

No compensation for shareholders in the case of the SNS Bank, according to the Advocate-General

On 10 October 2014, the Advocate-General at the Supreme Court of the Netherlands delivered his opinion on the compensation case, instituted by the expropriated shareholders.

On February 1, 2013 the Dutch Minister of Finance and the Dutch Central Bank ('DNB') decided to expropriate all stock of SNS Bank N.V. and her holding companies to secure the bank from going bankrupt. His decision was based on article 6:2 Wft (Law on financial supervision, where the 'Interventiewet' is incorporated in). At that moment, 'Stichting Beheer' held 50.00000921% of the stock and six shares 'B' in SNS Bank N.V., whilst all other stock had been sold on the market. The Minister of Finance did not offer compensation to the shareholders (article 6:10(2) Wft).

According to article 6:6 and 6:7 Wft, expropriated parties have the right of appeal to the decision to expropriate at the Raad van State. A large group of the expropriated parties did appeal. The Raad van State decided that (...) 'there was nothing wrong with the expropriation.'

Subsequently, articles 6:10 and 6:11 Wft provide that the Enterprise Division of the Amsterdam Court of Appeal has to determine the compensation to the shareholders. The Court has to determine the compensation according to the offer, unless it deems the offer an incomplete compensation (article 6:11(2) Wft). On 11 July 2013 the Court decided that the Minister of Finance had not specified sufficiently why the shareholders should not receive any compensation and ordered for a team of specialists to further investigate what the amount of compensation should be, based on the losses suffered. The Minister of Finance disputed this judgment before the Supreme Court. The Advocate-General recently gave his opinion.

According to the Advocate-General the shareholders should not get any compensation. Based on article 6:8 (1) Wft the persons who are damaged by the expropriation, are entitled to compensation. In this article and article 6:9 Wft there is a rule to decide on the amount of compensation, starting with the idea that the expropriated party should neither be better off nor worse off when compensated. Article 6:8(1) Wft states that the expropriated party is entitled to '*full compensation for damages due to the loss of the title or the share*' and article 6:8(2) states that this compensation should amount to its real value. The real value should be determined based on article 6:9 Wft: '*the determination of the real value of the (...) share (...), shall be based on the future expectations of the financial company when the expropriation would not have taken place (...)*'.

According to the Advocate-General this implies that the future perspective of the business in case there would have been no expropriation, should be decided immediately after the moment of expropriation. This can be derived from the wording of article 6:9 Wft and the legislative history. Only after determining the future perspective, the price should be estimated based on the price the expropriated party as a reasonably acting seller and the expropriator as a reasonable acting buyer would have decided on. However, the Advocate-General argues that SNS had no future perspective at all, since there were various public reports and other information indicating that the bank would shortly fail, unless third parties would come to rescue. Since they did not, there was no financial perspective, and a fortiori no right on compensation for the shareholders.

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