



The Governor of St. Maarten
His Excellency
Drs. Eugene Holiday

December 8, 2020

In re: Unlawful/Wrongful interpretation and application of the term "gouverneur" in the LMA

Excellency:

Two letters, one signed by your person dd. December 20, 2019 and another dd. signed by mr. H.J.J. Kalter on your behalf on March 9, 2020 have been brought to the attention of Pro Soualiga. As part of our broad task of defending the political and constitutional rights of St. Maarten we bring the following to your attention and respectfully request you to take corrective measures. Pro Soualiga is of course available to assist you in evaluating any advice you might receive as the events below has led to serious doubts in that regard.

Both letters regard the application of article 86 of the LMA (disciplinary measures). The confusion starts in article 4 of the LMA where the governor is mentioned as "het bevoegd" gezag. What is meant actually is "governor" in the constitutional sense, or government¹. This nomenclature is a holdover from Antillian Law, and it is evident that your legal staff is not familiar with this. The LMA of Aruba and Curacao show the exact same wording, which is perhaps regrettable but "Het Gerecht in Ambtenaren Zaken (GAZ) is not confused:

Overwegingen

1. *Op grond van artikel 4, aanhef en onder a, van de Landsverordening Materieel Ambtenarenrecht (LMA) wordt voor de toepassing van deze landsverordening en de uit kracht daarvan gegeven voorschriften onder 'het bevoegde gezag' verstaan: de Regering van het Land Curaçao. (ECLI:NL:OGAACMB:2019:114)*

This matter of the "constitutional governor" was addressed in a 2012 case involving the Governor of St. Maarten (your person) in which the court ruled:

Nu in artikel 32 van de Staatsregeling van Sint Maarten is bepaald dat de Gouverneur (als vertegenwoordiger van de Koningin) samen met de ministers de regering vormt doch dat de ministers verantwoordelijk zijn moet uit deze bepaling worden afgeleid dat deze bepaling er aan in de weg staat dat de Gouverneur in rechte verantwoording aflegt. Gelet hierop kan de Gouverneur ook niet als bestuursorgaan worden aangemerkt. (ECLI:NL:OGAAM:2012:BY 1359)

We trust that the above has clarified your function and that in the future you shall refrain from becoming involved in matters that lie outside of the scope of your function as "governor." As a courtesy, may we suggest you offer a public apology to all those civil servants you have erroneously submitted to bogus procedures.


P.D. Brison – President Pro Soualiga Foundation

¹ Art. 44 Statuut spreekt in dit verband weliswaar van bepalingen die betrekking hebben op de bevoegdheden van de Gouverneur, maar bedoeld is hier de Gouverneur in constitutionele zin, de landsregering dus. Rogier, L.J.J. *Beginselen van het Caribisch Staatsrecht*, Boom Juridische Uitgevers, Den Haag, 2012, p. 63.



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