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COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DE LA SOCIÉTÉ
« ÉLECTRICITÉ DE BEYROUTH »

(FRANCE c. LIBAN)

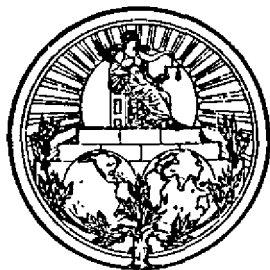
1954

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

“ÉLECTRICITÉ DE BEYROUTH”
COMPANY CASE

(FRANCE *v.* LEBANON)



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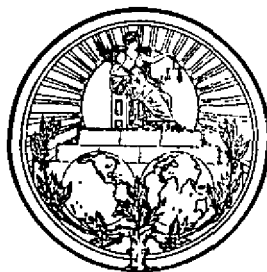
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AFFAIRE DE LA SOCIÉTÉ
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(FRANCE c. LIBAN)

ORDONNANCE DU 29 JUILLET 1954: RADIATION DU RÔLE

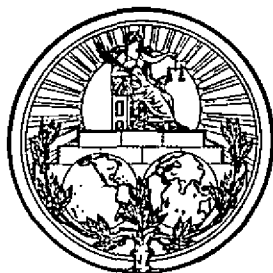


INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

“ÉLECTRICITÉ DE BEYROUTH”
COMPANY CASE
(FRANCE *v.* LEBANON)

ORDER OF JULY 29th, 1954: REMOVAL FROM THE LIST



PREMIÈRE PARTIE

REQUÊTE INTRODUCTIVE D'INSTANCE
ET PIÈCES DE LA PROCÉDURE ÉCRITE

PART I

APPLICATION INSTITUTING PROCEEDINGS
AND PLEADINGS

III.—APPLICATION INSTITUTING PROCEEDINGS
ON BEHALF OF THE GOVERNMENT OF THE
FRENCH REPUBLIC

[*Translation by the Registry*]

August 1953.

To the President,

And Members of the International Court of Justice,

I, the undersigned, duly authorized by the Government of the French Republic, selecting as address for service the French Embassy at The Hague,

Having regard to Article 36, paragraph 1, of the Statute of the Court,

Having regard to Article 23 of the Agreement of January 24th, 1948, between the Government of the French Republic and the Government of the Lebanese Republic,

Having regard to Article 40, paragraph 1, of the Statute of the Court,

Have the honour to address to you the following Application :

On January 24th, 1948, the Government of the French Republic and the Government of the Republic of Lebanon concluded an Agreement for the purpose of modifying the Agreement which had been concluded between them on January 25th, 1944, and which had been denounced by the French Government, and for the purpose of settling all the financial problems resulting from the liquidation of the past and, at the same time, their monetary and financial relations for the future. Ratifications having been exchanged on February 15th, 1949, the Agreement entered into force on February 16th, 1949 (*Journal officiel de la République française*, March 14th-15th, 1949, p. 2651).

Article 23 of this Treaty provides : "The High Contracting Parties agree that any disputes which may arise from the application of the present Agreement or of its Annexes shall, at the request of the Party concerned, be submitted for arbitration by the Court of International Justice."

The Agreement of January 24th, 1948, includes, among the obligations assumed by each of the Contracting Parties, an undertaking by the Lebanese Government, contained in the letter appearing as Annex No. 12 to the Agreement, with regard to concessions of French companies and companies with French capital in Lebanon :

"The Lebanese Government, considering that by reason of the termination of the Mandate and the proclamation of Lebanese independence, it may be desirable to effect certain modifications in the instruments and annexes governing the

concessions of French companies and companies with French capital operating upon its territory, and in the texts defining the manner in which they should be applied, proposes to initiate conversations with each of the companies concerned in the spirit of the discussions already held to this end.

The purpose of these conversations will be to arrive at a solution, in a contractual manner and within the framework of the existing law, such as to enable the Lebanese Government to submit the modifications in question for the approval of Parliament.

Until the putting into effect of these modifications, the instruments, annexes and texts which governed the concessions of these companies on January 1st, 1944, will remain in force.

The present *modus vivendi* is to be read with the various provisions of the Agreement of to-day's date¹."

As the result of breaches of the undertakings subscribed to by the Lebanese Government in favour of the Government of the French Republic, in the said Annex No. 12, the latter Government, on the basis of Article 23 of the Treaty of January 24th, 1948, is led to seise the International Court of Justice of the present Application.

The Société Électricité de Beyrouth is a French limited company with its Head Office at 7, Boulevard de la Madeleine in Paris. It was incorporated on January 3rd, 1923, for a period of 99 years, and its objects are the study, establishment and exploitation of public services such as transport, lighting and power. The Company is the holder of five concessions in Lebanon, of which the present Application is concerned with four :

- (1) Concession for the distribution of electrical energy for all purposes in the town of Beirut and its surrounding district.
- (2) Concession for the construction and exploitation of high tension electrical energy mains for the town of Beirut and within a perimeter around Beirut.
- (3) Concession for the establishment and exploitation of a hydro-electric factory on the Nahr-El-Safa.
- (4) Concession for the distribution of electrical energy in certain villages of Lebanon.

These various concessions fall within the category of instruments referred to in the letter, Annex No. 12, to the Franco-Lebanese Agreement of January 24th, 1948, cited above, which provides that any modifications to be effected in the concessions of French companies and companies with French capital should be effected in a contractual manner and that "until the putting into effect of these

¹ Translation by the Registry.

modifications, the instruments, annexes and texts which governed the concessions of these companies on January 1st, 1944, will remain in force".

Instead of seeking to secure modifications of the four concessions of the Société Électricité de Beyrouth in a contractual manner, as it was bound to do by the terms of the Agreement of January 24th, 1948, the Lebanese Government acted unilaterally and, as a final step in a series of measures contrary to the General Conditions [*Cahiers des Charges*] of the concessions, decided to put the Company's electricity concessions under provisional State control by decrees of March 19th and April 4th, 1953.

The history of the Lebanese breaches of the Franco-Lebanese Agreement of January 24th, 1948, goes back to the end of the year 1951. At that time, as the result of certain pressure, a campaign was started with the object of securing a reduction of the charges for electricity, which went as far as a collective refusal of consumers to pay the rates corresponding to their consumption of electricity: this movement was all the more difficult to understand in that the Company was far from applying the maximum rates authorized by the General Conditions of its concessions, that its rates were lower than those of many towns of comparable size and that, furthermore, the general rates applied had been formally approved by the authority granting the concession, and confirmed by the *Service de contrôle* in 1943.

According to the General Conditions of June 4th, 1925, Article 13 (Concession 1), the Company retained liberty to raise certain reduced charges which it allowed to certain special categories of consumers, provided that the charges did not exceed the general rates which had been confirmed. However, whereas the Company's right to raise the reduced rates had never been challenged by the authority granting the concessions, the *Service de contrôle* objected to it for the first time in 1950. The Company offered to allow the dispute to be settled by the legal means provided for in the General Conditions, but its offer remained unanswered. The Lebanese Government, on the other hand, allowed the opinion to become current that the Company was in breach of the concessionary instruments. Accordingly, the public campaign against the electricity rates developed into an invitation to the general public to refuse to pay for electricity.

It was for the Lebanese Government to put its concessionnaire in a position to resist this pressure; far from doing so, the Lebanese Government refused to permit the Company to exercise its elementary right of cutting off the current in cases of non-payment. The consumers' strike naturally developed and by January 1952, 50% of the accounts were not paid.

By letters of February 4th and March 4th, 1952, the Company took note of the refusal of the Lebanese Government to restore order and to put its concessionnaire in a position to perform the

service in question and it indicated that if it were obliged to accept the reductions of the rates imposed by authority, it would claim the reparation due for these infringements of its rights.

The Lebanese Government decided to request two Dutch experts to undertake an enquiry. After recognizing that "the rates are based on sound economic principles and can satisfy the needs of the consumers", the experts recommended, in order to restore calm, a slight reduction for those consumers only who did not use more than 20 kwh. per month, "without changing the other rates". But these recommendations were not carried out by the Lebanese Government, which complied with the demands of the Consumers' Strike Committees and issued Decree No. 8904 on July 10th, 1952, supplemented by Decrees No. 9228 of August 19th, 1952, and No. 9379 of September 5th, 1952.

Decree No. 8904 lowers all applicable general rates from 21 Lebanese piastres to 16.50 for lighting, from 13.25 to 10.25 for low tension power and from 13.25 to 8.25 for high tension power; the reduced rates for certain domestic uses were altered for all consumption above a certain level from 8 piastres to 6.50, this rate becoming a true flat rate. The number of consumers benefitting from the reduced prices was increased from 8000 to 48,000; furthermore, the reduction was made retroactive to January 1st, 1952.

These arbitrary measures upset the financial equilibrium of the concession and, if the Lebanese Government had deemed them necessary in order to restore order, they ought to have involved compensation. But the negotiations entered into by the Company to obtain the re-establishment of the financial equilibrium of its concessions did not succeed. The new decrees, No. 9228 of August 19th, 1952, and No. 9379 of September 5th, 1952, issued by the Lebanese Government, fixing new rates for industrial consumers, gave rise to fresh protests in face of which the Government yielded and enjoined the Company not to collect the reduced rates which it itself had just decreed but only a payment on account of 5 piastres per kwh. "on the amount consumed in the past and in the future until the Council of Ministers should have decided what ought to be done" (letter from the Minister of Public Works to the Company, No. 2380, of November 17th, 1952).

In reply to the Company's demands, the Minister of Public Works wrote as follows on December 1st, 1952: "As regards your two letters of July 22nd and October 29th, 1952, the questions raised therein are at present being discussed by the Council of Ministers which will shortly invite you to enter into negotiations with it in order to fix new bases which will be the subject of an agreement with your Company and will include all questions still outstanding concerning the financing of new means for producing electrical power, electricity rates and the question of exploitation."

Thus, on December 1st, 1952, the Lebanese Government still recognized its obligation under the letter annexed as No. 12 to the Agreement of January 24th, 1948, to negotiate with the Company in respect of any modifications it wished to make in the concessions. In the same letter of December 1st, 1952, the Lebanese Government also recognized the merit of the financial and constructional record of the Company during the year 1952. But these words were not translated into action, and on February 23rd, 1953, the Company was obliged to draw the attention of the Lebanese Government to the gravity of the situation since the decrees had not been respected by industrialists and since public offices for more than a year had refrained from paying for the current they had consumed. Having received no practical reply from the Government, the Company, by a letter dated March 2nd, 1953, requested arbitration, in pursuance of its General Conditions, of the questions which were the subject of dispute with the Lebanese Government (Article 39, Concession of June 4th, 1925 ; Article 32, Concession of August 26th, 1925 ; Article 28, additional clause, of May 23rd, 1929). The General Conditions in each case provide that the concessionnaire is entitled to refer its disputes with the Administration concerning the execution or interpretation of the clauses of the General Conditions to an arbitration commission.

On March 19th, 1953, the Lebanese Government issued a Decree enacting that the concession for the production of electrical power in Beirut should be brought provisionally under State control, at the expense, under the responsibility and on behalf of the Company, and appointing two receivers. The latter took possession of the offices and archives of the Company and expelled the Company's representative in Beirut from his office by force.

On April 4th, 1953, a further Decree extended the receivership to all the Company's electricity concessions.

The Company protested against this provisional bringing under State control, which had been decided upon in violation of the provisions of the General Conditions and renewed its request for arbitration. No reply was ever received. All the Company's difficulties, which have been recited in this Application, including the provisional placing under State control, concern the application of the General Conditions and the interpretation of the rights of the concessionnaire and are a proper subject-matter for arbitration. The arbitrary reduction of the rates by the Lebanese Government is a violation of the rights which the Company holds under the General Conditions. There exists no country where the right of the authority granting the concession to modify, in the general interest, the conditions of exploitation of a public utility is not accompanied by an obligation to compensate the concessionnaire for the damage resulting from modifications of the financial clauses of a concessionary contract. Administrative case

law in Lebanon on the subject is the same as that of the French Conseil d'État.

The refusal of the Lebanese Government to accept arbitration, as it is bound to do under the General Conditions, constitutes a further violation of the obligations it assumed in letter No. 12 annexed to the Agreement of January 24th, 1948, and this violation constitutes a culminating point of all the measures which it has taken in contravention of the Instruments of Concession, as recited above. The Company is now denied recourse to the tribunal to which it is entitled under its contract.

Being naturally concerned with the situation in which its national found itself, the Government of the French Republic has on several occasions reminded the Lebanese Government of its obligations under the Agreement of January 24th, 1948. Representations were made through diplomatic channels with a view to avoiding a serious dispute between the Government of the French Republic and the Government of the Lebanese Republic, but these representations were of no avail (memorandum handed by the French Ambassador to Lebanon on March 18th, 1953, notes from the Embassy of March 21st and March 24th, 1953, notes from the Ministry for Foreign Affairs of the French Republic handed to the Lebanese Embassy in Paris on March 24th, 1953, and May 16th, 1953).

The Government of the French Republic has decided to support the Société Électricité de Beyrouth in the defence of its rights as a concessionnaire in Lebanon, rights which have been formally recognized in international treaties concluded by that State, and to secure respect by the Lebanese Government of its obligations towards the Government of the French Republic undertaken in the Agreement of January 24th, 1948. The breaches of the concessionary contract of the Société Électricité de Beyrouth and the denial of justice involved in the Lebanese Government's refusal to accept the arbitration provided for by the General Conditions are, by reason of the treaty obligations cited in this Application, violations of international law for which the Government of the Lebanese Republic must bear responsibility. The Government of the French Republic asks that the rules of international law that are applicable to the situation of its national, as set out above, should be respected, and asks for adequate reparation for the failure to observe these rules.

Having vainly resorted to diplomatic negotiations in respect of all the foregoing points, the Government of the French Republic has decided to bring its dispute with the Government of the Lebanese Republic to the International Court of Justice.

Accordingly, and subject to the subsequent presentation to the Court of a Memorial, Counter-Memorial and, in general, of any evidence or argument, and subject to any subsequent request for the indication of provisional measures of protection in accordance with Article 41 of the Statute of the Court,

MAY IT PLEASE THE COURT :

To take note that for the purpose of all notifications and communications relating to the present case, the Agent of the Government of the French Republic selects for his address for service the French Embassy at The Hague ;

To notify the present Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, to the Government of the Lebanese Republic ;

To adjudge and declare, whether the Government of the Lebanese Republic appears or not, and after such time-limits as the Court may fix in the absence of an agreement between the Parties :

That the alterations of the situation of the Société Électricité de Beyrouth made unilaterally by the Lebanese Government are contrary to the undertaking given in the Agreement of January 24th, 1948, between France and Lebanon ;

That the Lebanese Government has accordingly failed to carry out the obligation to negotiate with the concessionary Company which it assumed under the Agreement of January 24th, 1948 ;

That the Lebanese Government is under an obligation to enter into negotiations with the Société Électricité de Beyrouth in respect of any modifications of its situation and to make good the damage suffered until the date of the Court's decision as the result of the measures which have prevented the Société Électricité de Beyrouth from operating according to the rules which the Lebanese Government was under an obligation to observe.

The Agent of the Government of
the French Republic,
(Signed) André GROS.

Signature certified :

[Seal of the Ministry
for Foreign Affairs
and illegible signature.]
