

Turkmenistan faces new ECT claim



Power plant, istock.com/zhongguo

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Turkmenistan is facing an Energy Charter Treaty claim at ICSID over a Turkish group's investment in two power plants and a refinery.

ICSID registered a claim brought by Ankara-based energy group Lotus yesterday. The claim is based on both the ECT and the 1997 Turkey-Turkmenistan bilateral investment treaty.

Lotus is represented by Istanbul law firm Egemenoglu, with Washington, DC firm, Butzel Long as co-counsel. It is the second time that both firms have been instructed to bring an ICSID claim against Turkmenistan. Last year, they helped Turkish construction company Gorkem file a claim at the centre, which remains pending.

Turkmenistan has retained Curtis Mallet-Prevost Colt & Mosle, which has represented the state in all seven previous cases it has faced at ICSID. Partner **Ali Gursel** in New York and Ashgabat is leading the team.

Lotus operates in Turkmenistan through its subsidiary, Lotus Enerji, which has undertaken eight projects in the state.

GAR has learned that the dispute concerns three of those projects: the construction of two 254-megawatt electric power plants and one state-owned refinery.

According to a 2010 telegram published by *Wikileaks*, the plants are located outside Turkmenistan's capital, Ashgabat and on the coast of the Caspian Sea. They are valued at US\$172 million and US\$271 million, respectively.

In its claim, GAR understands Lotus accuses Turkmenistan of failing to make a retention payment for the construction of the plants, despite the state's acknowledgment that the projects were completed successfully, and of unlawfully terminating the agreement relating to the refinery.

The group is alleging various breaches of the ECT and of the discriminatory behaviour, expropriation, most favoured nation and fair and equitable treatment provisions of the BIT.

According to Turkey's *Hurriyet Daily News*, Turkish investors have been active in Turkmenistan since its independence from the Soviet Union in 1991. In 2010, Turkish companies operated nearly 1,300 construction projects in the country, making them the largest group of foreigners doing business in the country. Turkish investors have brought a range of ICSID and UNCITRAL claims against the state reported by GAR in the past few years, which have mostly been dismissed.

Two other claims against the state are still going on at ICSID. In 2012, Turkish national Muhammet Çap and his family-run construction company Sehil filed a US\$300 million claim over the state's alleged failure to pay them for several building projects. UK arbitrator **Julian Lew QC**, Belgium's **Bernard Hanotiau** and French-Swiss arbitrator **Laurence Boisson de Chazournes** held a hearing on jurisdiction and the merits in February and the parties have filed post-hearing briefs.

The second ongoing claim is Görkem's, filed last year in a dispute over the construction of a US\$12 million shopping mall. Two arbitrators have been appointed so far: US arbitrator **James Boykin** and Australia's **Zachary Douglas**.

Another claim against Turkmenistan could materialise soon. In December, the insolvency administrators of a German construction company served a notice of dispute on the state over a government tender to build grain mills and café-bakeries.

Lotus Holding Anonim Şirketi v Turkmenistan (ICSID Case No ARB/17/30)

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