

Chairlady of the Presidium of the Parliament of Sint Maarten
Honorable member of Parliament Mrs. Grisha Heyliger-Martin
Wilhelmina Straat # 1, Philipsburg
Sint Maarten

STATEN VAN SINT MAARTEN	
Ingek. 03 JUN 2022	
Volgnr.	
Par.	

Philipsburg June 3rd 2022

Honorable Chairlady of Parliament,

The undersigned, member of parliament Claudius Buncamper after carefully having reviewed the constitution, the explanatory notes and haven spoken to reputable persons with authority on international laws and treaties, has taken the decision to address the matter of the suspension imposed on this member of parliament based on the articles of the constitution.

When one reads the referenced article 50 sub 2b, the suspension is based on a verdict of the courts for crimes committed as per article 50 sub 1b of the Constitution of St. Maarten.

Considering that within the Dutch Kingdom only St. Maarten applies this article enforcing suspension, also considering that it is my firm belief that international treaties regulating the rights of senators to represent the people whom duly elected them are being infringed on, I hereby request the following to be considered and duly realized post haste.

The Kingdom's obligation to ensure compliance with the relevant treaty obligations (in other words: as a positive obligation) is enshrined in treaty law (cf. Christien de Kruif, *Mutual government liability for violations of European law*, Maklu, 2012, p. 32).

With regard to the provisions of the ICCPR, the Kingdom has committed itself by Article 2 thereof, also for Sint Maarten, as follows:

'1. Each State Party undertakes to respect the rights recognized in this Convention and to ensure them to any person residing within its territory and subject to its jurisdiction, without

distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, wealth, birth or any other circumstance.

2. Each State Party undertakes, by the means prescribed by its state law and in accordance with the provisions of this Convention, to take all laws, regulations or other measures necessary to give effect to the rights recognized in this Convention, to the extent not already provided for by existing legal regulations or otherwise.

3. Each State Party undertakes to:

(a) To ensure that any person whose rights or freedoms as recognized in this Convention are infringed has an effective remedy at his disposal, even if the breach would have been committed by persons in the exercise of their official duties;

(b) To ensure that the right of the person seeking the remedy is decided by the competent judicial, administrative or legislative authority, or by another authority competent to do so under national law, and to further develop the possibilities of recourse to the courts;

(c) To ensure that the competent authorities effectively restore rights, should the appeal be upheld. "

The UN Human Rights Committee provided the following explanation as to the scope of that provision in General Comment No. 31 (CCPR/C/21/Rev.1/Add. 13, 26 May 2004). The obligations laid down in Article 2 of the ICCPR are intended to safeguard the rights of individuals and that the Contracting States, *in this case the Kingdom*, are obliged to implement them:

"3. Article 2 defines the scope of the legal obligations undertaken by States Parties to the Covenant. A general obligation is imposed on States Parties to respect the Covenant rights and to ensure them to all individuals in their territory and subject to their jurisdiction (...). Pursuant to the principle articulated in article 26 of the Vienna Convention on the Law of Treaties, States Parties are required to give effect to the obligations under the Covenant in good faith.

The obligations set out in Article 2 of the ICCPR must be complied with by all state bodies, including the public prosecutor's office and the judiciary:

"4. The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party."



Furthermore, circumstances in national legal systems cannot justify a failure to comply with them:

"The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. Although article 2, paragraph 2, allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States Parties with a federal structure of the terms of article 50, according to which the Covenant's provisions 'shall extend to all parts of federal states without any limitations or exceptions'."

The insurance obligation under the ECHR is laid down in Article 1 thereof:

"The High Contracting Parties shall ensure to all persons within their jurisdiction the rights and freedoms laid down in Title One of this Convention."

This is an obligation to achieve a specific result (in Dutch: 'resultaatsverplichting'). There is simply put no room for ifs or buts.

Sint Maarten, and in fact the Dutch Kingdom, must ensure that the rights and freedoms laid down in the aforementioned conventions are safeguarded. Thus, also the following.

Article 1 of the International Covenant on Civil and Political Rights states:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

Article 3 of the International Covenant on Civil and Political Rights states:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.



I was and am still also as such entitled to cast a vote for whom should politically represent me and conversely the Sint Maarten citizens were and are still at liberty to elect me to represent them in Parliament. This liberty is premised on universal and internationally recognized human rights. All Governmental bodies, including the Public Prosecutors Office should respect same. This liberty cannot be sidelined. Certainly, not by misinterpreting a provision in our Constitution enacted to cater to an entirely different situation.

Article 14 sub 5 of the International Covenant on Civil and Political Rights states:

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

Article 12 of the International Covenant on Civil and Political Rights reads:

"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

Article 26 of the International Covenant on Civil and Political Rights states:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The suspension provision stems from a unique and awkward case that transpired many years ago in Curacao, when a parliamentarian who was irrevocably sentenced to 7 months of incarceration and couldn't attend parliamentary meetings. The senator in question asked every week to be released/transported to attend the senate meetings. To prevent recurrence of this circumstance, St. Maarten introduced article 50 sub 2b in its constitution, without much thought about other possible unwanted and negative consequences. In reading the explanatory notes of the article in question in the constitution one can clearly establish the aforementioned. More importantly, that this article was never intended to suspend senators who are:

- Not irrevocably sentenced for one of the crimes mentioned in article 50 of the Sint Maarten Constitution.
- Not incarcerated and as such free to exercise their function without any impediment.

I strongly hold that the current interpretation and effectuation of article 50 of the Sint Maarten Constitution not only violates international treaties and conventions that Sint Maarten is obliged to abide by. It's also discriminatory. Latter b.t.w. already follows from the fact that the same provision does not exist, or is at least not interpreted in same way, in other parts of the Dutch Kingdom.

The Sint Maarten Senate is also in light of the aforementioned advised to adopt a motion to review the interpretation of the international treaties that protect duly elected and appointed authorities to be able to execute their jobs until there is an irrevocable verdict sentencing them to a violation as per referenced article in the constitution.

On May 30th, 2022, I was fully acquitted in the BUMU case after having been sentenced by the Court of First instance for 6 of the 8 charges initially brought against me in two indictments. This BUMO case was for so-called wrongdoings that lasted some 8 years in courts while the judicial issues started with the resignation of my wife as Minister on December 23rd, 2010. I mention this specifically to show the damage intermediate judgements can do to a person's life and deny them the rights they have to represent their constituents that duly elected them. How will I ever get back this lost time to represent the people of our country that elected me fairly?

I must also state that my court case which led to a conviction in 1st instance, currently in appeal, for the charge of bribery covers the period of 2015-2018 when I was a civil servant and has absolutely nothing to do with the execution of my functioning as a member of parliament which I became in February 2020. My conviction is not irrevocable, and I find it very unfair that the people of this country must prematurely pay

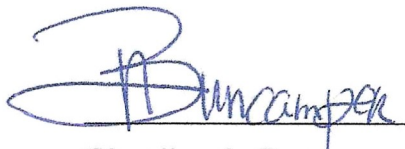
for this conviction which has been appealed, by having their duly elected representative prematurely suspended.

Seeing that this is the 2nd case of a member of parliament being suspended for these matters in St. Maarten while still fighting their case in a court of law. I firmly believe it warrants a proper review regarding the manner in which the constitution was prepared and if there were/are any oversights like the right individuals have through international treaties that govern this country and supersede the constitution of this country.

I must also clearly show that the aspect of the image of the country being tarnished is only applicable if one decides to remain in office when the act was committed in office or by using the office. This clearly isn't the case presently and I humbly ask that this is also taken into careful consideration. While everyone is responsible for their deeds one shouldn't be punished for a hastily sought solution to try and prevent the issue that occurred with the former parliamentarian Anthony Godet back in the days of country Netherlands Antilles.

If there is any additional information that I can supply to assist the progression of this matter, please do not hesitate to contact me.

Regards,



Claudius A. Buncamper

Member of Parliament (suspended)

Present