



Judicial procedures designed for expropriation of shares and bonds were not unfair

In its decision in the case of [Adorisio and Others v. the Netherlands](#) (applications nos. 47315/13, 48490/13 and 49016/13) the European Court of Human Rights has by a majority declared the application **inadmissible**. The decision is final.

The case concerned the accelerated proceedings allowing bond holders to challenge the lawfulness of the Netherlands Government's expropriation of the assets they held in SNS Reaal, a banking and insurance conglomerate. SNS Reaal had run into trouble as a result of the financial crisis of 2008 and the Government decided to protect the domestic banking industry and customers' savings by nationalising the conglomerate.

The Court found in particular that the time constraints imposed on the bond holders in the proceedings to decide on the lawfulness of the expropriation had not placed them at an unfair disadvantage and that their restricted access to financial reports concerning the bank and its assets had been necessary.

The case did not address the issue of compensation. Compensation proceedings are still pending in the Netherlands.

Principal facts

The applicants are 373 individuals of Italian, American, Romanian, Swiss, Brazilian, Egyptian, Venezuelan, Filipino, Netherlands, and Tunisian nationalities, who were born between 1919 and 1993, and 13 companies based in Italy, Grand Cayman (Cayman Islands), Ireland, and Belgium. Their case concerns the manner by which the Netherlands Government expropriated the shares and subordinated bonds they owned in SNS Reaal. The compensation proceedings are still pending in the civil courts in the Netherlands; the present case only deals with the accelerated proceedings before an administrative tribunal, the Administrative Jurisdiction Division of the Council of State, in which the lawfulness of the expropriation could be contested.

SNS Reaal's banking arm was, and is, the fourth biggest high-street bank in the Netherlands. The conglomerate as a whole was taken over by the Netherlands Government in 2013 after its real-estate division ran into trouble following the global economic crisis in 2008. Given the perceived risk of the bank collapsing, the Government decided to protect the banking service and customers' savings by nationalising SNS Reaal and to lessen the cost to the taxpayer by expropriating shares, capital securities and subordinated bonds issued by the bank. A procedure specially designed for crises involving large financial institutions was used to determine the lawfulness of the expropriation in order to ensure a rapid decision. Under this procedure share and bond holders had ten days to lodge an appeal following the announcement of the government's decision on 1 February 2013, after which the decision had to be given within a further fortnight. The Administrative Jurisdiction Division held a hearing on their case on 15 February 2013 and issued its decision ten days later, less than four weeks after the nationalisation was announced.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 10 July 2013. The Court adopted a partial decision on the case on 14 January 2014, rejecting complaints lodged under Articles 1 (obligation to respect human rights), 13 (right to an effective remedy), and 14 (prohibition

of discrimination) and communicating the complaints relating to the lawfulness of the expropriation under Article 6.

Relying on Article 6 § 1 (right to a fair hearing / access to court), the applicants complained that the ten day window they had been given to appeal the expropriation following the decision by the Netherlands Government had been too short, that they had not had enough time to study a statement made by the Minister of Finance (received late in the afternoon on the day before the hearing on their case) and that they had only been given access to incomplete versions of two reports concerning the bank and its assets.

The decision was given by a Chamber of seven, composed as follows:

Luis **López Guerra** (Spain), *President*,
 Ján **Šikuta** (Slovakia),
 Dragoljub **Popović** (Serbia),
 Kristina **Pardalos** (San Marino),
 Johannes **Silvis** (the Netherlands),
 Valeriu **Grițco** (the Republic of Moldova),
 Iulia Antoanella **Motoc** (Romania), *Judges*,

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that the right to a fair hearing implies that each party must have a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage in comparison to their opponent.

Having considered the applicants' complaint the Court found by a majority that the application was inadmissible. In reaching this decision the Court attached particular weight to the facts and circumstances set out below.

Concerning the ten-day time-limit to lodge an appeal: The Court accepted that the Government had needed to intervene in SNS Reaal as a matter of urgency in order to prevent serious harm to the national economy. The ten-day window for lodging an appeal had admittedly been very short, but it had not prevented the applicants from bringing an effective appeal. Moreover, once their appeals were pending the applicants had been able to submit further documents and materials until the day before the hearing. At the hearing, they had also been able to submit further arguments, including ones that they had not relied on before. Accordingly the Court could not find that the ten-day time-limit for lodging appeals had been so short as to result in the proceedings being unfair.

Concerning the time available for responding to the Minister's statement of defence: The Court also accepted that the applicants and their representatives had had relatively little time to study the Minister's statement of defence, having only seen it late in the day on the eve of the hearing. However, even with the benefit of hindsight none of the applicants suggested that they would have argued their case any differently at the hearing if they had had more time to study it. Furthermore the decision of the administrative tribunal stated that the appellants had raised "all possible relevant aspects of the case" between them. Noting the particular need for a rapid decision in the original case, the Court found that the applicants had not been put at an unfair disadvantage as a consequence of the time they had been given to study the Minister's statement of defence.

Concerning the redacting of the financial reports: Given the very exceptional circumstances of this case, the Court found that the reviews conducted by the administrative tribunal, sitting in a different composition, which determined that the information withheld from the applicants was of purely

financial interest and had no bearing on the lawfulness of the expropriation, had adequately counterbalanced the disadvantage felt by the applicants at not receiving the full reports. Indeed, the European Commission, which had been called upon to decide whether or not the nationalisation constituted “State aid”, illegal under EU law, and for that purpose had been given access to at least one of the reports, had also decided to exclude the detailed financial information from the documents it had made available to the public. The Court therefore accepted that a real need had existed to restrict access to this information.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.