



**OMBUDSMAN**

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### **Notice of Termination Investigation**

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

Ministry of Tourism, Economic Affairs, Traffic and Telecommunication  
Attn.: Department of Economic Licenses  
Mrs. Valya Lake-Pantophlet, Department Head  
Zoutsteeg 3  
Virgon Building  
Philipsburg  
Sint Maarten

**Your ref.no.:**

**Our ref.no.: OM-OBM 2015 00035\_60**

**Your letter of:**

**Complaint no.: 2015 00035**

**Re: Complaint filed with the Ombudsman**

Philipsburg, 20 October 2015

Dear Mrs. Lake-Pantophlet,

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

#### **Summary of Complaint:**

By Decree of 25 April 2006 a business license was issued to Complainant (Complainant).

By Ministerial Decree dated 6 May 2013 the operational license was issued to Complainant.. Since the issuance of the operational license in 2013, Complainant has been requested to pay business license fees for the periods of 2006 to 2013.

In a letter dated 20 January 2014 an objection was submitted to the Secretary General of the Ministry of Tourism, Economic Affairs, Traffic and Telecommunication (TEZVT), expressing the Complainant’s disagreement with the payment of the accumulated business



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license fees. Complainant requested that the fees be pardoned, as it was not possible to operate the business until 2013.

In an email response sent to Complainant from the Department Head of Economic Licenses on 6 March 2014, two options were presented to the situation. Option 1 was to cancel the business license, thereby nullifying the operational license and reapply thereafter, taking into account that a new business and/or operational license may not be issued. Option 2 was to pay the accumulated fees.

By letter dated 21 May 2014 an objection letter was submitted to the Minister of TEZVT. In the letter the Managing Director's standpoint was reiterated, as presented in the letter dated 20 January 2014. In the objection letter of 21 May 2014 the Minister was requested to pardon the business license fees for the period of 2007-2012. To date of filing the complaint with the Ombudsman on 4 January 2015, Complainant claimed that there had been no response to the objection letter dated 21 May 2014. Complainant feels that it is unfair that Complainant is being charged for the years during which they were unable to operate.

**Findings:**

**By letter dated 4 February 2005** a business permit for the operation a car rental was requested. The letter was stamped for receipt by the Department of Records & Information Management on 23 February 2005.

**By Decree of 25 April 2006** a business license referring to a request dated 11 February 2005, was issued Complainant.

**By Ministerial Decree dated 6 May 2013** referring to a request dated 8 January 2013, an operational license was issued.

**In a letter dated 20 January 2014** addressed to Mr. Miguel de Weever, Secretary General of the TEZVT, Complainant objected to the payment of the accumulated business license fees for the periods of 2006 to 2012. In said letter, it was requested that the fees be pardoned, as it was not possible to operate the business until 2013.

**By email of 6 March** 2014 the Department Head of Economic Licenses at TEZVT (the Department Head) responded to Complainant's letter of 20 January 2014. In the response, two options were presented to resolve Complainant's situation. Option 1 was to cancel the business license, thereby nullifying the operational license and then reapply, taking into



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account that a new business and/or operational license may not be issued. Option 2 was to pay the accumulated fees.

**An objection letter dated 21 May 2014** was submitted to the Minister of TEZVT in response to the above-mentioned email. In the letter Complainant's standpoint as presented in the letter dated 20 January 2014 was reiterated; the Minister was (again) requested to pardon the business license fees for the period of 2007-2012 as Complainant was unable to operate in that period.

**On 4 January 2015** Complainant's representative filed a complaint with the Ombudsman stating that she considers it unfair to pay the business license fee for periods during which Complainant was unable to operate.

**On 17 February 2015** a Notification of Complaint (NOC) was sent to the Department of Economic Licenses. The department was requested to respond to the NOC within 4 weeks from the date of the letter, however no later than 17 March 2015. The following questions were included in the NOC:

- Explain why a business is requested to pay government related business fees, if said business is unable to operate because government did not issue an operational license.
- Why was Complainant's operational license issued seven years after the business license had been issued?
- When can Complainant expect to receive a response to the letter dated 21 May 2014?
- Please submit a copy of the legislation or regulations applied in this case.
- Explain how the pertinent legislation and or regulation is implemented in practice; provide documentation of the actual procedure followed, if any.

**On 19 February 2015** Complainant's representative forwarded a copy of the request dated 4 February 2005 for a business license to operate a "*Car Rental License*" to the Ombudsman.

**By email of 12 March 2015** the Department Head forwarded to the Ombudsman a series of correspondence with Complainant from June to July 2014. The correspondence included the Department Head's request that Complainant submit copies of the previous requests for an operational license so that an advice be prepared for the Minister.

According to the Department Head, the Complainant did not comply with said request.

**On 12 March 2015** the Department Head was reminded of the response deadline of 17



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March 2015 to the NOC, as no formal response was received.

**In a follow-up email of 13 March 2015** the Complaint Officer informed the Department Head that although information had been provided on the matter, a response was still needed to questions 4, 5 and 7 of the NOC.

**By email of 16 March 2015** the Department Head responded to questions 4, 5 and 7 of the NOC as follows:

Question 4:

Explain why a business is requested to pay government related business fees, if said business is unable because government did not issue an operational license.

*The related fees charged are for being in possession of the business license, in accordance with the Precariorechten-en retributieverordening.*

Question 5:

Why was Complainant's operational license issued seven years after the business license had been issued?

*The license is not issued by the same department. However, on the operational license, it says that the request for the operational license was received on January 8, 2013. Therefore, it could be assumed that the applicant was not ready to start her business until 2013 when she submitted the application for the operational license. As a result of these findings, the applicant was asked to provide proof of when she first applied for the operational license (see email sent to you on Friday). If it is shown that she applied directly after having received the business license, then the matter would have to be looked at differently than if she applied in 2013.*

Question 7:

a. Please submit a copy of the legislation or regulations applied in this case.

- *Precariorechten- en retributieverordening:*

*[http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/207497/207497\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/207497/207497_1.html) Refer to article VI of the Tarieventable.*

- *Vesitiginsgeregeling voor bedrijven:*

*[http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/142548/142548\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/142548/142548_1.html)- Landsverordening personenvervoer:*

*[http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/208315/208315\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Sint%20Maarten/208315/208315_1.html)*



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b. Explain how the pertinent legislation and or regulation is implemented in practice; provide documentation of the actual procedure followed, if any.

*Once the application has been submitted with all required information as outlined in article 5 of the LVO personenvervoer, an advice will be prepared by the department and sent to the Policy dept and the SG for signing/ approval before moving on to the Minister for his decision. In accordance with the LB personenvervoer*

*([http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Sint%20Maarten/206108/206108\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Sint%20Maarten/206108/206108_1.html)), there should be a committee that reviews these applications. However, the public transportation committee was suspended as of the former Executive Council Decision. The committee was not functioning as many members from the private sector did not attend meetings, therefore no quorum and advices were delayed for long period of times. The department of Inspection was tasked with the administrative work of the Committee, the advice to the Minister was approved by the Head of Inspection (now by the Head of Economic Licenses), Head of the Policy dept and the SG.*

**By email of 19 March 2015** Complainant responded to the information provided by the Department Head, regarding the reason why the operational license had been issued seven years after the business license was issued. In the response the Complainant stated that: *"In February 2005 we submitted our request for an operational license to operate a fleet of 50 vehicles. This was done early to ensure both permits/ licenses could be issued at the same time instead of having to wait until the business license was issued to submit a request for an operational license. However, despite our proactive approach in August 2006 the business license was issued solely. After submitting our request in 2005, we were never informed that an additional follow up letter was required. Determined, we continued over the years to pursue the license. In May 2013 we were finally successful."*

The response included a copy of the request for "a business license to operate a car rental", dated 4 February 2005.

**By letter dated 22 June 2015** the Preliminary Findings Report (PFR) was sent to the Department Head of Economic Licenses. In the PFR the Ombudsman issued the following recommendation:

- That a registration and tracking system for incoming requests and complaints be implemented within the Department of Economic Licenses and Public Transportation.

The Department Head was requested to respond to the findings outlined in the PFR by 6 July 2015.



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By email dated 7 July 2015 the Department Head confirmed her agreement with the recommendation issued in the PFR of 22 June 2015, and stated that the recommendation would be followed.

**Legal Basis:**

**Pursuant to article 19 section 1 of the National Ordinance Ombudsman (AB 2010, GT no. 20)**, the Ombudsman is authorized to request from government bodies, civil servants, the complainant, civil servants as experts or witnesses, all information and or documents pertaining to the investigation.

The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds (“*verschoningsrecht*” - see article 19 section 4).

**“Landsverordening vestigingsregeling voor bedrijven” (AB 2013, GT no. 362)**

“*Artikle 2*

*Het is verboden:*

- a. een zaak te vestigen en te drijven of te doen drijven;*
- b. een zaak te doen vestigen en te drijven of te doen drijven;*
- c. een zaak over te nemen en te drijven of te doen drijven;*
- d. een zaak te doen overnemen en te drijven of te doen drijven;*
- e. een zaak voort te zetten of te doen voortzetten;*
- f. een zaak ten aanzien van het publiek te verplaatsen;*
- g. een zaak van aard te wijzigen,*

*zonder een daartoe strekkende vergunning van de Minister van Toerisme, Economische Zaken, Verkeer en Telecommunicatie, hierna te noemen: de minister.”*

**“Landsverordening personenvervoer” (AB 2013, GT no. 118)**

“*Artikel 5*

- 1. De aanvraag om een vergunning geschiedt schriftelijk bij de minister en bevat tenminste de navolgende gegevens:*
  - a. naam en voorna(a)m(en), geboortedatum, geboorteplaats, adres en nationaliteit van de aanvrager;*
  - b. ingeval de aanvrager een rechtspersoon is: de juridische vorm, naam en zetel van de rechtspersoon, geboortedata, geboorteplaatsen, adressen en nationaliteit van de bestuursleden;*





- c. *een opgave van het (de) motorrijtuig(en), waarover de aanvrager beschikt of denkt te kunnen beschikken, onder vermelding van het aantal personen, voor het vervoer waarvan dit (deze) is (zijn) ingericht;*
        - d. *welke vergunning de aanvrager wenst.*
2. *Bij landsbesluit, houdende algemene maatregelen, kunnen nadere regels worden gesteld betreffende de wijze van aanvragen van vergunningen.*
3. *De aanvrager is gehouden alle door de minister en de commissie gewenste inlichtingen volledig en naar waarheid te verstrekken.”*

**“Landsverordening regelende de heffing en invordering van precariorechten en retributie”  
(AB 2013, GT no. 37)**

VI. “Retributies”

B. *“Onverminderd het bepaalde in artikel 1 jo. hoofdstuk 24 van de Tarieventabel van de Legesverordening wordt jaarlijks bij het begin van het kalenderjaar van de vergunninghouder een recht geheven voor het hebben van een vergunning voor:*

- a. *het vestigen en drijven van een zaak, verleend aan een naamloze of besloten vennootschap: NAf 1.550,-;*
- b. *om als directeur op te treden van een zaak met meer dan een directeur, NAf 625,-;*
- c. *om als directeur op te treden van een zaak met slechts een directeur, NAf 312,50;*
- d. *om de aard van een zaak te wijzigen of deze te verplaatsen, NAf 312,50;*
- e. *het vestigen van een filiaal, bijkantoor of andere nederzetting van reeds gevestigde zaken, NAf 1250,-;*
- f. *het verkrijgen van een reeds verleende vergunning, NAf 312,50;*
- g. *wijziging van de directeursvergunning, NAf 312,50;*
- h. *om als directeur, met domicilie in het buitenland op te treden, NAf 1.250,-;*
- i. *indien de belastingplicht voor het hebben van een vergunning zoals bedoeld in sub a t/m l, in de loop van het belastingjaar aanvangt, is het recht verschuldigd over zoveel twaalfde gedeelten van het voor dat jaar verschuldigde recht als er in dat jaar, na het tijdstip van de aanvang van de belastingplicht, nog volle kalendermaanden overblijven;*
- j. *indien de belastingplicht voor het hebben van een vergunning zoals bedoeld in sub a t/m l, in de loop van het belastingjaar eindigt, wordt ontheffing verleend over zoveel twaalfde gedeelten van het voor dat jaar verschuldigde recht als er in dat jaar, na het tijdstip van de beëindiging van de belastingplicht, (nog) volle kalendermaanden overblijven.*

*Van de betaling van de onder sub 1 bedoelde leges zijn vrijgesteld de bedrijven die zich*



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*onder de auspiciën van het "Netherlands Antilles Residence and Investment Program" vestigen, alsmede zuivere beleggings- of off-shore-maatschappijen."*

**Standard(s) of proper conduct:**

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *Active and adequate information provision*, *Adequate organization of services* and *Reasonableness and proportionality*.

The standard of *Active and adequate information provision* requires that administrative bodies are required to provide adequate information to the public actively and upon request, in the interest of managing the affairs of the citizens. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated.

That administrative bodies are required to provide adequate information to the public actively and upon request, entails the duty to provide citizens with information upon request; as well as have the duty to inform the citizen on its own initiative about proceedings that have a direct effect on them. Proper information provision creates legal certainty for all.

*Adequate organization of services* requires that administrative bodies organize their administration and operation in a manner which guarantees proper service to the public. Proper service refers to the principle of meticulousness in the administration. Proper service also includes organizing the administration in a manner that is lawful, effective, transparent, accessible, and equipped to provide prompt service and information. Continuity should be guaranteed; proper registration and archiving are essential in achieving and guaranteeing continuity in the administration.

The standard of *Reasonableness and Proportionality* complement each other. The standard of reasonableness provides that a decision made randomly by a public body is unacceptable; while the standard of proportionality governs the relation between the goal and the method used to achieve the pertinent goal.

An administrative body is obliged to weigh interests in reaching a decision and to observe the principle of proportionality. This requires that the negative consequences of an action to achieve a certain goal may not be disproportionate to the interest of the citizen.





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**Conclusion:**

By letter dated 4 February 2005 “*a business permit for the operation*” a car rental was requested.

By decree of 25 April 2006 a business license was issued to Complainant. By Ministerial Decree dated 6 May 2013 Complainant’s operational license was issued.

Since the issuance of the operational license in 2013, Complainant has been requested to pay business license fees for the periods of 2006 to 2013.

In a letter dated 20 January 2014, an objection was submitted to the Secretary General of the Ministry of Tourism, Economic Affairs, Traffic and Telecommunication (TEZVT), expressing Complainant’s disagreement with the payment of the accumulated business license fees. The request was that the fees be pardoned, as it was not possible to operate the business until 2013.

By email of 6 March 2014 the Department Head of Economic Licenses presented two options to the situation in response to the aforementioned letter. Option 1 was to cancel the business license, thereby nullifying the operational license and then reapply, taking into account that a new business and/or operational license may not be issued. Option 2 was to pay the accumulated fees, despite the fact that the operational license was issued in 2013.

By letter dated 21 May 2014 an objection was submitted to the Minister of TEZVT. In the letter Complainant’s standpoint as presented in the letter dated 20 January 2014 was reiterated; the Minister was requested to pardon the business license fees for the period of 2007-2012.

To date of filing the complaint with the Ombudsman on 4 January 2015 Complainant claimed that there had been no response to the letter dated 21 May 2014.

Considering the content of the letter dated 4 February 2005 “*a request for a business permit for the operation of ...*”. The Ombudsman establishes that the request mentioned is not clear; as a business license and an operational license are separate permits pursuant to the law. A company (N.V.) with a business license cannot operate a business without an operational license.

The findings in the investigation suggest that there may have been a misunderstanding on the



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matter. Parties may have been unclear regarding Complainant's request, and /or Complainant may not have been properly informed about the procedures provided for by law regarding a business license and subsequent operational permit.

The Ombudsman established that the Complainant received a business license by Decree of 25 April 2006, referring to a request of 11 February 2005. The Ombudsman was not provided by either party a copy of the letter dated 8 January 2013 mentioned in the Ministerial Decree dated 6 May 2013. Neither was a copy of an earlier request for an operational license, other than the letter dated 4 February 2005 provided. The Ombudsman therefore concludes that the information provided and subsequently the findings in this investigation are incomplete.

In response to the NOC, the Head of the Department stated that the public transportation committee charged to review applications was not functioning and was suspended. The Ombudsman observes that this may have been the reason for delay and uncertainty in this case.

Based on the email correspondence provided to the Ombudsman by the Department Head of Economic Licenses, it appears that Complainant may have received a response to the letter dated 21 May 2014. However, the Ombudsman is unable to determine the date of the response and proof that the Complainant was indeed informed accordingly.

Having concluded that the findings in this case are incomplete the Ombudsman will refrain from further investigation of this case due to the lack of information/written documents. The Ombudsman however establishes that the standards of proper conduct *Active and adequate information provision* and *Adequate organization of services* were not observed.

It could not be established that the Complainant was adequately informed of the (legal) procedures/requirements to secure the permits necessary to operate a car rental business. In addition the absence of a functioning body responsible for the review of applications with regard to "*Landsverordening personenvervoer*" resulted in delays in issuing advices and subsequent business licenses.

The standard of *Reasonableness and proportionality* may require that the request for pardon of the outstanding fees be reviewed, taking into consideration that the responsibilities and expectations of Complainant were not clearly communicated. As such the Ombudsman issues the following recommendation:

- To review the request of Complainant to wave the business license fees over the period of



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2007 -2012 taking the standard of *Reasonableness and proportionality* into consideration.

The Ombudsman requests a status report on the recommendation(s) **within three (3) months** from the date of this letter, **however no later than 20 January 2016**.

Sincerely,

Dr.R. (Nilda) J.A. Arduin  
Ombudsman

Cc: - Mr. Ernest Sams, Minister;  
- Mr. Miguel de Weever, Acting Secretary General;  
- Complainant's representative.