

On June 3rd 2022, I presented a compelling and detailed analysis to the Parliament of Sint Maarten identifying how article 50 sub 2b of our Constitution has proven to be in violation of International Treaties and specifically Human Rights of a higher order, to which Sint Maarten is bound.

These international treaties and human rights as such out-rank article 50 sub 2b of the Sint Maarten Constitution in the legal hierarchy and render the application of article 50 sub 2b of the Sint Maarten Constitution moot, under the given circumstances.

Article 50 sub 2b of our Constitution regulates the suspension of Members of Parliament, who have not been irrevocably and as such definitively sentenced for certain crimes.

Safeguarding the rights and obligations granted to our country by being bound to treaties is the responsibility of the Parliament of Sint Maarten as this countries' legislative body, tasked with creating and amending the laws of this nation. Taking the necessary action once it has been identified that specific international treaties outlining human, civic and political rights are being infringed on by article 50 sub 2b of our Constitution, is the responsibility of the Sint Maarten Government and ultimately Parliament.

The Sint Maarten Parliament in obviously recognizing the national importance of not having an article in nota bene our Constitution that potentially violates international treaties and human rights, decided to seek advice from ITS advisory body, namely the Council of Advice. This Council advises only the Sint Maarten Government and Parliament, NOT individual citizens.

In asking the Council of Advice for its informed advice on the presented matter, the Sint Maarten Parliament undoubtedly also considered and valued the impact and implications of not having the representation of persons duly elected by the Sint Maarten electorate (members of the highest Constitutional Body and as such the voice of the people), unjustly/incorrectly trampled on by a potentially unlawful and thus not-binding article in our Constitution.

These matters directly cater to the national interest of country Sint Maarten, as correctly established by the Sint Maarten Parliament when it decided to request advice. Logically, the Sint Maarten Parliament would not have solicited any advice for a personal/private matter.

The fact that the advice, which would have to entail a concrete answer about the (il)legality of article 50 sub 2b of our Constitution, might ultimately have consequences for the suspension of certain Members of Parliament, like me and former Member of Parliament Theodore Heyliger, does not suddenly defeat the national interest in not having an illegal article in our Constitution.

All laws and their ultimate application at the end of the day affect personal interests. The Council of Advice ought to know this. Also, as such, the position adopted by the Council

of Advice towards the Sint Maarten Parliament about this being a personal matter is incomprehensible.

Or is the Council of Advice saying that when the Sint Maarten Parliament and/or Government tomorrow possibly propose an amendment of the existing article 50 sub 2b of our Constitution, its advice is not needed, because such an amendment would have personal consequences and as such not be of a national interest?

The position of the Council of Advice is respectfully incorrect and not sustainable. It erodes its own authority and raises questions about its future involvement, if any, on constitutional matters of national interest by excluding from its advisory function all matters pertaining to the ability of elected members to Parliament to represent the electorate.

More importantly, the Sint Maarten Parliament is now unjustly and incorrectly deprived from the advice that it solicited, wanted and/or perceived that it needed to make the most informed possible decision.

Be it as it may, this apparent dereliction of duty by the Council of Advice in not answering its duty of call towards the Sint Maarten Parliament, ultimately does not take away from the obligation of the Sint Maarten Parliament and Government to decide if they hold that a provision in our Constitution violates higher treaties and/or human rights and to take the requisite remedial measures.

Just as in the cases whereby the detention situation and local rules and regulations regarding the same clearly violated internationally accepted human rights, the Sint Maarten Government and Parliament do not have to wait for a high court, such as the European High Courts of Human Rights, to point out these violations. The buck can and should also stop with the Sint Maarten Parliament and Government.

Acknowledging an error and remedying it before being instructed to do so by a higher power speaks to our growing maturity as an autonomous country, whereas doing nothing, does not.