



OMBUDSMAN

SINT MAARTEN

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TOPIC: Ombudsman submits National Ordinances regarding cuts to employment benefits to the Constitutional Court for review

PHILIPSBURG, On April 26th, 2021 the Ombudsman of Sint Maarten, Gwendolien Mossel, after careful consideration, submitted the three national ordinances, in connection with cuts to the employment benefits of all (semi) public sector workers, to the Constitutional Court for review. The three national ordinances are: the Temporary National Ordinance Covid-19 cuts, Temporary National Ordinance to amend the terms of employment of political authorities and Temporary National Ordinance on the standardization of top incomes and adjustment of employment conditions at (semi-) public sector entities.

The Ombudsman of Sint Maarten as the ‘Guardian of the Constitution’ has the authority to challenge newly ratified laws, which the Ombudsman considers to be in contravention with the Constitution. Restricting fundamental human rights can only take place based on specific requirements, the restriction should be prescribed by law, in the general interest of the people and it should pass what is called a ‘fair balance’ test.

Although the specific arguments for the challenging of the individual national ordinances differ slightly, the grounds are: (1). Incompatibility with article 15 of the Constitution (undisturbed enjoyment of property) and (2). Incompatibility with article 16 of the Constitution (equality principle).

Undisturbed enjoyment of property

The right to undisturbed enjoyment of property which has been more broadly codified under the term possessions in article 1 of the First Protocol of the European Convention on Human Rights (ECHR) includes among others salary, pension and employment benefits. An interference with the right to the peaceful enjoyment of ‘possessions’, must therefore be - apart from being prescribed by law and in the public interest - strike a ‘fair balance’ between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. The austerity measures implemented by these laws include the reduction of vacation days, the elimination of vacation allowances and any salary increases on any grounds for an indefinite period. These austerity measures that eliminate and or reduce individual’s fundamental rights ought to be put to the Constitutional Court for review.

Equality (non-discrimination) principle



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The Ombudsman will also argue that the measures are incompatible with the non-discrimination principle. The primary motive for the cuts to the employment conditions of all (semi) public sector workers, was to be in solidarity with employees outside of the public sector, who as a result of the economic down turn due to Covid-19, had to endure a reduction in salaries and/or loss of employment. On the one hand the national ordinances make a broad stroke by including workers from organizations/companies in which government is a (majority) shareholder and on the other hand excludes certain public sector entities. The solidarity motive and the decision on which ‘public sector’ workers to include also gives cause for concern.

Based on the mentioned grounds, the Ombudsman has requested the Constitutional Court to quash all or part of the three national ordinances. The Ombudsman is being represented by the Law Firm of Hoeve & Rogers, attorneys Jason Rogers and Nancy Joubert, in the court proceedings.

*The Ombudsman listens, investigates, and recommends
Government to act on the concerns of the people
The Ombudsman is the Voice and Protector of the People!*

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