

## TRANSLATION OF THE OFFICIAL PUBLICATION OF SINT MAARTEN (AB 2010, GT no. 29)

### National ordinance Constitutional Court<sup>1</sup>

#### Chapter 1. The structure of the Constitutional Court

##### Article 1

1. The Constitutional Court consists of three members, including a president and vice-president, and three deputy members.
2. The members and deputy members of the Constitutional Court shall be appointed by national decree for a term of ten years. They may be reappointed on one occasion only. One member and one deputy member shall be appointed on the nomination of the Council of State of the Kingdom, from among its members. One member and one deputy member shall be appointed on the nomination of the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba, from among its members. One member and one deputy member shall be appointed, having heard the Constitutional Court.
3. The nominations referred to in paragraph 2 shall, if possible, contain the names of two persons.

##### Article 2

1. Persons who may be appointed as members or deputy members of the Constitutional Court are those who:
  - a. hold a Bachelor's and a Master's degree on the basis of successfully completed final examinations for a higher education course in the field of law awarded by a university to be designated by national decree containing general measures;
  - b. are entitled to use the Dutch title 'Meester' (Master of Laws) on the basis of a successfully completed final examination for a course in the field of law followed at a university to be designated by national decree containing general measures.
2. By national decree containing general measures, degrees awarded by a university or a university of applied sciences or equivalent certificates may be designated as equivalent to the Bachelor's or Master's degree in the field of law for the purposes of the application of paragraph 1(a).
3. Only Dutch nationals may be appointed as members or deputy members of the Constitutional Court.

##### Article 3

Before accepting their appointment, members and deputy members of the Constitutional Court shall take the following oath of office (declaration and solemn affirmation) before the Governor:

'I swear (declare) that I shall not accept any pledge or gift of any description from any person whatsoever, directly or indirectly, in order to take or refrain from any action of any description in this position.

I swear (affirm) my loyalty to the Monarch and to the Charter for the Kingdom, that I shall always help to uphold the Constitution of Sint Maarten and shall support the welfare of Sint Maarten to be best of my ability.

So help me God Almighty  
(This I declare and affirm)!

##### Article 4

1. Membership of the Constitutional Court is incompatible with the position or office of:
  - a. Governor;
  - b. Deputy Governor;
  - c. Member of Parliament;
  - d. Minister;
  - e. minister plenipotentiary;
  - f. member of the Council of Advice;
  - g. member of the General Audit Chamber;
  - h. Ombudsman;
  - i. president of the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba;

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<sup>1</sup> This issuance takes place on the basis of the additional Article II of the Constitution.

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- j. civil servant in active service;
  - k. lawyer, civil-law notary or other professional provider of legal assistance.
2. Spouses and relatives by blood or affinity to the third degree may not serve simultaneously as members or deputy members of the Constitutional Court.
  3. If members or deputy members of the Court marry, the spouse appointed last may not remain a member or deputy member of the Court.
  4. The relationship ceases to exist through dissolution of the marriage that gave rise to it.
  5. A person who cannot retain his or her office pursuant to paragraphs 2 and 3 shall tender his or her resignation.

#### **Article 5**

Suspension or dismissal as a member of the Council of State of the Kingdom or as a member of the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba entails suspension or dismissal as a member of the Constitutional Court by operation of law.

#### **Article 6**

1. A member or deputy member of the Constitutional Court shall be dismissed by national decree at their own request.
2. A member or deputy member shall be dismissed by national decree from the first day of the month following the month in which he or she reaches the age of 70.
3. A member or deputy member of the Constitutional Court shall be dismissed by the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba:
  - a. if he or she accepts a position or office incompatible with his or her membership, within the meaning of Article 4(1);
  - b. if he or she loses Dutch nationality;
  - c. in the event that he or she proves unfit for his or her position, other than due to illness.

#### **Article 7**

A member or deputy member may be dismissed by the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba if they are permanently unfit to perform their official duties due to illness.

#### **Article 8**

A members or deputy member may be dismissed by the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba:

- a. if they are convicted of a criminal offence by a final court decision, or if a measure resulting in deprivation of their liberty is imposed by such a decision;
- b. if, pursuant to a final court order, they are placed in receivership, declared bankrupt, are declared subject to the debt rescheduling arrangement for natural persons, are granted a moratorium on payments or are committed due to debts;
- c. on the grounds of actions or omissions that cause serious harm to the good process of jurisdiction or to confidence therein.

#### **Article 9**

1. A members or deputy member of the Constitutional Court shall be suspended by the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba:
  - a. if they are held in pre-trial detention;
  - b. if they are convicted of a criminal offence in a court decision that has not yet become final, or if measures are imposed on them by such a decision, leading to the deprivation of their liberty;
  - c. if they are placed in receivership, are declared bankrupt, are declared subject to the debt rescheduling arrangement for natural persons, are granted a moratorium on payments or are committed due to debts by a court decision that has not yet become final;
  - d. on the grounds of actions or omissions that cause serious harm to the good process of jurisdiction or to confidence therein.
2. During the suspension, the supplements for the member concerned shall remain in effect in full.

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#### **Article 10**

1. The Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba shall take the decisions referred to in this Chapter in response to a requisition of the Attorney-General.
2. The requisition of the Attorney-General shall take place officially or in response to a request of the president of the Constitutional Court, stating the reasons.
3. The Attorney-General shall claim the dismissal or suspension only after he has given the member or deputy member an opportunity to present his views orally or in writing. A record of the views presented orally shall be drawn up, which shall be signed by the person concerned and the Attorney-General. If the member or the deputy member refuses to sign, this shall be reported in the record, stating the reasons if possible. A copy of the record shall be issued to the person concerned.
4. The Attorney-General shall submit the requisition in writing, stating the reasons. The requisition shall in any event be accompanied by the views referred to in paragraph 3.

#### **Article 11**

1. The investigation by the Common Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba shall be conducted in chambers.
2. The Common Court shall send a copy of the requisition submitted and the accompanying documents to the member or deputy member.
3. The Common Court may, either at the request of the Attorney-General or of the member or deputy member concerned, or officially hear witnesses and order a report by or hearing of experts. The Common Court shall hear the member or deputy member concerned at his request.
4. The Common Court shall hand down a decision, stating the reasons. The decision shall be handed down in public.

#### **Article 12**

1. Members or deputy members may not take part, directly or indirectly, in any special consultations with parties to any case pending before the Constitutional Court, its authorised representatives or counsels, nor accept any special instruction or document.
2. The member that holds a position that could damage his impartiality in a particular case may not assist in the decision on that case.

#### **Article 13**

Members or deputy members of the Constitutional Court may not be prosecuted in court, nor may legal action be taken against them in regard to what they submitted in writing during the consultations and public hearings of the Court.

#### **Article 14**

The financial provisions of the members and deputy members of the Constitutional Court shall be regulated by national decree containing general measures.

#### **Article 15**

1. A clerk shall be added to the Constitutional Court. The clerk shall be appointed by national decree on the nomination of the Constitutional Court and shall be suspended and dismissed by national decree, having heard the Court.
2. The terms of employment of the clerk of the Court shall be regulated by or pursuant to national ordinance.
3. The members and deputy members of the Constitutional Court and the officials made available are required to protect the confidentiality of all information of which they become aware as such, and of which the confidential nature is established or can reasonably be assumed.

### **Chapter 2. Task and procedure**

#### Section 1. Task

#### **Article 16**

The Constitutional Court decides on the compatibility with the Constitution of an adopted legal regulation that has not entered into force, within the meaning of Article 81(g), with the exception of

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uniform national ordinances, 81(h), 81(i) and 81(j) of the Constitution. Assessment shall not take place if the provision of the Constitution does not lend itself for assessment.

## Section 2. Commencing a case before the Court

### **Article 17**

1. Action may be commenced before the court only through a written petition of the Ombudsman to the Constitutional Court on the grounds of incompatibility with the Constitution, within six weeks of the adoption of a legal regulation, within the meaning of Article 81(g), with the exception of uniform national ordinances, 81(h), 81(i) and 81(j) of the Constitution, and before it enters into force, except in the case of an urgent interest. In that case, a petition from the Ombudsman is not admissible.
2. An urgent interest, within the meaning of paragraph 1, exists only in the case of:
  - a. serious private or public damage in the event of a delay;
  - b. urgent or emergency regulations;
  - c. corrective regulations; or
  - d. international regulations.
3. The petition states the reasons and contains the grounds for the incompatibility of the legal regulation with the Constitution. The Ombudsman also states which decision he requests. This may be full or partial overturning of the legal regulation.

### **Article 18**

The president may request further information from the Ombudsman in writing in relation to the petition, or may request additions or improvements to his petition.

### **Article 19**

1. If the petition is apparently inadmissible or unfounded, or if the Constitutional Court is apparently not competent to hear the case, the president may declare the petition inadmissible or unfounded, or declare the Constitutional Court incompetent to hear the case in an administrative decision, stating the reasons, without further examination by the Court being required.
2. The president shall hand down the administrative decision in open court, in the presence of the clerk.
3. The clerk shall send a copy of the administrative decision to the Ombudsman.

### **Article 20**

In a written decision, stating further reasons, the Constitutional Court may split an action before it into two or more cases to be heard individually. In a written decision stating the reasons, the Court may also combine separate cases and hear these as a single case.

### **Article 21**

1. The president shall send a copy of the petition and any accompanying documents and other information provided by the Ombudsman to the other party at the earliest opportunity, requesting it to present its position in a defence statement.
2. At the request of one of the parties, the president may request the parties, on behalf of the Constitutional Court, to explain their positions in more detail, in writing. These documents shall be sent to the other party.
3. The president may fix a term for the submission of the documents by the parties.

## Section 2. The examination at the hearing

### **Article 22**

1. After the preliminary investigation has been concluded, the Constitutional Court shall conduct a public hearing of the case.
2. The parties shall be given an opportunity to explain their views orally at this hearing.

### **Article 23**

1. The Constitutional Court may call witnesses and experts to appear at the hearing, officially or at the request of parties.
2. The parties, witnesses and experts shall be called to appear by registered letter.

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**Article 24**

Parties may provide to be represented or supported.

**Article 25**

The Constitutional Court may order that witnesses and experts who do not appear, having been correctly called to do so, are brought before the Court by the public authorities in order to meet their obligations.

**Article 26**

1. The president and the other members of the Court are authorised to request information of parties, witnesses and experts during the hearing.
2. The parties may request information of each other and of witnesses and experts with the consent of the president and through his intervention. The president may also officially permit questioning.
3. The Constitutional Court may order that witnesses shall not be heard until they have taken an oath or made a solemn affirmation.
4. In that case, they shall take the oath or make the solemn affirmation before the president to 'tell the truth, the whole truth and nothing but the truth'.
5. The Constitutional Court may order that experts shall take the oath or make the solemn affirmation in advance to 'inform the Constitutional Court to the best of their knowledge'.

**Article 27**

1. Witnesses and experts who are called officially pursuant to this national ordinance, or who are officially assigned an order, shall receive compensation for this.
2. Witnesses and experts who are called to the hearing or are assigned an order at the request of the parties shall receive compensation, within the meaning of paragraph 1, from the parties concerned.

**Article 28**

1. The president is responsible for leading the hearing and for maintaining order during the hearing. He may issue all necessary instructions in that regard.
2. The president ensures that a record is drawn up of the hearing.
3. The record shall contain the names of the members of the Constitutional Court in attendance at the hearing, of the clerk, of the persons appearing for the parties at the hearing and of the experts appearing.
4. The record shall contain a brief statement of all matters occurring in relation to the case. It shall be signed by the president and by the clerk who draws it up.
5. The Constitutional Court may order, officially or at the request of the parties, that statements by the parties or by experts are included in the record in full. In that case, the statement shall be recorded in writing immediately, shall be read to the person concerned and shall be signed by that person, by the president and by the clerk.
6. If no signature takes place, the reason for this shall be reported in the record.

**Article 29**

1. All persons are required to provide the assistance requested of them pursuant to a provision of this section.
2. This obligation does not apply for the Governor.
3. In the interests of the Kingdom or the Country, it may be determined by or on behalf of the government that information and documents are issued to the Constitutional Court in confidence. The Court shall observe this confidentiality.
4. The Constitutional Court shall determine the extent to which it will take the relevant information and documents into account in the handling of the case and its decision.
5. Members of the Council of Ministers may invoke confidentiality before the Constitutional Court with regard to discussions in private meetings of the Council. This confidentiality does not apply for the decisions of the Council and the grounds for these decisions.
6. Persons who are required to protect confidentiality on the grounds of their position, profession or office may claim privilege with regard to the provision of information or documents, but only to the extent that this concerns knowledge entrusted to them as such.

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**Article 30**

For serious reasons, to be included in the record, the Constitutional Court may decide that the handling of the case shall take place partially or entirely in chambers.

**Article 31**

1. Following the handling of the case at the hearing, the Constitutional Court may obtain further information, officially or at the request of the parties, and may give the parties an opportunity to explain their positions in writing.
2. If necessary, it may devote more than one public hearing to a case.

**Article 32**

Following the conclusion of the examination, the Constitutional Court shall provide the parties with an opportunity to present their pleas.

**Article 33**

As soon as the examination at the hearing is completed, the Constitutional Court shall close the hearing and the parties shall be notified of the date of the decision.

Section 3. The decision

**Article 34**

1. The Constitutional Court shall discuss the decision in chambers. The discussions are confidential.
2. The president shall lead the discussions. He may instruct one or more members of the Constitutional Court to draw up a draft of the decision.
3. The Constitutional Court shall aim for consensus on the decision and the reasons for this. If there are different positions with regard to the decision or the reasons for this, the decision and the reasons shall be drawn up in accordance with the majority view.
4. The Constitutional Court is entirely free in its assessment of the evidence.

**Article 35**

In its decision, the Constitutional Court may overturn an adopted legal regulation that has not yet entered into force, within the meaning of Article 81(g), with the exception of uniform national ordinances, 81(h), 81(i) and 81(j) of the Constitution. The decision of the Constitutional Court is binding. It is not open to appeal.

**Article 36**

1. The Constitutional Court's decision on the case shall contain the grounds on which it is based and shall be recorded in writing.
2. The decision shall state when and by which members of the Constitutional Court it was taken.
3. It shall be signed by the president and the clerk.
4. The Constitutional Court shall hand down its decision at a public hearing.
5. Copies of the decision shall be handed to or sent to the parties at the earliest opportunity.
6. The Constitutional Court may instruct government bodies to announce the decision in official publications.

**Chapter 3. Final provision****Article 37**

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

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

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