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SINT MAARTEN

Notice of Termination Investigation

(Article 16 and 17 sub 3 National Ordinance Ombudsman)

Ministry of Public Health, Social Development and Labour
The Honorable Mrs. R. Bourne-Gumbs, Acting Minister of Public Health, Social
Development and Labour
Clem Labega Square,
Philipsburg
Sint Maarten

Philipsburg, 12 February, 2015

Your ref.no:
Our ref.no: OM-OBM 0149/2015

Your letter of:
Complaint no.: 2014/00179

The Honorable Minister Bourne-Gumbs,

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

Summary of Complaint:

The Complainant (Complainant) send a letter dated May 22, 2014 to the Minister of Healthcare, Social Development and Labour ("VSA") to request the Minister to intervene in the incident that the Government Mediator does not react on requests from the COMPLAINANT to mediate. The COMPLAINANT complains that no response is received from the Minister of VSA on the aforementioned letter.

Findings:

The abovementioned letter dated May 22, 2014 refers to two other letters that the Complainant sent to the Government Mediator. The pertinent letters are dated March 25, 2014; one letter deals with a request to the Government Mediator to mediate in cases regarding the Telem Group of Companies (TELEM) and in the other letter to mediate in cases regarding the Sint Maarten Cable TV.

During the investigation of the complaint the COMPLAINANT also handed the Bureau Ombudsman several documents from which became clear that a court case between COMPLAINANT and Sint Maarten Cable TV might be ongoing. A verdict in a summary procedure between aforementioned parties, given on August 16, 2013 concludes that Sint



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Maarten Cable TV should allow COMPLAINANT to start negotiations for a collective labour agreement. Furthermore, a statement of appeal from Sint Maarten Cable TV dated September 20, 2013 indicating that an appeal procedure was started against aforementioned decision.

On September 18, 2014 a Notification of Complaint (NOC) is sent to the Minister of VSA in which he is requested inter alia to answer the following questions:

- Explain why the letter from COMPLAINANT dated May 22, 2014 remained unanswered?
- Which are the procedures to handle letters from citizens or entities to the Minister of VSA?

In a letter dated October 7, 2014 the Government Mediator responded to the NOC as requested by the Minister of VSA.

The Government Mediator stated that as provided by article 5 of the *Arbeidsgeschillenlandsverordening* (AB 2013, GT no.344) he refrains from mediating in the case of the Sint Maarten Cable TV, because there is a lawsuit ongoing in the pertinent case.

In regard to the case of TELEM the Government Mediator informed the Ombudsman that he notified the President of COMPLAINANT that there would be a conflict of interest if he would be the mediator, as he is chairman of the TELEM. Therefore, the Government Mediator had as provided by article 8 *Arbeidsgeschillenlandsverordening* (AB 2013, GT no. 344) appointed another extraordinary Mediator. According to the Government Mediator he informed the President of the COMPLAINANT about the aforementioned. The Government Mediator indicated that the parties agreed on this course of action, as well as the person to be appointed as such. However, the prospective Mediator decided to return to the Netherlands, and was no longer available.

The Government Mediator in answering the NOC informed the Ombudsman that - with the consent of the Minister of VSA – he is willing in consultation with the Director of the COMPLAINANT, to find a suitable candidate for the function as an extraordinary Government Mediator.

Per email dated November 6, 2014 the Ombudsman requested an explanation from the COMPLAINANT if Court proceedings are ongoing regarding the Sint Maarten Cable TV case, and if an extraordinary Mediator has been proposed by the Government Mediator in the TELEM case?

The COMPLAINANT informed the Ombudsman that an appeal is ongoing regarding Sint Maarten Cable TV, but according to the COMPLAINANT the appeal does not concern anything in regard to the letter dated March 25, 2014.

In reference to the TELEM case COMPLAINANT responded that at one occasion the Government Mediator did ask him: “... *if the union have any problem he appointing an extraordinary mediator and I told him that it would not be any problem, but that stay in the air*”, and “*The Minister also post the same question to me when I had a telephone*”



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conversation with him.....”.

On November 10, 2014 the COMPLAINANT provided the Ombudsman with the verdict dated November 7, 2014 in the case against Sint Maarten Cable TV. The Court reiterates in pertinent verdict that Sint Maarten Cable TV should start negotiations for a collective labour agreement with COMPLAINANT. Hence, there is apparently indeed a role in this for the Government Mediator.

On December 1, 2014 the Ombudsman sent a Preliminary Findings Report to the Minister of VSA. By email of December 17, 2014 the Minister of VSA responded to the PFR regarding the complaint about TELEM, reiterating what was mentioned as a response to the NOC by the Government Mediator, adding a mediation contract dated October 27, 2014 between TELEM and COMPLAINANT.

With reference to the complaint regarding the Sint Maarten Cable TV the Minister of VSA mentioned that article 5 of the *Arbeidsgeschillenlandsverordening* prohibits in this case that the Government Mediator mediates between parties, because the Government Mediator is part of a Court case of Sint Maarten Cable TV against him. Moreover, the Minister of VSA stated that the content of the verdict dated November 7, 2014 in the case between COMPLAINANT and Sint Maarten Cable TV is not known to him.

On January 19, 2015 COMPLAINANT confirms to the Ombudsman via a telephone conversation that a private mediator is appointed. As a consequence of the aforementioned COMPLAINANT sent an e-mail dated January 19, 2015 with the verdict from November 7, 2014 attached to the Government Mediator.

On January 21, 2015 the Government Mediator provides the Ombudsman with yet another verdict dated December 15, 2014 of a case from Sint Maarten Cable TV against him - about his task as a Mediator - arguing that ‘de facto’ a court case is still going on involving COMPLAINANT, and there is still the possibility for Sint Maarten Cable TV to appeal this verdict.

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 these cases are: The *standards of active and adequate information provision and promptness*.

The *standard of active and adequate information provision* provides that a public body is required to actively provide adequate information to the citizen concerning the interest of the citizen. On the one hand, this entails adequately replying to a question posed by the citizen, and on the other hand it entails that the public body actively informs the citizens of actions that affect the interests of the citizen



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The *standard of Promptness* requires that a government body is expected to observe the applicable deadlines. If no deadlines are specified, the governing body must act within a "reasonable" period to come to a decision. The interpretation of a "reasonable" time depends on the facts and circumstances. If a delay can be expected in regard to a decision which needs to be made, the person should be informed in a timely manner.

Conclusion:

The Complainant (COMPLAINANT) sent a letter dated May 22, 2014 to the Minister of Public Health, Social Development and Labour ("VSA") to request the Minister to intervene in the situation that the Government Mediator does not react to letters dated March 25, 2014 to mediate regarding issues concerning the Telem Group of Companies (TELEM) and Sint Maarten Cable TV.

On September 18, 2014 the Ombudsman sent a Notification of Complaint (NOC) to the Minister of VSA, who is responsible for acts of the Government Mediator. The Government Mediator answers on behalf of the Minister of VSA to the NOC, stating that a lawsuit is ongoing regarding the Sint Maarten Cable TV situation, and therefore as provided by article 5 *Arbeidsgeschillenlandsverordening* (AB 2013, GT no.344) he is not allowed to mediate in this case. On November 7, 2014 a verdict is given in the case between Sint Maarten Cable TV and COMPLAINANT, and on December 15, 2014 another verdict is pronounced in a case between Sint Maarten Cable TV and the Government Mediator.

The Government Mediator argues that in the TELEM case there is a conflict of interest, because he is chairman of the Board, and consequently informed COMPLAINANT that he would appoint an extraordinary Mediator. However, the pertinent extraordinary Mediator returned to the Netherlands. Complainant confirmed this, subsequently a mediation contract was signed between COMPLAINANT and TELEM.

The Ombudsman concludes that despite the aforementioned, the letters to the Minister needed to be answered; the Minister of VSA or the Government Mediator should have responded to the letters of the COMPLAINANT to inform Complainant why the Government Mediator could not mediate. An answer in writing is required to avoid that the position of the Mediator is not clear. That the extraordinary Government Mediator returned to the Netherlands was however no reason not to follow up the request for mediation in the TELEM case for more than seven months.

Considering that court cases relating to the complaint involving Sint Maarten Cable TV are ongoing, the Ombudsman is not authorized to deal with this complaint, and will accordingly refrain from further investigation.

While the complaint is partly founded, and it is concluded that the Minister of VSA in the



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complaint regarding TELEM did not comply with the *standards of proper conduct of adequate information provision and promptness*, the Ombudsman nonetheless also refrains from further investigation of this complaint, because on October 27, 2014 the COMPLAINANT and TELEM have agreed to appoint a private mediator. Both the Mediator and the Minister are advised to observe propriety at all times, and respond to letters in writing to avoid doubt and uncertainty regarding request and queries from citizens

Sincerely,

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

CC: Mr. R. Boasman, Government Mediator
Mrs. J. Wuite, Secretary General
Mr., COMPLAINANT