

*Toto Costruzioni Generali S.P.A. v Republic of Lebanon* ICSID Case No. ARB/07/12, Award

**Summary:** Toto claimed against Lebanon under the Italy-Lebanon BIT for the State's failure to expropriate lands which was necessary for Toto's carrying out of the highway construction project.

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
WASHINGTON, D.C.**

In the matter between

**TOTO COSTRUZIONI GENERALI S.P.A.**  
(Claimant)

and

**REPUBLIC OF LEBANON**  
(Respondent)

(ICSID Case No. ARB/07/12)

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**AWARD**

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*Members of the Tribunal*  
Professor Dr. Hans van Houtte  
Judge Stephen M. Schwebel  
Mr. Fadi Moghaizel

*Secretary of the Tribunal*  
Ms. Milanka Kostadinova

*Representing the Claimant*  
Bechara S. Hatem, Esq.  
Professor Hadi Slim, Esq.  
Hatem, Kairouz, Messihi & Partners  
Beirut, Lebanon

*Representing the Respondent*  
Nabil Abdel-Malek, Esq.  
Mireille Rached, Esq.  
Joseph Bsaibes, Esq.  
Nabil Abdel-Malek Law Offices  
Beirut, Lebanon

*Date of Dispatch to the Parties: June 7, 2012*

Lebanon in its capacity of '*autorité publique*.' Although Toto has submitted the CEGP's decisions on the delivery of the parcels, it has not submitted evidence that the actual expropriation proceedings by the public authority were unreasonably delayed. The chronology of events indicates that the expropriations were generally finalized within a year.<sup>139</sup>

182. The Tribunal has noted that Toto does not allege that Lebanon openly mishandled the expropriations in an outright and unjustified repudiation of its own established expropriation practice.

*a) Article 2*

183. Toto alleges that the late expropriations and the failure to deliver the parcels in a consecutive order constitute a breach of Lebanon's obligation to act in a diligent manner to promote and protect Toto's financial interest in the performance of the Contract, as Article 2 of the Treaty requires. For Toto, Lebanon failed to create and maintain favourable conditions for Toto's investment.

184. For the Tribunal, a breach of Article 2 requires, not only (1) an established delay in expropriation, but also (2) that this delay is attributable to Lebanon.

185. It is a fact that the expropriations with regard to the original alignment were substantially finalized before or within the first months after the works had started. Toto did not convincingly demonstrate that – in the first months of the Project – it had been hindered by the fact that not all sites had been expropriated. Indeed, as Toto had proposed substantial variations, which would change the alignment of the highway, it apparently avoided carrying out works on the expropriated sites of the original alignment, which would no longer serve a useful purpose.

186. Once the variations had been accepted, new expropriations were needed. It took two months for Toto to request the Lebanese authorities to carry out these expropriations. It took some twelve months for the authorities to carry out the latest of these expropriations. Taking into account the complexity of expropriation procedures, which may involve also court proceedings, the Tribunal is of the view that a time span of twelve months is reasonable.

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<sup>139</sup> The initially expropriated parcels could of course be delivered sooner as the expropriation process was already on its way before the Contract was concluded.

187. The parties have discussed whether Article 2.1 of the Treaty, which obliges Lebanon to ‘promote’ investments, imposes upon Lebanon an obligation of due diligence, as argued by Toto. Even if ‘due diligence’ were to be required, Toto has not submitted evidence that Lebanon had not behaved in a diligent way.

188. Article 2.3 of the Treaty sanctions unreasonable or discriminatory delays in expropriation which would have impaired Toto’s investment. Toto does not allege that Lebanon acted in a discriminatory fashion. It did not indicate how Lebanon ought to have acted “in a reasonable manner.”

189. Article 2.4 of the Treaty requires Lebanon in general “*to create or maintain favourable legal or economic conditions.*” Toto failed to show how the alleged delay in the expropriations for the construction of a portion of the highway constitutes a failure “*to create or maintain favourable legal or economic conditions.*” Toto did not provide particulars in respect of the kind of general legal and economic conditions Article 2.4 refers to. On the contrary, Toto accepted the granting of an extension to complete the works and waived any claim to damages because of the delay in expropriations.<sup>140</sup> Such acceptance, in all events, undercuts the factual grounds for arguing that Lebanon failed to protect the investment.

*b) Article 3.1*

190. Toto submits that Lebanon failed to ensure fair and equitable treatment to Toto’s investment because of the late expropriations. Toto expected expropriations which would not prevent the performance of the Contract within the agreed time frame. Toto alleges that its legitimate expectations of a consistent and consequential delivery of the parcels had been frustrated.

191. For Lebanon, Toto could not have legitimate expectations of this nature. When Toto agreed to the Contract, it was aware that the expropriations had not been carried out and that parcels would be delivered progressively in the first months of the works. This was the only expectation Toto could have had. Toto accepted to execute the works within the contractual time limit in spite of the uncertainty concerning the date of delivery of the parcels. Moreover, Toto was aware

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<sup>140</sup> Minutes of meeting October 19, 2000, Exhibit MM39.