

TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 20)

National ordinance ombudsman¹

§ 1. General provision

Article 1

1. The following definitions apply for the purposes of this national ordinance and the provisions based on it:
 - a. ombudsman: the ombudsman, as referred to in Article 2(1);
 - b. body: an administrative body, as referred to in the first sentence of Article 2(1) of the National ordinance concerning administrative justice;
 - c. civil servant: any person employed in the service of the Country;
 - d. conduct: an act or omission by a body in a particular matter;
 - e. complaint: an expression of dissatisfaction concerning conduct;
 - f. complainant: a natural person or legal entity who has submitted a complaint in accordance with Article 12(1).
2. The conduct of a civil servant or member of a body in the performance of his duties or office is regarded as conduct of that body.

§ 2. Appointment, suspension and dismissal of the Ombudsman

Article 2

1. The ombudsman shall be appointed by Parliament for a term of seven years. On the appointment, Parliament shall comply with a recommendation drawn up for that purpose by agreement between the vice-chairman of the Council of Advice, the President of the Common Court of Justice and the chairman of the General Audit Chamber, containing the names of at least two persons, as it sees fit.
2. The ombudsman may be reappointed for a second term on one occasion only.

Article 3

For appointment as the ombudsman, a candidate must hold Dutch nationality and be a resident of Sint Maarten.

Article 4

1. The ombudsman may not simultaneously be:
 - a. member of the Council of Advice;
 - b. member of the General Audit Chamber;
 - c. minister;
 - d. minister plenipotentiary;
 - e. civil servant in active service;
 - f. member of the judiciary;
 - g. attorney-general or solicitor-general at the Common Court of Justice;
 - h. Member of Parliament;
 - i. attorney or civil-law notary.
2. For the purposes of this Article, persons in the service of the national administration under a civil-law employment contract are equated with civil servants, as referred to in paragraph 1(e).
3. Furthermore, the ombudsman may not accept any secondary positions, the performance of which is undesirable in the interests of the proper performance of his duties or the preservation of his impartiality and independence, or of confidence therein. If the ombudsman wishes to accept a secondary position, he must notify Parliament of this in advance.
4. Before accepting his office, the person appointed as ombudsman shall swear the following before the President of Parliament:
 - a. the oath or solemn affirmation that he has not given or promised anyone anything, nor shall give or promise anyone anything in order to obtain his appointment, and that he shall not accept any pledge, favour or gift from anyone in return for any action or omission in his office;

¹ This issuance takes place on the basis of the additional Article II of the Constitution.

- b. the oath or solemn affirmation of loyalty to the Constitution.

Article 5

1. Parliament shall dismiss the ombudsman:
 - a. at his own request;
 - b. on reaching the age of 70;
 - c. if he is convicted of a criminal offence by a final decision of a court, or if a measure is imposed on him by such a decision leading to the deprivation of his liberty;
 - d. if he is placed in receivership, is declared bankrupt, is granted a moratorium on payments or is committed for debts by a final decision of a court;
 - e. on acceptance of one of the positions referred to in Article 4(1);
 - f. on the loss of Dutch nationality;
 - g. on the loss of residency in Sint Maarten.
2. Parliament, having heard the Council of Advice, may dismiss the ombudsman:
 - a. if he is permanently unable to perform his duties due to illness or disability;
 - b. if circumstances arise as referred to in Article 4(3).

Article 6

1. The ombudsman shall be suspended:
 - a. if he is held in pre-trial detention;
 - b. if a preliminary court investigation is opened against him in relation to a criminal offence;
 - c. if he is convicted of a criminal offence by a decision of a court that has not become final, or if a measure is imposed on him by such a decision leading to the deprivation of his liberty;
 - d. if he is placed in receivership, is declared bankrupt, is granted a moratorium on payments or is committed for debts by a decision of a court that has not become final.
2. The ombudsman may be suspended if there are other serious suspicions of the existence of facts or circumstances that could have led to dismissal, other than those in the cases referred to in Article 5(1)(a) and 5(1)(b) or 5(2).

Article 7

If there is an intention to suspend or dismiss the Ombudsman, other than in the cases referred to in Article 5(1)(a) and 5(1)(b), he shall be given an opportunity to express his views on this.

§ 3 Legal position of the Ombudsman

Article 8

1. The ombudsman shall enjoy annual remuneration equivalent to scale 17 of the remuneration applying for civil servants. The remuneration shall be index-linked in the same manner as the remuneration for civil servants.
2. The ombudsman shall enjoy a representation allowance of six percent of his remuneration.

Article 9

1. All legal regulations applying for civil servants and relating to:
 - a. leave;
 - b. the holiday allowance;
 - c. the reimbursements for the costs of medical treatment or nursing;
 - d. the pension;
 - e. the benefits on decease and surviving dependents' pensionsshall apply for the ombudsman, to the extent that no provision is made for this in this national ordinance.
2. For the purposes of the regulations referred to in paragraph 1, the ombudsman is equated with a civil servant in the highest scale and grade pursuant to the regulation on the remuneration of civil servants.
3. At the proposal of Parliament, the ombudsman may be included in regulations that are not legal regulations within the meaning of paragraph 1 and that do not generally apply for civil servants.

Article 10

By a parliamentary rule the ombudsman may be awarded an expenses allowance for the use of a personal mobile telephone or a personal motor vehicle, or other provision may be made for the use of a telephone and motor vehicle for the performance of his duties.

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§ 4 Office of the Ombudsman

Article 12

1. There shall be an Office of the Ombudsman. The budget and financial reporting of this office form part of the budget and accounts, respectively, of the Country's general service.
2. The Parliament shall provide the ombudsman with all facilities necessary for the proper and independent performance of his duties, by agreement with him and with the minister concerned.
3. The ombudsman shall determine the working methods and organisation of the office.
4. By agreement with the ombudsman and in observance of the Country's regulations concerning legal positions, as referred to in paragraph 5, the quantity and quality of the personnel of the office shall be laid down by parliamentary regulation. The regulation shall be recorded in the Official Publication.
5. The Country's regulations concerning legal positions shall apply to the personnel of the office. The ombudsman acts as the competent authority for the application of the regulations concerning legal positions.
6. The ombudsman may mandate one or more of his powers to one or more employees of his office.
7. The appointment, promotion, suspension and dismissal of the personnel of the office shall take place by national decree, on the proposal of the ombudsman.

Article 13

The ombudsman and the personnel of the office are not subordinated to any body with regard to the performance of their duties.

Article 14

1. On the nomination of the ombudsman, if possible from among the personnel of the office of the ombudsman, Parliament shall appoint a deputy ombudsman who can represent his office in his absence. The appointment of a deputy ombudsman shall be made for the duration of the term of office of the ombudsman on whose nomination the appointment is made.
2. If the ombudsman dies or pursuant to Article 5, is dismissed, before the end of his term of office Parliament shall provide for an acting ombudsman as soon as possible, until a new ombudsman takes office.
3. All the provisions of this national ordinance the ombudsman apply to the acting ombudsman, with the exception of Article 2.

§ 3. The complaints procedure

Article 15

1. Everyone has a right to submit a complaint to the ombudsman. The ombudsman shall ascertain whether the complainant has notified the body and, if applicable, the civil servant of the complaint and has given it/him an opportunity to respond to this.
2. A complaint shall be issued in writing and shall contain:
 - a. the name and the address of the complainant;
 - b. the clearest possible description of the conduct against which the complainant addresses the complaint;
 - c. a statement of the body and if applicable, the civil servant against which or whom the complaint is addressed;
 - d. a description of where, when and against whom the conduct took place;
 - e. the reason why the complainant feels injured by the conduct;
 - f. date
3. If the complainant so requires, the office of the ombudsman shall assist him in drawing up his complaint in writing.
4. Following submission of his complaint, the complainant shall receive a written notice of receipt from the ombudsman.

Article 16

1. The ombudsman shall investigate the complaints submitted.
2. During the investigation, the ombudsman may make proposals for reaching a solution to the complaint to the complainant and the body.

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3. The ombudsman shall hand down a decision as to whether the conduct was proper or not, partially or in full.
4. By way of derogation from paragraph 3, the ombudsman shall not hand down a decision if the investigation leads the ombudsman to the conclusion that it does not provide sufficient certainty regarding the actual facts regarding the conduct against which the complainant addresses the complaint.
5. The ombudsman may also open an investigation into conduct on his own initiative if he suspects that such conduct is improper. The provisions of this national ordinance concerning submitted complaints then are likewise applicable.
6. The ombudsman may make recommendations to a body to take measures. The body shall notify the ombudsman whether and how the recommendations were followed. The body shall state its reasons for not adopting the recommendations, or for departures from these.

Article 17

1. The ombudsman is not authorised to open or continue an investigation, as referred to in Article 15:
 - a. if the matter falls under the general policy of a body;
 - b. concerning generally binding regulations;
 - c. if proceedings have been instituted against the conduct under administrative law, civil law or criminal law, or if an administrative-law decision has been handed down.
2. The ombudsman is not required to open or continue an investigation, as referred to in Article 15, if:
 - a. a year has passed since the conduct at the time when the complaint is submitted;
 - b. the complaint does not comply with the requirements referred to in Article 15(2);
 - c. the complaint is apparently unfounded;
 - d. the interest of the complainant or the seriousness of the conduct does not appear to be sufficient;
 - e. the complainant is a person other than the person against whom the conduct took place;
 - f. a complaint concerning the same conduct is being processed or has been settled by the ombudsman, unless a new fact or new circumstance has been revealed and this could have led to a different decision on such conduct;
 - g. a provision under administrative law was open to the complainant with regard to the conduct, and the complainant did not avail himself of this;
 - h. if a complaint regarding the conduct has been submitted to a body as referred to in chapter 9 of the General national ordinance administrative law, and no decision has yet been handed down on this.
3. If the ombudsman does not institute an investigation, or further investigations pursuant to paragraph 1 or 2, he shall notify the complainant, the body concerned and, if applicable, the civil servant concerned of this in writing at the earliest opportunity, stating the reasons.
4. The ombudsman shall provide a copy of or extract from the notice referred to in paragraph 3 to anyone on request. The Government Information (Public Access) Decree shall be likewise applicable to the charges to be made for this.
5. If, in the view of the ombudsman, a provision is open to the complainant under administrative law, civil law or criminal law with regard to the conduct, he shall notify the complainant of this at the earliest opportunity.

Article 18

1. The ombudsman shall notify the relevant body and, if applicable, the civil servant of the complaint. The complainant, the body and, if applicable, the civil servant shall be given an opportunity to present their views, in writing or orally, and in the presence of each other or otherwise, at the discretion of the ombudsman. A record of an oral presentation shall be drawn up.
2. If this is considered necessary in order to assess a complaint, the ombudsman may also give other parties an opportunity to view a complaint and to submit a written statement in that regard.
3. The persons concerned, as referred to in paragraphs 1 and 2, may be supported or represented by an authorised representative in order to protect their interests in that regard. For that purpose, the authorised representative shall submit a written power of attorney from the person that he represents, unless he is an attorney or appears in the presence of the person that he represents.

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Article 19

1. The ombudsman is authorised to request all information or documents, or to view all documents relating to a matter to which the investigation relates from the relevant body, and, if applicable, the civil servant as well as from the complainant as well as from civil servants acting as experts or witnesses.
2. The persons concerned referred to in paragraph 1 are required, subject to paragraphs 3 and 4, to comply with a request as referred to in paragraph 1 within a term set by the ombudsman.
3. The ombudsman may gather information relating to the policy pursued under the responsibility of a body only with the mediation of that body.
4. The persons concerned referred to in paragraph 1 may claim immunity from the provision of information on the grounds of statutory or other serious reasons. The ombudsman may request documentary evidence in support of an invocation of immunity.

Article 20

1. Before completing the investigation and recording the resulting findings in a report, the ombudsman shall notify the body and, if applicable, the civil servant, as well as the complainant of his preliminary findings.
2. The ombudsman shall give the body and, if applicable, the civil servant, as well as the complainant, an opportunity to express a view on the provisional findings within a term that he sets.

Article 21

1. When the investigation has been closed, the ombudsman shall draw up a report in which he presents his finding and his view, as referred to Article 16(3), or his conclusion, as referred to in Article 16(4).
2. The ombudsman shall send the report to the complainant, the body and, if applicable, to the civil servant and if necessary, to other persons involved in the investigation.
3. The ombudsman shall provide a copy of or extract from the report referred to in paragraph 1 to any person on request. The Government Information (Public Access) Decree of Sint Maarten shall be likewise applicable to the charges to be made for this. He shall also make the report available for inspection at the office of the ombudsman.
4. In the cases referred to in paragraph 3, the anonymity of the persons referred to in the report shall be assured.

Article 22

1. Each year, the ombudsman shall send a report on his work to Parliament.
2. He shall ensure that the report is published and is made generally available. The Government Information (Public Access) Decree shall be likewise applicable to the charges to be made for this. He shall also make the report available for inspection at the office of the ombudsman. Article 21(4) applies likewise.
3. The ombudsman may add information to the report that is intended solely for confidential viewing by Members of Parliament and the bodies concerned.
4. Parliament is authorised to call the ombudsman to appear at a parliamentary hearing in order to answer questions.

Article 23

1. At the request of Parliament or otherwise, the ombudsman is authorised to notify Parliament of his findings and view immediately after the closure of an investigation.
2. Article 22(2), 22(3) and 22(4) are likewise applicable.

§ 4. Final provisions

Article 24

All persons involved in the implementation of this law who obtain access to data in that process which they know or should reasonably be expected to suspect to be confidential, and who are not already subject to a confidentiality obligation on the grounds of their office, occupation or legal regulation in respect of the data, are required to maintain the confidentiality of the data, except to the extent that they are required to disclose these by any legal regulation or the need for disclosure arises from their duties.

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Article 25

This national ordinance shall be referred to as 'the National ordinance Ombudsman'.

Issued on the *twentieth* of December 2010
The Minister of General Affairs,
S.A. Wescot-Williams