



OMBUDSMAN

SINT MAARTEN

FOR IMMEDIATE RELEASE

TOPIC: Ombudsman concludes Systemic Investigation into motor vehicle confiscation policy of the Police Force of Sint Maarten (KPSM)

PHILIPSBURG, Ombudsman Gwendolien Mossel has concluded the Systemic Investigation into the motor vehicle confiscation policy of KPSM. The Final Report (FR) was recently submitted to the Minister of Justice.

History

The Ombudsman received numerous complaints regarding KPSM confiscating motor vehicles, usually during traffic controls, for suspicion of the vehicle being stolen. Complainants alleged that vehicles remained in the custody of the police/public prosecutor (OM), sometimes for months, without proper explanation, even after it had been established that the vehicle was not stolen, and complainant was the rightful owner. There have also been complaints concerning lost or misplaced keys of confiscated vehicles as well as lost or (unjustly) destroyed and misplaced vehicles.

Bottlenecks and Challenges

The following bottlenecks and challenges have been identified:

Lack of written policy and procedures

There is an overall lack of written policies and procedures. This is not only pertaining to vehicle confiscation, but in general. This was also highlighted as a bottleneck in the Ombudsman's investigation regarding KPSM's towing policy. Documented policies, procedures and/or basic work instructions regarding vehicle seizures that can be made available to the public, and which KPSM can be held accountable for, are non-existent.

Lack of information provision / inadequate communication

There are inadequacies in KPSM's /OM general communication to the public. Ineffective communication leads to misunderstandings and disagreements, and can leave persons feeling frustrated and upset. This is evident from complaints received at the Ombudsman. Basic information about the process and for example during which hours persons can visit the police station, and who are the contact persons, who will be available to answer questions regarding vehicle seizures is not known.



Lack of financial, personnel and material capacity

There is a chronic lack of financial, personnel, and material capacity across the judicial chain, KPSM included. The following is quoted from the Law Enforcement Council's, State of Law Enforcement Report (2022): *'The necessary preconditions for the proper execution of tasks, continues as a common thread throughout almost all organizations in 2022. The capacity issue(s) runs like a thread through almost all topics. Time and again, the capacity shortage and its negative effects emerge across the entire judicial chain'*. The lack of financial capacity has manifested itself in several projects that would have substantially curtailed vehicle theft, namely the bill of sale and database projects. The bill of sale project was reportedly discontinued due to a lack of funds less than 6 weeks before implementation. In addition, while KPSM would like to introduce a designated window for confiscated goods, this is not feasible due to a shortage of personnel.

Lack of an appropriate storage facility

As a result of not having a storage location, KPSM have acknowledged that some goods remain at the KPSM premises awaiting criminal proceedings, resulting in space and safety issues. Other goods are stored in other unsafe and unsuitable locations, resulting in liability risks. Although the Minister of Justice has expressed willingness in looking into the availability of land so that the Court could build a storage site through its own financial resources, this is an unlikely scenario, due to the lack of resources, and will not be realized in the short term.

Accidentally destroyed and/or lost goods and motor vehicles

Pursuant to article 142 paragraph 1 CPC confiscated objects may not be auctioned or destroyed without authorization from the Prosecutor. The Ombudsman has however received complaints regarding seized items and motor vehicles that have been accidentally misplaced and even destroyed, without the required authorization. It is unclear how these incidents could have occurred. This therefore points to not only inadequacies in the storage facility but more so the manner in which items are registered as well.

Lack of fair and timely compensation for accidentally destroyed and misplaced goods

The Ombudsman has observed that in the event of accidentally destroyed or misplaced goods, persons are not fairly nor timely compensated. In one case, complainant was waiting for more than two (2) years for his scooter to be returned after it had been confiscated. The scooter was accidentally destroyed by KPSM. Up to present, it is uncertain if complainant has been (fairly) compensated.



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Delayed receipt of traffic (police) reports (*'proces-verbalen'*)

Insurance companies have indicated to the Ombudsman that there is a delay in the processing of traffic reports by KPSM, which unnecessarily delay the settling of claims.

Lack of cooperation with insurance companies in Marigot

KPSM has indicated that the communication and cooperation with the insurance companies in Marigot is challenging. The main offices of said insurance companies are located in Guadeloupe and usually (they) take considerable time to respond to inquiries which further delays the process. This points to a communication (language) and organizational challenge.

Motor Traffic Guarantee Fund (*waarborgfonds motorverkeer*) inactive

The Motor Traffic Guarantee Fund is available to anyone who has suffered damages due to a motor vehicle accident and cannot claim said damages by their own insurer. For example, if the perpetrator drove away, is not insured or was driving a stolen motor vehicle. The motor traffic guarantee fund is also regulated in the national ordinance on motor vehicle liability insurance. This fund has not yet been established on Sint Maarten. As a result, there is presently no recourse for victims who have suffered damages and are unable to claim the damages at their insurer.

Conclusion

The Court is the custodian based on the law, however because of the present lack of storage facilities KPSM currently acts as the 'holder'. As such KPSM is usually the general public's first point of contact. The Prosecutor also has a role to play as it relates to decisions such as to return to owner, auction or the destruction of goods. KPSM/Prosecutor has no written policy and/or procedures regarding motor vehicle confiscation. Upon questioning by the Ombudsman for same, a reference was made to the articles in the Criminal Procedural Code and the Confiscation Decree, without any further explanation regarding the practical execution of these laws. As a result, there is inadequate communication to the general public which leads to misunderstandings and frustration. KPSM has acknowledged that they are facing challenges with ensuring efficient and accurate communication to the public. Since the start of the investigation KPSM has taken swift action via the media in an attempt to correct some of these shortcomings, however a sustainable communication strategy and structural changes are needed. Affected persons were encouraged to visit the Great Bay Police Station at specific times during the week. Names of the responsible police officers and telephone extensions were also provided.



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While these quick remedies are applauded by the Ombudsman, they cannot replace written transparent published policy/procedures, combined with a clear and easy breakdown of said policy, that can be made available to the public and to which KPSM/OM can be held accountable. According to the Enforcement Council's, State of Law Enforcement Report (2022), the lack of financial, personnel and material capacity is the Achilles heel and the primary source of most of KPSM's current challenges, however the Ombudsman notes that cost-effective and common-sense solutions must be found in particular when dealing with the public.

Recommendations

Based on the facts and findings the Ombudsman proposes the following recommendations. Keeping consideration with the absence of financial, personnel and material capacity the provided recommendations are cost-effective and common-sense solutions that require limited financial resources. This however does not negate the fact that a comprehensive long-term solution for vehicular theft (that continues to be rampant on the island) as previously envisioned by KPSM c.s. should be implemented.

1. Improve information provision/communication to the public
2. Prepare written policy for (motor vehicle) confiscation
3. Improved registration system/process
4. Fair and timely compensation for accidentally destroyed and misplaced goods
5. Improve cooperation with insurance companies in Marigot
6. Activate the Motor Traffic Guarantee Fund

The final [report](#) is available via download on the Ombudsman's website www.ombudsman.sx. To complement the report a short animation video has been produced. The film can be viewed on the Ombudsman's Facebook page (Bureau Ombudsman Sint Maarten) or via the website (www.ombudsman.sx).

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