



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law No. 184

April 2015

***Adorisio and Others v. the Netherlands (dec.) - 47315/13,
48490/13 and 49016/13***

Decision 17.3.2015 [Section III]

Article 6

Administrative proceedings

Article 6-1

Fair hearing

Restriction of procedural rights in proceedings challenging emergency economic measures adopted in the banking sector: *inadmissible*

Facts – The applicants, all foreign nationals or legal persons, owned shares and subordinated bonds in one of the major Dutch banking and insurance conglomerate, the SNS Reaal's. Following the 2008 global economic crisis, Reaal's banking arm ran into trouble. Given the perceived risk of the bank collapsing, in 2013 the Government decided to nationalise the conglomerate and to expropriate shares, capital securities and subordinated bonds issued by it in order to protect the banking service and customers' savings. In order to ensure a rapid decision in determining the lawfulness of the expropriation, an accelerating procedure specially designed for crises involving large financial institutions was used. The Administrative Jurisdiction Division of the Council of State held a hearing on the applicants' case in February 2013 and issued its decision upholding the expropriation ten days later.

Law – Article 6 § 1: Before the European Court, the applicants complained under Article 6 § 1 of the Convention that the ten-day time-limit for appealing to the Administrative Jurisdiction Division had been too short, that they had had insufficient time to study the Minister of Finance's statement of defence and that they had been given access to incomplete versions of the reports drawn up by a firm of accountants and a firm of real-estate valuers.

The Court accepted at the outset that the Government's decision to nationalise SNS Reaal's had been motivated by the need to intervene as a matter of urgency in order to prevent serious harm to the national economy. The conglomerate was a major domestic financial institution whose collapse had to be prevented to protect the stability of the entire Dutch financial system. Under the accelerated administrative procedure available to challenge the lawfulness of the expropriation, the expropriated entities and individuals had only ten days to lodge an appeal against the Government's decision concerning their assets. The Court understood the applicants' complaints in the sense that the brevity of the time-limit had prevented them from properly developing their arguments and presenting their evidence to the domestic courts. However, although the time-limit for lodging an appeal had admittedly been very short, it had not prevented the applicants from bringing an effective appeal. Moreover, the applicants had been able to submit

additional documents until the day before the hearing and to submit further argument orally at the hearing itself. In these circumstances, the time-limit for lodging the applicant's appeals had not undermined the fairness of the proceedings.

Moreover, the Court accepted that the applicants had had relatively little time to study the Minister of Finance's statement of defence, having only seen it on the eve of the hearing. However, the applicants did not claim that such document contained any statements of fact of which they were yet unaware, or arguments which they were unable to counter for lack of preparation time. Nor did they suggest that their oral submissions to the Administrative Jurisdiction Division would have been any different had they had more opportunity to study it. Considering in particular the domestic courts' need for a very speedy decision, the Court could not find that the applicants had been put at an unfair disadvantage in this respect.

Finally, during the domestic proceedings the applicants had been given access to copies of the financial reports with parts blacked out. Given the very exceptional circumstances of this case, 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 was irrelevant for the lawfulness of the expropriation, had adequately counterbalanced the disadvantage suffered by the applicants at not receiving the full reports. Furthermore, the European Commission had also been given access to at least one of the reports in order to decide whether or not the nationalisation constituted illegal "State aid". After perusal of the financial report, the Commission had decided to exclude the detailed financial information from the documents it had made available to the public and had also approved the expropriation decision. In the light of these circumstances, the Court therefore accepted that a real need had existed to restrict access to this information.

Conclusion: inadmissible (manifestly ill-founded).

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