

Year Report 2012



Focus on the Building blocks



“The secret of change is to focus all your energy, not on fighting the old, but on building the new.”
(Socrates, a gas-station attendant in the 1980's, not the renowned Greek philosopher)

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Foreword



The core function of the Ombudsman is to serve as an independent complaint agent, accessible to the public of Sint Maarten, with the assurance of impartial and confidential handling of complaints against government. A special task, unique within the Dutch Kingdom, is the role of the Ombudsman as guardian of the Constitution to safeguard that laws and regulations governing the citizens do not infringe on the rights of the same citizens they are to protect. The challenge in executing these core tasks and functions is, to be effective and efficient in highlighting problem areas in the government administration, recommending appropriate reforms and promoting transparency.

Though the principles of good governance are generally covered by our Constitution and the laws of the land, making these principles a reality, visible and a fact of our daily life, requires more than only the law; proper interaction between the government and the governed, the citizen, is required. On one side of the relationship is: the Executive, the Ministers and the Civil Servants, who are expected to duly apply the principles of proper governance, and the Legislator, Parliament, who is required to assume a role as lawmaker and its responsibility as independent supervisor of the Executive branch. On the other side of the relationship are the people, the citizens of the country, willing to hold government accountable notwithstanding political loyalties and patronage.

The interaction between the principles of good governance and the norms of society has proven to be an important element in our investigations over the past year. The interaction between the prevalent norms within the society as a result of social circumstances such as financial dependency on government, individual interest above the general interest, family ties and friendships in a small society versus political power, which can be used to favor, alienate, misuse and create political patronage, but at the same time is very much dependent on the support of the electorate, should not be underestimated in the plight to promote good governance.

While obstacles, difficulties and resistances sometimes have the tendency of wanting to detour us, we continue to expand our commitment to work more consciously and collaboratively with stakeholders to promote good governance in the relationship government and its citizens, through monitoring and investigating government behavior on behalf of the people.

Achieving our ultimate goal of propriety (“behoorlijkheid”) being the standard of conduct of government bodies and agencies in dealing with the citizens, requires the willingness of all to assume their assigned roles and responsibilities.

The future is in us. A shift of mind set creating new relations between government and citizens based on the principles set out in our Constitution, and restoring trust in the relationship between government and the citizens, are key in building our nation on the pillars of democracy.

It is my distinct honor and pleasure to give account of the work and activities of the Ombudsman during the year 2012 by presenting this Year Report 2012 to Parliament.

Dr. Nilda Arduin
Ombudsman

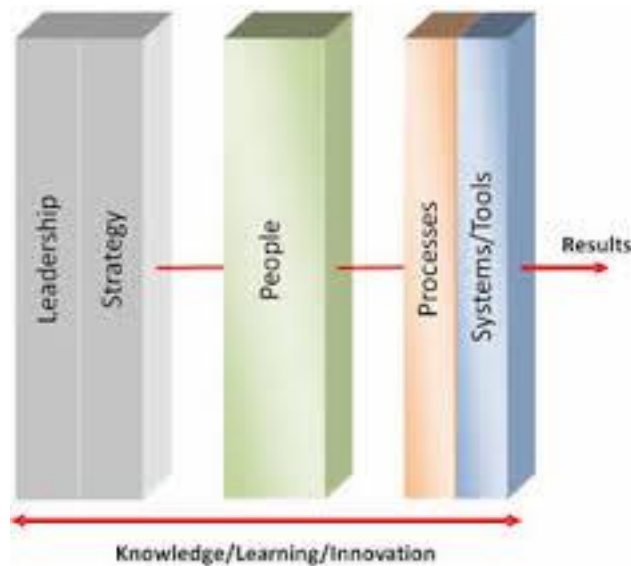
Vision and Mission Statement

VISION

To promote good leadership for Sint Maarten, with government and related bodies characterized by good governance, and responsive to the needs of the citizens

MISSION

The Ombudsman as protector of the citizens and guardian of the Constitution of Sint Maarten provides a system of checks and balances, which guarantees good governance and accountability of the government, where basic human rights and freedoms are safeguarded



Executive Summary

1. Introduction

Laying the stones block by block on a solid foundation established in the previous year has been the focus of the Ombudsman in the year 2012.

Though not all activities planned were fully executed, the main objectives for the year were met.

2. Strategic priorities and activities 2012

In keeping with the strategic areas outlined in the Strategic plan 2011-2021 priorities for 2012 were among others strengthening the capacity of the Bureau to handle complaints more effectively and efficiently.

Meetings (2) were held with **the Council of Ministers** to discuss the main findings as a result of complaints filed, the role of the Ministers with regard to investigations started by the Ombudsman, and to present the Year Report 2011. Three basic targets to improve Government's operations and the service to the public were agreed upon, to be implemented no later than the end of 2012. The ratification procedure for legal instruments and notifications of same to the Ombudsman in accordance with art. 127 section 2 of the Constitution was discussed with the Council of Ministers.

It was established by **Parliament** that the Ombudsman will annually present and discuss the Year Report with the Members of Parliament, and by extension to the public of Sint Maarten, on a date in the month of August to be appointed each year by the President of Parliament. Parliament expressed concern regarding the findings at the Cadaster and Land registry, and the reported lack of cooperation by the Foundation "Kadaster & Hypotheekwezen" with the investigation initiated by the Ombudsman. Upon request of Parliament a copy of the pertinent report was submitted to the President of Parliament.

As part of the Bureau's annual schedule, exchange sessions were held with the Secretary General, the Department and Sector heads of each Ministry. Valuable information regarding procedures and policies within **the Ministries**, as well as their experience with the investigative procedures of the Ombudsman was shared.

In the period August through December 2012 information sessions were held in nine **districts** around the island in collaboration with the Boards of the Community Councils and or the directorate of Community Centers.

In order to strengthen ties with Ombudsman institutions in the region and prepare for the Seventh CAROA (Caribbean Ombudsman Association) Conference to be hosted by the Ombudsman of Sint Maarten in 2013, the Secretary General of the Bureau visited the Ombudsman institutions of Bermuda, Trinidad and Barbados on an information and exchange mission. Case handling procedures were compared, and valuable information received from the Caribbean experiences. The Ombudsman attended: a symposium in the Netherlands in celebration of the 25th anniversary of the Ombudsman institute of Amsterdam; the annual International Ombudsman Conference organized by the Ombudsman of Curaçao; the Tenth World Conference organized by the International Ombudsman Institute (IOI) in New Zealand with the theme "*Speaking Truth to*

Power; The Ombudsman in the 21st Century". Upon request of the organizers the Ombudsman contributed to the Conference in Curaçao with a presentation on the topic "*The threats a young Ombudsman office faces while conducting investigations*".

The net result for Sint Maarten from attending **Conferences** is not only measured by the amount of knowledge acquired by the Ombudsman for further development of the Bureau on Sint Maarten, but also the commitments received from experienced and highly acclaimed international Ombudsmen to visit Sint Maarten and give presentations at the CAROA Conference to be hosted in 2013 on Sint Maarten.

In keeping with the strategic area of transparency the Ombudsman held four **Press Conferences** during 2012, to inform the general public about the activities of the Ombudsman

3. Tasks of the Ombudsman

On April 1st, 2012 the Bureau resumed accepting complaints from the public after having secured confidentiality of the information received by means of a secured digital registration system. In the year 2012 seventy new complaints were filed with the Ombudsman. A total of twenty complaint investigations were closed. Apart from official complaints filed in the period April to December 2012, 106 advices were given to citizens seeking information regarding issues that affect them. These visits by citizens to the Ombudsman are registered as "Referrals" in a registry of the Bureau named "*Juridisch Venster*".

The policy regarding complaints handling in 2012 was geared at creating awareness among the civil servants pertaining to propriety ("*behoorlijkheid*"), the standards of proper conduct to be observed by Government in relationship with the citizens. The standards of proper conduct most violated by the investigated administrative bodies are: Active and adequate information provision, Promptness, Legal certainty, and Adequate organization of services.

4. Constitutional Court

On May 25, 2012 Parliament approved amendments to the Criminal Code, the draft Ordinance was prepared by the former Netherlands Antilles. In the period May – August 2012 the Ombudsman received many emails from citizens protesting against the approval by Parliament of a clause in the amended Penal Code, exempting organizers of animal fights as a cultural or structural event with a license from criminal prosecution.

In response to the above stated the Ombudsman sent out a press release to explain the role of the Ombudsman, and the procedures regarding the Constitutional Court as provided for by the Constitution. While approved by Parliament, the pertinent law first has to be ratified by Government before the Ombudsman can take any action.

On August 30, 2012 the National Ordinance providing law enforcement agencies extraordinary authority to investigate criminal actions, the "*Landsverordening van de 30ste augustus 2012 houdende wijziging van het Wetboek van Strafvordering, AB 2012 no. 25*", was published. As a result of the information received when presented with the mentioned ordinance, the Ombudsman queried the Minister of Justice, the President of Parliament and the Prime Minister regarding various legal technical issues pertaining to establishing the pertinent law.

5. Financial Reporting

An amount of Nafl. 1.301.359,52 was budgeted for the operation of the Ombudsman in 2012, while a total amount of Nafl. 999.141,27 was actually spent. From the total amount of Naf 1.126.526,50 allocated from USONA funds for the establishment of the Ombudsman Institute, a total of Nafl. 676.377,17 was spent as per December 31 2012; an amount of Nafl. 312.017,34 was spent in 2012.

6. Achievements

Among the main achievements of the Ombudsman and the Bureau in 2012 are among others: The introduction of a digital Complaint Registration tool (KRS); full staffing of the Bureau in accordance with the formation plan approved by Parliament; establishing of the Standards of Proper Conduct regarding propriety ("*behoorlijkheid*"); awareness created within the community regarding the Ombudsman and the Bureau; election of the Ombudsman of Sint Maarten as a Regional Director on the IOI Board.



1. Introduction

Laying the stones block by block on a solid foundation established in the previous year has been the focus of the Ombudsman in the year 2012 (see **Appendix 1: Bureau Ombudsman Strategic action plan 2012**). Though not all activities planned were fully executed, the main objectives for the year were met.

The staff was expanded and trained by a senior team leader from the office of the National Ombudsman in the Hague. This came about through the excellent work relationship between the Ombudsman of Sint Maarten and our counterpart in the Netherlands.

After having suspended the intake of complaints in July 2011 as a result of the funding to build the institution encountering serious delays, the Bureau resumed its services to the general public on April 1, 2012. Complaint handling is the focus of the 2012 Year Report.

The first report following an own motion investigation of the operational procedures at the Cadaster, the Land registry office, was drafted in June 2012, and published. The Foundation “*Kadaster en Hypotheekwezen*” (“*K&H*”) is a private entity with public authority, established by National Ordinance, in Dutch a “*Zelfstandig Bestuursorgaan*” (“*ZBO*”).

The Ombudsman strengthened relationships with the stakeholders, Parliament, the Council of Ministers, the civil service, civil communities, and expanded its regional and international network.

The Year Report 2012 focuses on complaint handling and propriety (“*behoorlijkheid*”). The report includes: Strategic priorities and activities 2012 (2); Tasks of the Ombudsman, including statistics and a selection of complaints handled, reflecting the most prominent norm violations encountered (3); activities surrounding the Constitutional Court (4); Financial reporting (5); and the main achievements of the Ombudsman and Bureau in the year 2012 (6).

2. Strategic priorities and activities 2012

In keeping with the strategic areas outlined in the Strategic plan 2011-2021 priorities for 2012 were among others: strengthening the capacity of the Bureau to handle complaints more effectively and efficiently.

An additional complaint officer and a legal advisor were employed. Various courses were followed by staff, as well as training at the Ombudsman of Amsterdam and the National Ombudsman in the Netherlands. A senior team leader from the office of the National Ombudsman was hired as a consultant for a period of six months for in-house training of the staff and support to the Bureau to fine tune its operations.



Introduction new complaint officer Ms. Kim Huisman (in the middle) and Ms. Jos de Bruijn (second from right) team leader from the Netherlands



Senior Team Leader from the National Ombudsman, Ms. Jos de Bruijn



Mr. Marlon Hart, LLM, Legal Advisor

In September of 2012 a three day retreat was held with the staff at a local Resort to evaluate progress made at the Bureau and strengthen the team.

An apprentice program was started in October 2012, aimed at grooming youngsters to better understand the government system and the role of the High Councils of State, in particular the Ombudsman, while at the same time securing much needed assistance for our administration.



*First Apprentices hired in October 2012
Ms. Rayette James and Mr. Jahneiro de la Rosa*

The relationship with local stakeholders got due attention, while our regional and international network was expanded. The joined annual symposium organized by the High Councils of State (Council of Advice, General Audit Chamber, Ombudsman) held in October 2012 was again a

success. The theme of the symposium “*Thoughts on Good Governance*” was expounded on by the Minister of State and former President of the Common Court of Justice of the Netherlands Antilles and Aruba, Prof. Jaime Saleh. The activities in preparation for the Conference of the Caribbean Ombudsman Association (CAROA), to be held in 2013 on Sint Maarten, were initiated in 2012. A exploratory meeting was held with various event planners.



*Meeting with Event Planners in Sint Maarten
on the TOR for the CAROA Conference to be held in 2013*

Contacts were strengthened both within and outside the Government administration.



*Presentation Handbook of the Bureau Ombudsman to
the Department for Information Provision, DIV
("Departement voor Informatie Voorziening")*



*Presentation Handbook Bureau Ombudsman to the
Philipsburg Jubilee Library*

2.1. The Council of Ministers

Two meetings were held with the Council of Ministers to discuss the main findings as a result of complaints filed, the role of the Ministers with regard to investigations started by the Ombudsman, and to present the Year Report 2011. Three basic targets to improve Government's operations and the service to the public were agreed upon, to be implemented no later than the end of 2012,:

- 1) All Departments should implement procedures to acknowledge receipt of, and handle requests from citizens within a reasonable time;
- 2) Government should establish fixed terms to keep track of documents between Ministries and Departments in order to meet the terms for decision making provided for by law in cases such as requests for building permits, medical and financial aid;
- 3) All committees and advisory bodies required by law should be appointed by December 31, 2012.

The ratification procedure for legal instruments and notifications of same to the Ombudsman in accordance with art. 127 section 2 of the Constitution was discussed with the Council of Ministers. A follow up on this matter was presented to the Prime Minister in a letter dated October 12, 2012 (**Appendix 2**).

2.2. Parliament

The Year Report 2011 was presented in July 2012 to the President of Parliament, and discussed with the Members of Parliament in a Central Committee meeting in August 2012.



Presentation Annual Report 2011 to Parliament (August 17th 2012)

It was established by Parliament that the Ombudsman will annually present and discuss the Year Report with the Members of Parliament, and by extension to the public of Sint Maarten, on a date in the month of August to be appointed each year by the President of Parliament. The Ombudsman was queried by Members of Parliament about various aspects of the report, among which questions pertaining to investigative procedures, complaints before 10-10-10, progress in setting up the institute, provisions regarding future continuation of the institute, the Cadaster report, and more.

Parliament expressed concern regarding the findings at the Cadaster and Land registry, and the reported lack of cooperation by the Foundation “Kadaster & Hypotheekwezen” with the investigation initiated by the Ombudsman. Upon request of Parliament a copy of the pertinent report was subsequently submitted to the President of Parliament (**Appendix 3: Executive Summary Report K&H**).

2.3. The Ministries

As part of the Bureau’s annual schedule, exchange sessions were held with the Secretary General, the Department and Sector heads of each Ministry. Valuable information regarding procedures and policies within the Ministries, as well as their experience with the investigative procedures of the Ombudsman was shared. The obligations of the Departments as provided for by law and the need for proper compliance with the terms indicated to respond to queries by the Ombudsman, were emphasized.



Exchange Session with the Ministry of General Affairs. Ombudsman Dr. Nilda Arduin and the Secretary General of General Affairs, Mr. Maxime Larmonie with staff



Exchange Session with the Ministries of Tourism Economic Affairs, Public Transportation & Telecommunication and the Ministry of Education, Culture, Youth Affairs & Sports

Apart from investigative procedures applied by Bureau Ombudsman, guidelines established by the National Ombudsman of the Netherlands how to offer an apology when proper conduct has not been observed by Government in dealing with a citizen, were provided to the Ministries for consideration. The Management of the Ministries was encouraged to acknowledge the merits of complaints filed with the Ombudsman as a means to learn and improve the service to the public, which by extension promotes good governance. The annual report 2011 of the Ombudsman was presented to the Secretary Generals of all Ministries.

2.4. District Exchange Sessions

In the period August through December 2012 information sessions were held in nine districts around the island in collaboration with the Boards of the Community Councils and or the directorate of Community Centers.



Information Session at Middle Region



Information Session at Suckergarden



Information Session at the St. Peters Community Center

While the Ombudsman and the Staff of the Bureau provided persons in the community information about the tasks of the Ombudsman and the procedures for filing a complaint with the Bureau, the Ombudsman got vital information from the audience regarding the sentiments of the people towards the services of Government. Trust in Government's operations and proper representation of the people's interests need to be restored.

The Ombudsman experienced a decrease in complaints filed at the Bureau in comparison to the "Dry run" period January – June 2011. On the other hand there was a substantial increase of persons visiting the bureau for information and advice.

2.5. Regional and International Networking

In order to strengthen ties with Ombudsman institutions in the region and prepare for the Seventh CAROA (Caribbean Ombudsman Association) Conference to be hosted by the Ombudsman of Sint Maarten in 2013, the Secretary General of the Bureau visited the Ombudsman institutions of Bermuda, Trinidad and Barbados on an information and exchange mission. Case handling procedures were compared, and valuable information received from the Caribbean experiences.



Ombudsman of Bermuda, Mrs. Arlene Brock (second from left), Secretary General Ms. Patricia Philips (second from right) during a meeting in Bermuda

Material used and procedures followed in Bermuda and Trinidad in organizing previous CAROA Conferences were exchanged, while agreements were made with CAROA President, the Ombudsman of Barbados, with regard to preparations for the Conference to be held on Sint Maarten.



The Honorable Judge Jacob (Bob) Wit, President Constitutional Court Sint Maarten residing in Trinidad, Mrs. Lynette Stephenson, Ombudsman Trinidad and Patricia Philips, Secretary General Bureau Ombudsman Sint Maarten



President CAROA and Ombudsman Barbados, Mr. Valton Bend, Patricia Philips and Michael Sabazan, Senior Investigator Barbados Ombudsman Office

In February 2012 the Ombudsman attended a symposium with the theme “*Kunt u daar iets aan doen? 25 jaar Gemeentelijke Ombudsman*” (Can you do something about it? 25 years Municipal Ombudsman) held in the Netherlands in celebration of the 25th anniversary of the Ombudsman institute of the Municipality of Amsterdam. During this working trip, arrangements with the National Ombudsman of the Netherlands were finalized to make available, a senior team leader for consultations, training and support for a period of six months to Bureau Ombudsman on Sint Maarten.

The Ombudsman attended the annual International Ombudsman Conference organized by the Ombudsman of Curaçao in collaboration with the Caribbean International University established in Curacao. Upon the request of the organizers, the Ombudsman of Sint Maarten contributed to the Conference with a presentation on the topic “*The threats a young Ombudsman office faces while conducting investigations.*”



Mr. Andre Marin (Ombudsman Canada),
Ms. May Pastoor (Netherlands), Dr. Nilda Arduin,
Mrs. Majorie Tromp (Curaçao), Ms. Sulaica Martis (Curaçao)



Dr. Nilda Arduin, Ombudsman Sint Maarten in New Zealand

In November 2012 the Ombudsman attended the Tenth World Conference organized by the International Ombudsman Institute (IOI) in New Zealand with the theme “*Speaking Truth to Power; The Ombudsman in the 21st Century*”.

The net result for Sint Maarten from attending Conferences is not only measured by the amount of knowledge acquired by the Ombudsman for further development of the Bureau on Sint Maarten, but also the contacts and commitments received from experienced and highly acclaimed international Ombudsmen to give presentations and participate at the CAROA Conference to be hosted in 2013 on Sint Maarten. Preliminary commitments to attend and present at the Seventh CAROA Conference were received from the IOI President, the Parliamentary Ombudsman Institute of Sweden, the Ombudsman of Ontario and various regional Ombudsmen. The theme for the CAROA Conference was set at a regional meeting held during the IOI Conference in New Zealand, as well as pledges for support received from the region for the preparation of the CAROA Conference. During that meeting the Ombudsman of Sint Maarten, Dr. Nilda Arduin, was elected to the IOI Board as a Director for the Latin American and Caribbean region.

2.6. The Media

In keeping with the strategic area of transparency the Ombudsman held four Press Conferences during 2012, to inform the general public about the activities of the Ombudsman. The Press was briefed on travel reports to ensure that the public understands the Ombudsman’s strategy not to

reinvent the wheel in building the institution for Sint Maarten, empower the public, inform how the Ombudsman operates to protect the citizens' rights, and promote good governance in the relationship between Government and citizens.

The Media played a pivotal role in the promotion of the information sessions in the various districts: announcements were made on the Government Information page in the newspapers, and by means of publication of press releases sent out to the Media.

3. Tasks of the Ombudsman

The main task of the Ombudsman pursuant to the law is to investigate behavior of administrative bodies of the country and administrative agencies with public authority. Investigations can be initiated upon the request of a citizen, or on the Ombudsman's own initiative.

A complaint registration system designed for, and used by the Ombudsman of Curaçao was adapted and introduced in 2012 at the Bureau on Sint Maarten. In-house training for the staff by a complaint officer from the Ombudsman in Curaçao was organized at the Bureau. On April 1st, 2012 the Bureau resumed accepting complaints from the public after having secured confidentiality of the information received by means of a secured digital registration system.



*Signing of the contract with FACE Gemeente Enschede
for a Complaint Register system (KRS: "Klachten Registratie Systeem")*

3.1. Statistics

In the year 2012 seventy new complaints were filed with the Ombudsman. A total of twenty complaint investigations were closed.

Complaints Received and Closed per Ministry¹ from April to December 2012:

	Received	Closed
Min. G.A.	10	5
Min. Fin.	3	
Min. Jus.	9	3
Min. OCJS	3	
Min. TEZVT	9	3
Min. VROMI	21	3
Min. VSA	14	5
Governor ²	1	1
Totals:	70	20
Referrals	106	

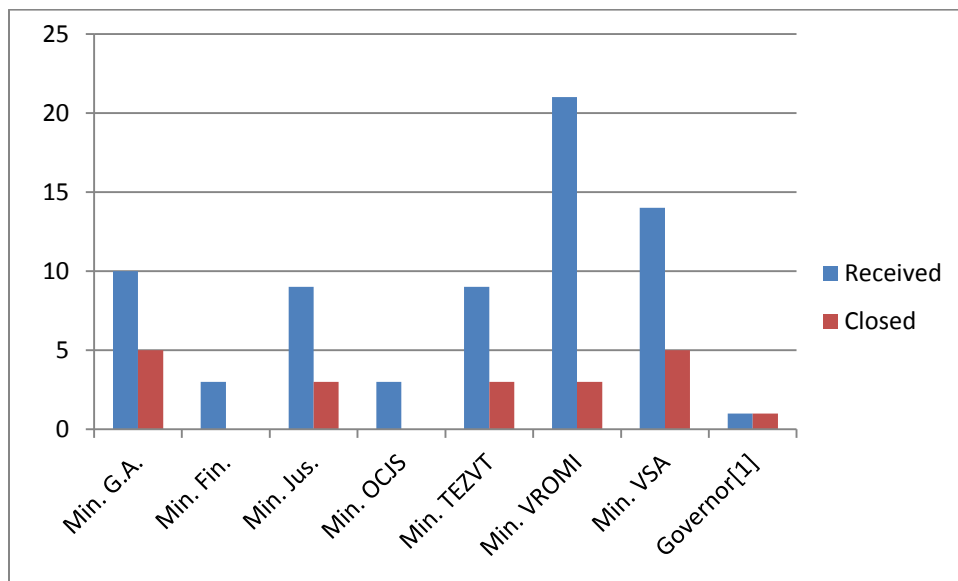


Chart complaints received and closed 2012

¹ Min. G.A.: Ministry of General Affairs; Min. Fin.: Ministry of Finance; Min. Jus. :Ministry of Justice;
Min. OCJS: Ministry of Education, Culture, Youth Affairs and Sports
Min. TEZVT: Ministry of Tourism, Economic Affairs, Public Transportation and Telecommunication
Min. VROMI: Ministry of Public Housing, Spatial Planning, Environment and Infrastructure
Min. VSA: Ministry of Public Health, Social Development and Labor

² The Governor does not fall under the competence of the Ombudsman, however the complaint entailed a matter to be addressed with the Census Office.

Complaints received and closed in 2011 and 2012 per December 31 2012

	Jan.'11- June'11 Received:	Apr.- Dec.'12 Received:	2011 Closed:	2012 Closed:
Min. G.A.	14	10	12	5
Min. Fin.	8	3	8	0
Min. Jus.	17	9	16	3
Min. OCJS	6	3	5	0
Min. TEZVT	11	9	9	3
Min. VROMI	16	21	15	3
Min. VSA	16	14	15	5
Governor	0	1	0	1
Notaries	4	0		
Others	2	0		
On Hold	1	0	1	
Totals:	95	70	81	20
Systemic Investigation	0	0	0	1
Referrals	28	106		

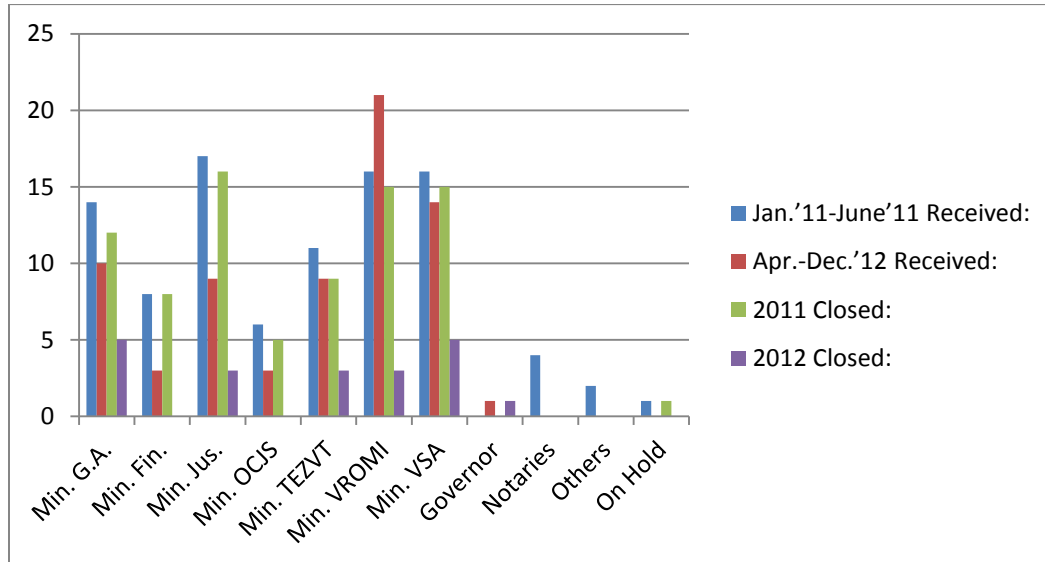


Chart comparison complaints received and closed in 2011 and 2012 per December 31 2012

The above mentioned data does not reflect a comparison of full years. In 2011 although the Bureau informed the public that the handling of investigations has ceased per July 1st 2011, complaints were accepted during the rest of the year under the condition that they would be handled in 2012. Pending files of 2011 were handled in 2012.

Apart from official complaints filed in the period April to December 2012, 106 advices were given to citizens seeking information regarding issues that affect them. These visits by citizens to the Ombudsman are registered as “Referrals” in a registry of the Bureau named “*Juridisch Venster*”.

The policy regarding complaints handling in 2012 was geared at creating awareness among the civil servants pertaining to propriety (“*behoorlijkheid*”), the standards of proper conduct to be observed by Government in relationship with the citizens. As such a limited amount of final reports were drafted, while the Ombudsman concentrated through interventions on working with the Departments on solving issues brought forward by means of complaints. This method also served to familiarize the civil servants with the standards of proper conduct required from administrative bodies.

Though the cases were mostly addressed and handled by interventions, the “Notices of Termination” to the Departments often included a conclusion regarding the conduct of Government in handling the subject of the complaint, and recommendations to improve the operations of the Departments. The standards of proper conduct most violated by the investigated administrative bodies are:

- Active and adequate information provision
- Promptness
- Legal certainty
- Adequate organization of services

Upon the request of a civil servant and a Department head, the Ombudsman mediated in a conflict between the parties involved. A report was drafted regarding the conclusions.

3.2. Complaints handled

Complaints investigated by the Bureau Ombudsman start with a “Notification of Complaint” to the pertinent Department within a particular Ministry. If more than one Department is involved, it is expected that the Department, which is addressed by the Ombudsman, takes the lead within the government administration to gather the requested information. After having gathered sufficient information, the Bureau sends a report with the preliminary findings (“Preliminary Findings Report”) to the respective Department(s) and the complainant for comments. The responses (not) received may give reason for a “Hearing” with the parties, continuation with the investigation, or closure of the investigation. As such an investigation may end with a “Final Report” or a “Notice of Termination” - with or without recommendations - sent to the pertinent Department. A copy of the Final Report or Notice of Termination is sent to the complainant with a letter that the case is closed. The complainant is informed in writing of the reason why the Ombudsman refrains from further investigation of the complaint.

Most recommendations are acknowledged by the Departments and followed.

Following is a selection of complaints handled and closed by the Ombudsman in 2012, categorized by the standards of proper conduct most violated.

3.2.1. The Standard of “active and adequate information provision”

The standard of active and adequate information provision implies on the one hand that administrative bodies have to provide information on demand, but also that they are obliged to provide information on their own initiative when certain actions of the administration will influence the interest of the citizen. This means that they have to be proactive.

When it is not possible to give information straight away, a term should be given within which the information will be provided, and when it appears that more time is needed, the administration should inform the citizen about this on its own initiative and explain why.

3.2.1.1. Summary of Complaint

Complainant has been employed at the Ambulance Department for a period of one year. This agreement was silently extended evidenced by payment of salary to the complainant beyond the termination date. Complainant's salary was abruptly stopped at the end of October 2010. According to the complainant she received no conclusive explanation regarding this matter, notwithstanding numerous requests to the various Departments.

Findings

Complainant had a one year contract with Government, which ended on March 15th 2010 as a result of a negative final evaluation in February 2010. She was taken off the payroll as of April 1st 2010.

Complainant appealed her final evaluation by sending a letter to Government, the then Executive Council, dated March 23rd 2010. According to the Department of Personnel Affairs the letter was not submitted within the appeal time of seven days after the evaluation.

Complainant sent a second letter dated April 14th 2010 to the Executive Council in which she explained what occurred while working at the Ambulance Department, and requested to get her job back.

The Department of Personnel Affairs provided the Ombudsman with an overview of events pertaining to the complaint, which shows that the Executive Council decided to disregard the termination of the pertinent contract. Subsequently complainant was retroactively paid her salary for the months of April 2010 until August 2010 and placed back on the payroll. Complainant's salary was abruptly stopped as of November 1st 2010.

Following meetings with the relevant Departments (Ambulance and Personnel Affairs) and recommendations made by the Ombudsman to resolve the situation, the Department of Personnel Affairs sent an advice to the Minister of Health, Social Development and Labor, dealing with the complaint in a proper manner.

As a result of the intervention of the Ombudsman a Resolution, “*Landsbesluit*”, was signed by the Minister of Health, Social Development and Labor in accordance with the recommendations offered by the Ombudsman.

Conclusion

Upon information received during the investigation the Ombudsman concluded that the complainant was unaware that her appeal letter sent to Government would not be considered as it was submitted seven days too late. She was furthermore not informed why her salary had been abruptly stopped after continuation of same beyond the expiration of her initial labor contract.

When a citizen is unaware if a Department received a letter submitted to a government body, the citizen is left to wonder if the letter was received or not, and or whether it is being handled. In this case the relevant Department(s) should have informed the complainant, that the subject of the letters could not be handled, the reason why not, and the consequences thereof. Concerning the payment of the complainant's salary, a letter should have been sent to the complainant explaining that proper procedures were not followed in handling the situation.

The Department of Personnel Affairs received complainant's letters, but never communicated with the complainant regarding the status of her request for reconsideration of the decision to terminate her contract. The complainant was not informed by means of a letter that her appeal to her final evaluation had been submitted later than required by law. The decision to stop payment of the salary without informing the complainant that procedures were not properly followed, was not proper.

After receipt of a copy of the formal decision ("*Landsbesluit*") resolving this matter according to the recommendations of the Ombudsman, the case was closed with a "Notice of Termination", including general recommendations to the relevant Departments.

Recommendations

- The Personnel Department should inform the civil servants of the status of their appeals or letters, also in case of an appeal not submitted within the legal time frame;
- Citizens in general should always be informed if their letter was received, and how their request will be processed and handled.

3.2.1.2. Summary of Complaint

Complainant claimed that he was assaulted, and threatened with a gun by a Police officer, dressed in civilian clothing. Complainant filed an official complaint at the Police station. He has however never been informed about the status of his complaint.

Findings

Upon investigation, a report dated July 19th 2011 was received by Bureau Ombudsman with the results of an investigation, carried out by the Bureau Internal Affairs regarding the complaint filed at the Police station.

The investigation was not conclusive; it was difficult to establish what exactly happened, due to the fact that there were no witnesses present at the place of the incident. Established was however that the officer involved transgressed various internal procedures.

As a result of the internal investigation the Police officer was issued a written reprimand.

A copy of the official written reprimand was requested and received by the Ombudsman.

After informing the complainant accordingly, he informed the Ombudsman that he was not satisfied with the outcome of the investigation of his complaint, because he was never afforded the courtesy by the Police Department to be informed regarding the status of the complaint filed at the Police station, nor the outcome of an investigation.

Conclusion

The fact that the complainant filed an official complaint at the Police station, and did not receive a response, is not in accordance with the standard of proper conduct of active and adequate information provision. In such cases a citizen may feel that he is not being taken serious when he is abiding by the law, and that his rights are not protected. Such a situation can lead to the person assuming that his complaint is not being investigated, and leave him to wonder whether the Police Department is carrying out its tasks as it should.

Complainant was unaware of the status of his complaint filed at the Police station, which led him to assume that his complaint was not being taken serious.

Acknowledging receipt of a complaint, and informing the complainant that the matter will be investigated, shows that the issue is being dealt with in a professional manner. When information is not given, it can damage the citizen's trust in the authorities. When it is not possible to give an answer straight away, a term should be given within which the information will be provided. When it appears that more time is needed, the administration should inform the citizen about this on its own initiative, including an explanation of the reason why.

After receipt of a copy of the letter of reprimand to the Police officer involved, the Ombudsman refrained from further investigation of the case. The investigation was closed with a "Notice of Termination" sent to the Police Department, including the following recommendations.

Recommendations

The Ombudsman is aware that there are situations which may lead to an investigation taking longer than others to complete due to circumstances, however the citizen should be informed in a timely manner that his complaint is being investigated.

- The Police Department should inform persons who filed a complaint that their complaint has been received, and will be investigated, preferably by means of an acknowledgement of receipt. This will also give the person the impression that his complaint is being dealt with in a professional manner;
- In situations where an investigation takes a long period of time, citizens can be informed by means of a letter that there will be a delay in the investigation of their complaint, or at least reassured when inquiring about the status that an investigation is ongoing;
- In situations such as the one experienced by the complainant, persons can be requested to come to the Police Department for a personal conversation, during which it can be explained that because there were no witnesses present the facts cannot be established (who was in the wrong in the matter). It can also be communicated during the meeting that such behavior from a Police officer is not condoned, and if it is found that a Police officer did not act in accordance with the law, he will be dealt with accordingly;
- In the case of the complainant, the Ombudsman recommended to invite the complainant to inform him personally regarding the procedures followed, and the outcome of the investigation;

- The Police Department was requested to inform the Ombudsman within four weeks of receipt of the Preliminary Findings Report, if the recommendations will be followed; in particular regarding the last mentioned recommendation.

By letter from the Commissioner of Police, dated August 10, 2012, the Ombudsman was informed that complainant would be invited as advised, and as a result of the other recommendations provided by the Ombudsman an internal complaint procedure would be developed and submitted to the public prosecutor's office and the Ombudsman for comments, where after the Minister of Justice will be requested to formally ratify same.

3.2.1.3. Summary of Complaint

According to complainant, she was verbally informed that her bus permit was cancelled. The reason for this she was told was that the license plate for 2009 was not picked up. She was informed that the policy of the Department of Control and Inspection is that once the license plate is not picked up, the bus permit will be cancelled.

Findings

The communication with the Department of Control and Inspection proved to be very challenging; a Preliminary Findings Report was drafted and forwarded to the Secretary General of Economic Affairs, Tourism, Transportation and Telecommunication for comments. No reaction to the findings was received. The Complaint Officer was however finally informed by the Head of the Department of Control and Inspection that complainant could proceed to collect the number plate for her bus. Bureau Ombudsman advised the complainant to contact the Department; she was informed accordingly.

Bureau Ombudsman also contacted the Head of the Committee of Transportation via email seeking information regarding the complaint. The information received included the following:

- The Department of Control and Inspection confirmed that complainant's bus license had not been revoked. Complainant attempted to collect the license plates for her bus, but was unsuccessful because of agreements between the Inspection Department and the Receiver's Office. It could not be confirmed whether the complainant was informed of the new arrangements; she was instructed to contact the Inspection Department.
- The new arrangements required that all public transportation license plates must be collected at the Department of Control and Inspection. This was done for the following reasons: 1. To assist with updating the public transportation database; 2. To avoid plates being issued without the proper license and documentation.

The Head of the Transportation Committee informed Bureau Ombudsman that there is no written policy in regard to the agreement between the Inspection Department and the Receiver's Office. The arrangements were just an agreement between the Departments, because of the (unspecified) challenges that they were encountering.

According to the Head of the Transportation Committee information sessions were held for the public regarding this matter.

Following, the Bureau Ombudsman received correspondence from the Department Head Control and Inspection pertaining to the complaint, stating the following:

- The bus permit belonging to complainant was put on hold for collection at the Receiver's Office due to the fact that the license plates had not been paid for since 2008. This was done in conformity with article 16 g. of the Public Transportation Ordinance.
- The Receiver's Office received instruction not to release the pertinent plates, and to refer the individual concerned to the Department of Control and Inspection for further discussion with the permit holder.
- Complainant did attempt to collect the bus license plates, but was unsuccessful based on the agreements between the Inspection Department and the Receiver.

The Head of the Department of Control and Inspection subsequently:

- Informed Bureau Ombudsman that complainant was informed that her permit was never retracted. The Receiver's Office was notified by the Department to put the plate on hold, due to the fact that it had not been used for a period longer than six months as stipulated in article 16 sub g. of the Public Transportation Ordinance; the Receiver's Office would be instructed to release the plate for payment;
- Confirmed the agreements made regarding the picking up of transportation plates at the Department of Control and Inspection;
- Informed complainant that she needed to present a copy of her permit in order for her to pick up her license plate.

The complainant informed the Department of Control and Inspection that she no longer had a copy of her bus permit, and would like to receive a copy from the Department in order to collect the license plate. The Department could however not assist her in obtaining a copy of the bus permit, because the Department was temporary assigned to carry out operations of the Public Transportation Committee and was not privy to all the files. As such the Department was not able to locate the "duplicate" of the permit. Complainant had to submit an official request to the Minister of Public Transportation for a copy.

Following these instructions, complainant requested a copy of her bus permit by letter dated July 18th 2011 addressed to the pertinent Minister. Not having obtained a copy of her permit, resulted in complainant not being able to proceed to collect the number plate for her vehicle. Non-response to her request filed with the Minister prompted the complainant to file a complaint with the Ombudsman.

Conclusion

The investigation established that the bus permit was not cancelled, it was put on hold. Complainant was not informed properly pertaining to the procedures to be followed. It is not certain whether holders of bus permits know what is needed in order to pick up one's license plate.

The Head of the Department of Control and Inspection instructed complainant to address the Minister for a copy of her bus permit, however a copy could not readily be provided, nor did complainant receive a response to her request from the Ministry of Tourism, Economic Affairs, Public Transportation and Telecommunication.

Though the last two recommendations stated in the Preliminary Findings Report sent to the pertinent Department have been complied with, considering the “Findings” in the investigation, the Ombudsman requested the Department of Control and Inspection to pay special attention to all the recommendations provided.

While Bureau Ombudsman will be monitoring the follow up on the recommendations, the parties were informed by “Notice of Termination” that the file was being closed, as the complaint was considered handled.

Recommendation

The Ombudsman reiterated the recommendations, and requested to keep the Ombudsman updated about the process leading to implementation of same.

- The public, in particular holders of bus permits, needs to be aware of the procedure followed when no use is made of a bus permit for a period longer than six months.
- The public should also be informed of policies and or internal changes within the administration of Government. In this case it pertains to the location for picking up of the bus license plates. The information should be disseminated by means of: newspaper, radio, information flyers and posters at the Department. A notification to bus permit holders, whose addresses should be on file, is proper.
- A proper policy outlining what a person needs to submit in order to pick up their license plate needs to be established, and the public properly informed about new procedure to be followed.
- The Department needs to make an inventory regarding any unwritten policies, and subsequently formally establish and publish these policies.
- The staff of the Department must be aware of the current policies to be able to properly inform the general public, and persons requesting a license plate and or bus permit.
- The filing system of the Control and Inspection Department has to be revisited in order to ensure that the information requested by citizens is readily available.

3.2.2. The Standard of “promptness”

The standard of ‘promptness’ implies that the Department should act resolute and sufficiently swift. A government body is expected to observe the deadlines provided for by law. If no deadlines are specified, the administrative body must act within a ‘reasonable’ period of time to take a decision. The interpretation of a ‘reasonable’ period of time depends on the facts and circumstances. This standard of proper conduct should be respected by government at all times.

3.2.2.1. Summary of Complaint

On April 4th, 2012 the complainant filed an application for medical assistance at the Department of Social Services (“Social Services”). On May 4th, 2012 complainant returned to Social Services for a follow up on the application. Complainant was informed by a front desk employee that she will have to return in two months for a new update, and that it is not possible to provide her with a guarantee letter in the meantime. When complainant asked for the reason why it took so long to decide on the application, she was informed that this is the procedure.

Findings

The Ombudsman received a response to the Notification of Complaint from Social Services on June 4th, 2012. According to Social Services the complaint is valid, because a decision must be taken within one month in accordance with the applicable Ordinance. The reason for not being able to decide within the legally established period is, the lengthy procedure involved to obtain and decide on an advice. Social Services could not give a date or period when the decision could be expected. A guarantee letter could not be issued because a decision of the Minister of Public Health, Social Development and Labor is required.

On August 8th, 2012 the Ombudsman sent a Preliminary Findings Report to Social Services. The following recommendation was issued: to review the procedure leading to the decision on an application for medical assistance, and change the procedure in a way that it will be possible to take a decision within the legally established term.

On September 14th, 2012 the Head of Social Services, responded to the preliminary findings. He indicated that the Ministry of Public Health, Social Development and Labor is working on a 'mandate regulation' in order to shorten the process for applications for financial and medical assistance, especially for vulnerable groups like the elderly, mentally challenged and physically handicapped persons.

In addition Social Services provided the Ombudsman with an overview of the processing time of the application for medical assistance of the complainant. The overview shows that the complainant indeed applied for medical assistance on April 4th, 2012. Subsequently the application had to be processed through seven different Government departments in order to get the requested signature. On June 28th, 2012 the application returned to Social Services, and the Social & Health Insurances (SZV) was requested to print the medical card for the applicant. As per September 14th, 2012 the medical card was not received by Social Services.

The Ombudsman drafted a Final Report in this case, including a judgment.

Conclusion

Propriety has not been duly taken into consideration. Social Services acted not in accordance with the law by not observing the terms provided for by law to take a decision on an application for medical assistance.

The law provides that a decision on medical assistance must be taken as soon as possible, however no later than one month after the application. In this case it is evident that the decision on the application took longer than the legally established term. The application was filed on April 4th, 2012; according to the information provided by Social Services the request for the medical card was approved by the Minister of Public Health, Social Development and Labor on September 4th, 2012. Social Services requested the Social & Health Insurances (SZV) to print the medical card, however the medical card was not issued nor received by the complainant after a period of five months.

Social Services should be able to organize its work in a way that a decision could be taken within the legally established term, and if necessary, when a person is in urgent need of medical attention, even sooner, or issue the applicant a guarantee letter. In this particular case the complainant urgently required medical attention. The reason given by the Department for the time it takes to render a decision, the long process before a decision is taken, may explain the delay, but does not justify it.

Aforementioned standard of proper conduct should be respected by government at all times. In this situation it means that within maximum one month the request of the complainant must have been dealt with.

Judgment

Social Services acted improper with regard to the complaint.

Recommendation(s)

Social Services indicated on September 14th, 2012 in a reaction to the Preliminary Findings Report that the Ministry of Public Health, Social Development and Labor is working on a ‘mandate regulation’ in order to shorten the process for applications for financial and medical assistance. The Ombudsman requested to inform the Bureau Ombudsman no later than the end of January 2013 regarding the progress of the proposed ‘mandate regulation’.

A general short term target was recommended to the Council of Ministers by the Ombudsman to revisit all administrative procedures and to ensure they meet the terms for a response and or decision as provided for by law no later than the middle of 2013.

3.2.2.2. Summary of Complaint

In the month of December 2011 complainants submitted a request to the Social & Health Insurances (SZV) for compensation of exceptional medical costs (‘Kostenvergoeding uit het fonds Algemene Voorzieningen Bijzondere Ziektekosten’(AVBZ). On December 16, 2011 this request was rejected by the SZV. On January 16, 2012 complainants filed a written objection to the Director of SZV against the rejection of their request. Complainants filed a complaint with the Ombudsman on April 2, 2012, because no decision on the objection was received.

Findings

The Ombudsman sent a Notification of Complaint to SZV. Since no response on the Notification of Complaint was received, the Ombudsman sent a reminder to SZV. When no response was received to the reminder, the Director of SZV was invited to a hearing at the Bureau Ombudsman on October 9, 2012.

On October 1, 2012 the general advisor at SZV contacted the Complaint Officer of the Bureau Ombudsman, and informed her that the SZV received the complaint the week before (even though the Notification of Complaint went out months before).

The Bureau Ombudsman was furthermore informed that a Complaint Committee has been installed during the week of September 27, 2012. SZV intended to invite the complainants to a hearing with the Complaints Committee on October 19, 2012 or October 26, 2012 in order for complainants to further explain their objection. Following this hearing the Complaint Committee would draft an advice on the objection, and within 4-6 weeks a decision would be taken on the objection. Furthermore, the SZV promised that the Bureau Ombudsman will be provided with a response to the Notification of Complaint.

However on October 9, 2012 the Ombudsman received an email from the general advisor at SZV informing that SZV claims that the Ombudsman is inadmissible to handle the complaint since an objection procedure was submitted by complainants to the SZV; according to article 17 of the National Ordinance Ombudsman, the Ombudsman is inadmissible to investigate a complaint if an administrative procedure is pending. Therefore the SZV will not accept the invitation of the Ombudsman for the hearing dated October 9, 2012. Finally the SZV informed the Ombudsman that complainants will receive an invitation for a hearing with the Complaint Committee, which shall take place at the end of October 2012.

The Ombudsman interpreted the email dated October 9, 2012 to be a response to the Notification of Complaint. A Preliminary Findings Report was drafted and sent to the SZV, including a recommendation stating: *“In order to decide whether to continue the investigation, the Ombudsman requests SZV to provide a copy of the invitation of the hearing by the Complaint Committee within two (2) weeks after receipt of the Preliminary Findings Report”*.

Only after the complainants actually received an invitation for a hearing with the Complaint Committee, the Ombudsman considered refraining from further investigation of the complaint. Pursuant to article 17 paragraph 2 sub d. of the National Ordinance Ombudsman, the Ombudsman is not required to continue, or investigate a complaint if the interests of the complainant is insufficient.

Upon receipt of confirmation by both parties that complainants were heard, the Ombudsman closed the file with a Final Report, including a judgment.

Conclusion

Article 17 paragraph 1 sub c. of the National Ordinance Ombudsman provides that the Ombudsman has no jurisdiction to conduct an investigation, or continue an investigation if the conduct of the complaint filed with the Ombudsman is subject to pending administrative proceedings, or the subject of an administrative ruling.

Contrary to the statement of the SZV, the Ombudsman is competent to investigate the pertinent complaint: the subject of the complaint filed with the Ombudsman differs from the content of the objection filed by the complainants to the SZV. The complaint under investigation by the Ombudsman concerns the failure by SZV to take a decision on the objection dated January 16,

2012 lodged by the complainants with SZV. The objection filed with SZV concerns the rejection on complainants' request for compensation of exceptional medical costs, which is a different matter.

The Ombudsman concluded that the complainants are admissible, and the Ombudsman has authority to investigate the complaint.

Complainants' objection was lodged to the SZV within the period prescribed by law. Pursuant to article 36 section 1 of the Ordinance on General Insurance of Exceptional Medical Costs (AVBZ) a decision on an objection has to be taken within six weeks after receipt of the objection. This period may be extended if the complainant has been informed thereof. Complainants filed their objection on January 16, 2012 to the Director of the SZV. SZV failed to take a decision on the objection filed by complainants within the pertinent time. Not informing complainants on the progress of their objection is considered a violation of propriety. The fact that the Complaint Committee was installed at the end of September 2012 explains the delay, but does not justify violating the standards of proper conduct.

Judgment

SZV acted improper with regard to the complaint; the standards of 'promptness' and 'active and adequate information provision' are violated.

3.2.3. The Standard of "legal certainty"

Legal certainty consists of two standards:

- *Compliance with court judgments*
- *Legitimate expectations*

Legitimate expectations of citizens and organizations from the Government should be validated. This standard of proper conduct implies that an administrative body should honor promises made. This standard of proper conduct also implies that when Government uses standard conditions, terms in civil agreements or contracts, the citizen may expect that these conditions are respected and upheld. Of course Government may change its policy, but then the citizens should be properly informed or consulted, and the policy should be implemented according to a reasonable time schedule. When it is not possible to comply with promises made, and the citizens will not experience any damage from the delay, it will be sufficient to inform the citizen about the delay and give a date when the matter will be dealt with.

This standard of proper conduct also implies that promises made orally should be kept.

3.2.3.1. Summary of Complaint

Complainant, a civil servant employed at the Ambulance Services, stated that she had not been paid for overtime since the year 2009. The complainant also complained that she had not been paid the compulsory carnival overtime up to 2011 at the time her complaint was filed.

Findings

Complainant addressed a letter dated June 8th 2011 to her Department Head informing him of the various steps she took in connection with her complaint.

After thorough investigation of the complaint by Bureau Ombudsman, it appeared that the delay is rather structural. Meetings with the Head of Ambulance Services, as well as the Department of Personnel Affairs, indicated that there is currently no legal basis for payment of such overtime, referred to as '*Continudienst toelage*'.

In discussing the complaint with the relevant Departments it was established that temporary solutions should be, and are being sought. The Ombudsman was informed that an advice was sent to the Ministry of Health, Social development and Labor, because the Resolutions to pay the civil servants were not being signed. Over the years the personnel of the Ambulance Department, who worked the different shifts, automatically received a monthly allowance as was the case at the Fire department prior to the current 24 hours working schedule in place.

The Department of Personnel Affairs did not know when complainant and her colleagues, who are not receiving the '*Continudienst toelage*' (substituting overtime payment), could expect to be granted the allowance. The Island Decree of January 18th 2005 provides for a monthly allowance of fl.120 payable to shift workers at the Fire Department. The Decree refers however to Fire Department personnel, and makes no mention of Ambulance personnel.

The Ombudsman recommended provisions be made to pay the complainant for the overtime worked, pending a General Decree applicable to all workers in a similar position. Follow up on the recommendation to pay the complainant could be done pursuant to the provisions of the LMA, applicable for overtime and or work on holidays. Furthermore, the procedures for establishing a General Decree need to be reviewed, and a tracking system enabling all persons working on a particular file should be developed.

Subsequently complainant informed the Bureau Ombudsman that in August 2012 she has been paid '*Continudienst toelage*' retroactively.

Conclusion

After a rather lengthy investigation and meetings with both the Ambulance Department and Personnel Affairs, it appeared that there is no specific legal basis for application of the '*Continudienst toelage*' to the Ambulance personnel. A Decree of January 18, 2005 regarding the Fire Department has been followed to compensate the Ambulance personnel. The Ombudsman pointed out to the relevant Departments that this is not acceptable, and a transparent solution should be sought to remedy this situation.

While the matter of the complainant was solved after intervention by the Ombudsman, Government was informed that it is important that legal certainty is created for all civil servants in a similar position in regard to shift or dark hours allowance.

After complainant informed the Bureau that she has been paid the '*Continudienst toelage*' retroactively, the Ombudsman considered the matter of the complaint handled, and refrained from further investigating the complaint. The case was closed with a Notice of Termination, including the following recommendation.

Recommendation

The Ombudsman recommended that this matter be given proper attention.

According to the complainant's salary slip of August 2012 she was paid '*Continudienst toelage*' retroactively. This matter should be settled in general as a policy applicable to all civil servants in a similar position without distinction.

The Ministry is requested to inform the Ombudsman on progress made on this matter.

3.2.4. The Standard of "adequate organization of services"

The standard of *adequate organization of services* implies amongst others that the Department should organize its work and procedures in such a way that it can provide the citizen with the service he is entitled to. This is a matter of due care, but also refers to efficiency, availability, promptness, information provision, and more.

3.2.4.1. Summary of the Complaint

On May 3, 2002 and September 30, 2009 complainant filed an application for a taxi license. Complainant did not receive a decision on either application.

Findings

On October 10, 2010 the Executive Council is dissolved. Nevertheless, the successor of the Executive Council responsible for the issuance of taxi permits is in charge of the proper execution of the pertinent Ordinance (art.1 juncto art.1 section f. of the addendum juncto art. 8 sub 1 of the Ordinance on Transition of Legislation and Administration ("*Landsverordening overgangsbepalingen wetgeving en bestuur*").

The issuance of taxi permits is currently handled by the Department Ministry Tourism, Economic Affairs, Public Transportation & Telecommunications (art. 9 section f. under iii Ordinance on Transition of Legislation and Administration).

Complainant filed twice for a taxi permit: once on May 3, 2002 and subsequently on September 30, 2009. Complainant visited the Department on several occasions to get an update regarding his application. However, up to filing of his complaint no decision was taken on his request. (Complainant filed an application for a taxi permit twice, because he was informed by the Department that his first application was lost).

On October 24, 2011 the Head of the Department replied on the Notification of Complaint sent by the Bureau Ombudsman as follows:

"The request of (...) has been placed on hold as have all the other requests regarding taxi and bus permits. Up until 2010 there was a moratorium regarding the issuance of taxi and/or bus permit in place. The moratorium has since been lifted, but no concrete decision has been taken with regard to the actual issuance of additional permits due to ongoing evaluations of the sector and the overall restructuring of Public Transportation in general."

Conclusion

A government body is expected to process applications accurately and to store the documents pertaining to the application in a proper manner.

The procedure followed by the Department is not in accordance with the law and a violation of the standard of proper conduct that a motivated decision must be taken with promptness.

The investigated conduct of the Department is deemed not proper. The fact that an application could not be retrieved is a violation of the standard of conduct of adequate organization of services.

The Department must aim to comply with the deadlines stipulated in the pertinent Ordinance. Even in the event of a moratorium it is required that a rejection of an application is communicated to the applicant by a motivated decision according to article 10 of the pertinent Ordinance. Moreover, the Department must aim to process applications accurately, and store the documents in a proper manner.

The case was closed with a Final Report, including the following recommendations.

Recommendations

- Review the present procedures and adapt them to meet the legal requirements outlined in this report;
- Review the filing and tracking system for applications, and adapt these to serve the public adequately;
- Provide the complainant a motivated decision within 28 days of the date of receipt of the Final Report.

In response to the Final Report and recommendations the Ministry of Tourism, Economic Affairs, Public Transportation and Telecommunication responded as follows:

‘(....)The Ministry of TEZVT has implemented several administrative changes in regard to requests for public transportation licenses. These changes include the implementation of a new intake procedure, mandating of signing authority for the departments involved, and responding to applicants within a shorter timeframe.(....)

As of January 1, 2013 the process of transportation licenses is transferred from the Inspection Department to the Economic Licenses Department. All licenses issued by the Ministry of TEZVT are thereafter centralized at one single department. The Economic Licenses Department is implementing an automated document-management program called DECOS, whereby the entire licensing process will be automated.(....)

Furthermore, the Economic Licenses Department is working on clearing all backlogs in public transportation licenses requests.(....)

Also a ‘landsbesluit’ with legislative changes has been drafted. The filing and tracking system in regard to requests for public transportation licenses are adjusted in order to serve the public adequately.(....)

The Complainant has been issued a bus license.(....)’

3.2.5. The complaint is unfounded

Not all complaints are considered valid. If considered unfounded, the complainant will be informed accordingly.

Summary of Complaint:

Complainant has been diagnosed permanently unfit to work, due to the fact that he has a chronic disorder. He stated that he wrote a letter, based on the advice of the then Commissioner of Health, requesting to be laid off due to his illness which required him to live in a colder country. He accepted a settlement offer. Complainant complains that he is not receiving his “disability pension” as a result of the letter that he was advised to write by the Commissioner.

Findings:

Complainant submitted his written notice of resignation to the Island Government of Sint Maarten on January 2nd, 2008.

Complainant requested that his resignation becomes effective as of January 31st, 2008.

A decision from P&O dated January 15th 2008 states that complainant will be given an honorary discharge as of February 1st 2008, as requested by him.

There are two written statements from SZV, the former SVB, dated February 20th, 2008 and December 10th 2008, after the discharge of the complainant, stating that complainant is permanently unfit to work.

Article 13 sub 1 of the ‘*Pensioenlandsverordening overheidsdienaren*’ of December 23rd 1997 provides: a civil servant who has been dismissed at the time that they are not able to carry out their tasks because of sickness or defects is entitled to receive disability pension.

Conclusion:

Based on article 13 sub 1 of the Pension Ordinance of December 23rd 1997 quoted above complainant is not eligible to receive a disability pension, due to the fact that he was declared permanently unfit to work after his employment was officially terminated.

The Ombudsman therefore refrained from further investigation of the complaint.

The following is an example of a letter informing the complainant accordingly.

Dear.....,

This letter is to inform you that the Ombudsman refrains from further investigation of your complaint in accordance with art. 17 of the Ordinance Ombudsman (“Landsverordening Ombudsman Ab 2010 GT no.20”).

Reason: ☐ *The complaint is unfounded;*

- ☐ *The complaint pertains to a matter relating to a general policy of the organization or general binding regulations.*

Grounds / Elucidation:

Article 13 sub 1 of the “Pensioenlandsverordening overheidsdienaren” of December 23rd 1997 provides: a civil servant who has been dismissed at the time that they are not able to carry out their tasks, because of sickness or defects, is entitled to receive disability pension.

The fact that you requested your own resignation and were not dismissed by your former employer, leads to the decision to refrain from further investigation of your complaint.

*Sincerely,
Dr. R. (Nilda) J.A. Arduin
Ombudsman*

Cc: Department of Personnel Affairs, Department Head: Mrs. Christ’l Berwers-Larmonie

3.3. Own motion investigation

The Ombudsman continued an investigation initiated on her own account which started in December 2010 regarding the operations at the Cadaster and Land registry, operated by the Foundation “Kadaster & Hypotheekwezen” (K&H).



Secretary General Ms. Patricia Philips, Dr. Nilda Arduin and the Minister of VROMI, the Honorable Mr. William Marlin

A final report was drafted and submitted to the Minister of Public Housing, Spatial Planning and Infrastructure (“Minister VROMI”). Issues addressed in the report are among others: the competence of the Ombudsman to investigate this private entity charged by a National Ordinance with the execution of government tasks, the registration procedures of immovable property followed, the poor cooperation extended by the K&H with the investigation, conclusions and a judgment. The report concluded with recommendations to the Minister VROMI (see *Appendix 3: Executive Summary Report K&H*). Upon request a copy of the full report was submitted to the President of Parliament.

4. Constitutional Court

4.1. The new Penal Code

On May 25, 2012 Parliament approved amendments to the Criminal Code, the draft Ordinance was prepared by the former Netherlands Antilles.

In the period May – August 2012 the Ombudsman received many emails from citizens protesting against the approval by Parliament of a clause in the amended Penal Code, exempting organizers

of animal fights as a cultural or structural event with a license from criminal prosecution. A petition against ratification of the law to the Governor, supported by allegedly approximately 5000 signatures, was submitted in copy to the Ombudsman. By letter dated June 15, 2012 the President of the Foundation Animal R Friends requested the Ombudsman to present the pertinent article (art. 539) of the draft Penal Code to the Constitutional Court for review.



Copy of the Petition of the Animal Welfare Foundation submitted to the Ombudsman, Dr. Nilda Arduin. Left: Ms. Elaine Christopher; Right: Mrs. Mercedes de Windt.

In response to the above stated the Ombudsman sent out a press release to explain the role of the Ombudsman, and the procedures regarding the Constitutional Court as provided for by the Constitution. While approved by Parliament, the pertinent law first has to be ratified by Government before the Ombudsman can take any action.

The role of the Ombudsman in the lawmaking process starts after the ratification of legal instruments. The Ombudsman can submit a written petition to the Constitutional Court for review of a law or regulation within six (6) weeks after ratification, but prior to the law going into effect (art.127 Constitution juncto art. 17 of the National Ordinance Constitutional Court). Laws of an urgent nature are exempted from constitutional review.

4.2. “Landsverordening BOB”

On August 30, 2012 the National Ordinance providing law enforcement agencies extraordinary authority to investigate criminal actions, the “*Landsverordening van de 30ste augustus 2012 houdende wijziging van het Wetboek van Strafvordering, AB 2012 no. 25*” (“*Landsverordening BOB*”), was published. As a result of the information received when presented with the mentioned ordinance, the Ombudsman queried the Minister of Justice, the President of Parliament and the Prime Minister regarding various legal technical issues pertaining to establishing the pertinent law. The law was presented to the Ombudsman as a uniformed law (“*eenvormige landsverordening*”), which raised questions pertaining to procedures followed, and or to be followed, when enacting (new) laws.

By letter dated October 12, 2012 sent to the Prime Minister, the Ombudsman expressed concern, and requested special attention to the following (see *Appendix 2*):

- The established procedures regarding ratification of legal instruments and the notification of same to the Ombudsman;
- Review of the ratification procedures applied by Government, and the importance of having consensus and clarity on these procedures within the executive branch of government;

- The timing of publication of legal instruments;
- Clarity and transparency regarding the date of ratification of laws, which is pursuant to section 1 art. 40 Constitution an action executed by a signature from the Governor, co-signed by the Minister(s) involved. The Government was alerted that the date of co-signing by the Minister(s) should be clear in order to accurately establish the date of ratification.

Notwithstanding the procedural and legal technical remarks mentioned above, the Ombudsman concluded not to present the law ("*Landsverordenening BOB*") for review to the Constitutional Court; the content, nature and preparation of the law did not warrant the law not to take effect within the regular time provided for by law. The law also provides for review and evaluation after three years of taking effect. A response to the letter dated October 12 2012 to the Prime Minister was received on November 1, 2012, acknowledging the Government's attention for the remarks brought forward by the Ombudsman.



*The president of the Constitutional Court,
Judge Jacob ("Bob") Wit at Bureau Ombudsman*

5. Financial Reporting (see *Appendix 4*).

The budget for the Ombudsman is covered pursuant to art. 12 National Ordinance Ombudsman by the Government. Parliament - in agreement with the Ombudsman and the Minister in question (the Minister of General Affairs) - is charged to ensure that the Ombudsman is provided all facilities necessary for the proper and independent performance of his duties.

An amount of Nafl. 1.301.359,52 was budgeted for the operation of the Ombudsman in 2012, while a total amount of Nafl. 999.141,27 was actually spent (See *Appendix 4*).

In accordance with agreements made between the governments of Sint Maarten and the Netherlands, the budgets to establish the High Councils of State for the country are financed from the IVB-Project ("*Institutionele Versterking en Bestuurskracht 2008-2012 - Opbouw Hoge Colleges van Staat*"), managed by (U)SONA, an advisory body to the Netherlands which oversees the projects. An extension for the allocation of these funds has been granted, allowing for projects involving the setting up of the institutions to be submitted for funding up to the end of 2013.

From the total amount of Nafl. 1.126.526,50 allocated for the establishment of the Ombudsman, a total of Nafl. 676.377,17 was spent as per December 31 2012; from this amount a total of Nafl. 312.017,34 was spent in 2012 (see *Appendix 4*).

Attached as *Appendix 4* are:

- The Financial report from Government funded operations;
- The Financial Report from the IVB funded costs Dec 30th 2010 to December 31 2012;
- The Financial Report from IVB funded costs for the year 2012.
- The Consolidated Financial Report (Government and IVB funded accounts)

6. Achievements

Among the main achievements of the Ombudsman and the Bureau in 2012 are:

- Introduction of a digital Complaint Registration tool (KRS);
- Full staffing of the Bureau in accordance with the formation plan approved by Parliament;
- In-house support and training by a counterpart from the National Ombudsman of the Netherlands;
- Establishing of the Standards of Proper Conduct regarding propriety (“*behoorlijkheid*”);
- Awareness created within the community regarding the Ombudsman and the Bureau;
- Parliament established a date in the month of August, to be appointed each year by the President of Parliament, for the Ombudsman to present and discuss the Year Report in Parliament and to be queried by the Members of Parliament about the activities and findings of the institution;
- Apology letters sent by the Ministry of VROMI to residents of Chin Cactus Road and to a citizen regarding tardiness in handling an outstanding complaint;
- Letter from the Commissioner of Police to the Ombudsman announcing the intention to implement internal complaint procedures as a result of recommendation from the Ombudsman;
- Ratification procedures for National Ordinances reviewed and established by Government upon recommendation Ombudsman;
- Appointment by government of an Appeal Committee to handle appeals regarding placements of civil servant in the new government organization, and letters sent out by the Minister of General Affairs to civil servants informing them accordingly;
- Appointment of the members of the Monument Council by the Minister of Education, Culture, Youth Affairs and Sports as follow up on recommendations as a result of a complaint;.
- Election of the Ombudsman of Sint Maarten as a Regional Director on the IOI Board.

7. Appendix Year Report 2012

Appendix 1: Bureau Ombudsman Strategic action plan 2012

Appendix 2: Letter dated October 12, 2012 to the Prime Minister

Appendix 3: Executive Summary Report K&H

Appendix 4: The Financial report from Government funded operations;

The Financial Report from the IVB funded costs Dec 30th 2010 to December 31 2012;
The Financial Report from IVB funded costs for the year 2012.
The Consolidated Financial Report (Government and IVB funded accounts)



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5. Financial Reporting Page 35:

From the total amount of Naf 1.126.526,50 allocated for the establishment of the Ombudsman, a total of **Naf 665.933,54** was spent as per December 31 2012; from this amount a total of **Naf 316.386,26 was spent in 2012.**

Attached as *Appendix 4* are:

- The Financial Report from Government funded operations for the year 2012;
- The Financial Report from the IVB funded costs **during the year 2012;**
- The Consolidated Financial Report (Government and IVB funded accounts);
- **The Consolidated Balance Sheet per December 31 2012.**

Please note: the above-mentioned reports are unaudited.

7. Appendix Year Report 2012:

Appendix 4: The Financial report from Government funded operations;
The Financial Report from the IVB funded costs **during the year 2012;**
The Consolidated Financial Report (Government and IVB funded accounts);
The Consolidated Balance Sheet per December 31 2012.

Appendix 1:

Bureau Ombudsman (Strategic) Action Plan 2012

Date:	Activities:	Strategic Area:	Objective-should read Remarks:
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