputes – whose founding partner **Daniel Busse** [took the case with him](#) from Allen & Overy last year – and V&P Law in Athens. HSY, which was placed under special administration in Greece in 2018, is using local firm Drakopoulos Law, having previously used the same counsel as Privinvest.

The dispute arises from two contracts Greece signed with the respondents in 2000 and 2002. The first contract, known as the “Archimedes” programme, was for the construction of four Class 214 submarines. The second is called “Neptune II” and involved the modernisation of three Class 209 submarines.

Design work on the submarines was carried out by ThyssenKrupp, while Privinvest was the majority owner of HSY, the shipyard near Athens where much of the work was carried out.

In 2009, with the four new submarines reportedly built, the contractors cancelled both agreements, claiming that Greece owed €524 million.

Privinvest and HSY filed an ICC claim against the state in 2013. A year later, the state retaliated with its own claim for breach of contract against Privinvest and HSY, also naming ThyssenKrupp as respondent.

Fernández-Armesto was appointed as chair in both cases. In the first ICC case, he formed a majority with French arbitrator **Laurent Aynès** in 2017, [holding the state liable](#) for the contracts' termination and awarding Privinvest over €200 million. Greek national **Panayiotis Kornilakis**, appointed by the state, dissented.

That award was [upheld](#) by the Athens Court of Appeal last year.

Meanwhile Greece's ICC claim, understood to be worth as much as €8 billion, has seen hearings on liability split into three parts. Two of these have already been held while the third was scheduled for March but has been postponed due to the coronavirus pandemic.

In December, Greece reached a partial settlement with ThyssenKrupp and HSY concerning excess materials from the Neptune II project that were never allegedly delivered to the state.

Greece agreed to acknowledge that ThyssenKrupp was entitled to keep a €100 million payment already made for materials. ThyssenKrupp, meanwhile, agreed to send materials that had not already been delivered and withdrew a counterclaim in the arbitration where it sought declaratory relief that it was entitled to keep the payment. The company also dropped related Greek litigation.

HSY also agreed to waive enforcement of the 2017 ICC award as far as it concerned the materials.

ICSID claim over shipyard continues

Meanwhile, Privinvest's Lebanese owners, the Safa brothers, continue to pursue an ICSID claim worth over €400 million that they [filed against Greece in 2016](#) after its navy took over the HSY shipyard.

Privinvest acquired a majority stake in HSY in 2010 and the brothers are seeking damages for a law Greece passed four years later allowing its navy to complete the construction of Type 214 submarines it had ordered. The submarines were completed at the yard using HSY employees at no cost to the government.

The Greek navy is now in sole charge of the shipyard, better known as Skaramangas, which was created in 1937 to build warships and also serves as a naval base.

Finnish arbitrator **Veijo Heiskanen** is chairing the ICSID tribunal hearing that claim, joined by German-Irish arbitrator **Klaus Reichert** and French arbitrator **Brigitte Stern** – who was the subject of an [unsuccessful challenge](#) by the Safa brothers.

The Safa brothers are using Busse Disputes, which again took over from Allen & Overy, and Quinn Emanuel Urquhart & Sullivan partner **Philippe Pinsolle**. Greece is using HFW and barristers **Guglielmo Verdirame QC**, **Jonathan Ketcheson** and **Jonathan Bethell** of 20 Essex Street and **Guy Blackwood QC** of Quadrant Chambers, as well as state lawyers.

Greece v ThyssenKrupp Marine Systems, ThyssenKrupp Industrial Solutions, Prinvest and Hellenic Shipyards

Tribunal

- **Juan Fernández-Armesto** (Spain)(Chair)
- **Bernhard Meyer** (Switzerland)
- **Thomas Webster*** (Canada)

*replaced **Andreas Reiner** of Austria in 2019

Counsel to Greece

- Legal Council of the State

Led by **Dionysios Kolovos** and **Ourania Mendrinou**, with **Argyria Fanouraki** in Athens

- Holman Fenwick Willan

Partner **Costas Frangeskides** and senior associates **Ben Atkinson** and **Eirini Roussou** in London

- **Guy Blackwood QC** of Quadrant Chambers in London

Counsel to Prinvest Group

- Busse Disputes

Partner **Daniel Busse***, senior associate **Sibylle Herberg*** and associates **Natalie Schober**, **Sven Lange***, **Allison Torline*** and **Manuela Doughan*** in Frankfurt

*took the case with them from Allen & Overy last year

- V&P Law

Partners **Eliana Paschalides**, **Aris Anghelakos**, **Spyros Foulis** and **Alexandra Mitsokali** in Athens

Counsel to ThyssenKrupp

- Lenz & Staehelin

Partner **Harold Frey** counsel **Martin Aebi** and **Hanno Wehland** and associate **Eleni Serifi** in Zurich

- Arb Lit

Partner **Luca Radicati di Brozolo** and senior associate **Fabio Santacroce** in Milan

- KLC Law Firm

Partners **Aristides Chiotellis**, **Panagiotis Tzioumas** and **Xanthi Goustain** Athens

Counsel to Hellenic Shipyards

- Drakopoulos Law

Prinvest and Hellenic Shipyards v Greece

Tribunal

- **Juan Fernández-Armesto** (Spain)(Chair)
- **Laurent Aynès** (France) (appointed by Prinvest)
- **Panayiotis Kornilakis** (Greece) (appointed by Greece)

Counsel to Prinvest and Hellenic Shipyards

- Allen & Overy

Partners **Daniel Busse*** and **Benedikt Burger**, senior associate **Sibylle Herberg** and associates **Natalie Schober**, **Sven Lange** and **Hannah Werst** in Frankfurt

*now at Busse Disputes

- V&P Law

Partners **Eliana Paschalides**, **Aris Anghelakos**, **Spyros Foulis** and associate **Alexandra Mitsokali** in Athens

Iskandar Safa and Akram Safa v. Hellenic Republic (ICSID Case No. ARB/16/20)

Tribunal

- **Veijo Heiskanen** (Finland) (Chair)
- **Klaus Reichert** (Germany-Ireland) (appointed by the Safas)
- **Brigitte Stern** (France) (appointed by Greece)

Counsel to the Safa brothers

- Busse Disputes

Partner **Daniel Busse***, senior associate **Sibylle Herberg*** and associates **Natalie Schober**, **Sven Lange***, **Allison Torline*** and **Manuela Doughan*** in Frankfurt

*took the case with them from Allen & Overy last year

- Quinn Emanuel Urquhart & Sullivan

Partner **Philippe Pinsolle** in Geneva

Counsel to Greece

- Legal Council of the State

Led by **Emmanouela Panopoulou**, with **Dionysios Kolovos**, **Ourania Mendrinou** and **Argyria Fanouraki** in Athens

- Holman Fenwick Willan

Partners **Costas Frangeskides** and **Adam Strong** and senior associates **Ben Atkinson** and **Eirini Roussou** in London and Brussels

- **Guy Blackwood QC** of Quadrant Chambers in London
- **Siddharth Dhar** of Essex Court Chambers in London
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