



PRIME MINISTER OF SINT MAARTEN

Minister-President van Sint Maarten

Staten van Sint Maarten

Zittingsjaar 2020-2021-147

No. 6

The President of the parliament of Sint Maarten
Mr. Rolando Brison
Wilhelminastraat #1
Philipsburg, Sint Maarten

Philipsburg, June 24, 2021

STATEN VAN SINT MAARTEN			
Ingek. 24 JUN 2021			
Volgnr. 15/793/20-21			
Par.	A	vs	GR.

Subject: Presenting the Note following the Final Report of Parliament on the increase of the eligible age for members of the Council of Advice, Ombudsman, General Audit Chamber and the Constitutional Court.

DIV# 11680

Honorable President of Parliament,

Please find attached the note following the final report on the above-mentioned draft national ordinance.

I trust to have informed you sufficiently.

Sincerely,


Egbert J. Doran
Deputy Prime Minister of Sint Maarten

Government Administration Building

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PRIME MINISTER OF SINT MAARTEN
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Date: June 16, 2021

CENTRAL COMMITTEE MEETING FOR GENERAL AFFAIRS
On the Ordinance to amend the Legal Age limit for the appointments to HoCs

MP William

Statement: The proposal is to eliminate the age limit all together.

Answer: The legislations regarding the High Councils of State of the countries of the Kingdom all have a maximum age for its members. The maximum age is presently 70 years. The motive behind this retirement age is that, just like almost every labor relation, there comes an end to that when a certain (old) age is reached. The proposal to eliminate the age limit all together will bring a prompt end to this general belief and practice in our political and constitutional system. This is a drastic change in the system. If Government or even Parliament want to introduce such a drastic amendment of not only the age limit of the members of the Council of Advice, but members of all the other High Councils of State, it is imperative to consult the Council of Advice about this intention before it is put on the table for decision making by Parliament. This is also the ruling of the Constitutional Court in its verdict of July 7, 2016, in the case of the Ombudsman regarding the National Ordinance Integrity Chamber. During the legislative procedure Government introduced an amendment of the draft ordinance during the meeting in Parliament after the Council of Advice already rendered its advice on the draft national ordinance. Parliament approved the draft national ordinance, including the amendment as proposed by Government. The Ombudsman did not agree that Parliament approved the draft ordinance, including the amendment, without requesting advice from the Council Advice on the amendment, which was considered a drastic change of the draft ordinance. The Ombudsman appealed to the Constitutional Court on the basis that the drastic amendment and the national ordinance was approved by Parliament without consultation of the Council of Advice. The Constitutional Court considered this act as a violation of the Constitution of Sint Maarten and used this as one of the mayor considerations to nullify the complete National Ordinance Integrity Chamber.

Partially based on this judicial history Government would advise strongly, that a “nota van wijziging” of this nature be presented to the Council of Advice for a reaction. As the complete removal was not presented to the Council and would need to be reviewed in the broader scope of our total legal system which is a test that the Council executes. Additionally, it is advisable to consult with the High Council of States on this adjustment as they would be the institutions affected by such a change.

MP Wescot-Williams

1. There are other technical issues regarding the Constitutional Court and the Ombudsman. **FYI**

2. The legislative trajectory of Government and the priority legislation that the Government is working on now right now? What are those issues and proposal draft laws can Parliament expect on short term? Having consideration of the agreements under the uitvoeringsagenda I think that changes the game. If the Government, based on the uitvoeringsagenda, overhauling the education system then this will need to be done in close collaboration with Parliament to prevent us working alongside each other instead of working together.

Answer: With the execution of the implementation agenda it is foreseen that local legislation will need adjustments. Please note that in this phase we are still doing an inventory and compiling studies on the relevant subjects. Based on the results of mentioned studies, the next steps will be discussed and approved by Government, and we will have an overview of the laws to be adjusted sent to Parliament.

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In the meantime, I can mention that the drafts were reviewed by JZ&W and will be sent to the Council of Ministers for approval and then sent on to the Council for advice.

3. Who are the current members of the Constitutional court?

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Mrs. Becker is pending her appointment as Secretary (Griffier) - this is still in process

4. What in terms of the Financing of these institutions, there were some issues with the financing?

Answer: The institutions will propose a budget which will be sent directly to Finance (FBB) and afterwards approved in the Council of Ministers, as part of the complete budget, I am not sure what is meant exactly with the second part of your question MP, but as mentioned before the budget are approved as part of the whole budget.

Furthermore, it may be good to mention, that the Constitutional Court falls under the responsibility of the Minister of Justice, and the High Council of State under the responsibility of the Minister of General Affairs.

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1. How many cases has been difficult to find a replace of HOC after the member has reached 70?

Answer: Council of Advice currently has 6 members (4 regular and 2 extra ordinary), the CC should have 3, only had 1 for a long time, but Justice Minister recently finalized the process to instate 1 who's term had expired. 1 person is over 70 is awaiting the law to be re-appointed; the current Ombudsman is a young person, as is the Chair of the General Audit chamber.

2. Please provide a detailed explanation of efforts made to find a replacement of the Vice Chair of the RVA from January 2020 to date. -

Answer: There was a process of head hunting within the respective networks of the current members utilizing the profiles in the Rules of Order of the Council of Advice – Persons having legal policy, educational/social, financial/economic field with competencies in management are all eligible for appointment.

3. What concrete measures are being taken to make sure that younger qualified person can fill these positions within a couple of years?

Answer: I think I can answer this question, with the following. All the high Councils of State, have their members, and they have the secretariat which supports the Chair and the other members. The staff of the secretariat are the (young) professionals, experts in their field, who together with the SG (also a young) person does the relevant research and provides the advice to the members for decision making. The legal position of the staff of the secretariat is the same as for the civil servants.

The members are experienced professionals who in the form of a part-time job, offer their expertise and knowledge in approval of the proposed advices. So, the training the MP is referring to, is part of the work that person should have had during their professional career, and a training is provided once they become members or deputy members.

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5. Can the minister explain what the urgent need is as it relates to these institutions?

Answer: As mentioned, this has been the intention for successive governments for the last years. The Council of Advice is currently without a Chair which hampers the functioning of this Council and in turn hampers the ability of Government to legislate in a timely manner as the council is a part of this process.

6. Intention of the law was to go back retroactive to 2018, is it because the members in the function were beyond 70?

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Answer: The eldest at the RvA is 67.

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Answer: At the RvA the VC naf. 4000, members naf. 3500 and extra-ordinary members naf. 1500 per month as a stipend. This information is regulated by national decree etc and will be sent to parliament. ***

10. Can the minister provide all documentation to Parliament in reference to any such cases as to where the person is legally being compensated? If such a situation existed, what action or decision was taken by the relevant HoC during the time that the person above the legally established age and Minister is requested to provide a comprehensive listing in writing to parliament (s)?

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12. Can the minister explain the procedure generally being employed by the each HoCs to recruit new members? Also what efforts have been to ensure that possible replacement members are trained before age of 70?

Answer has already been provided under question 2 of MP Emmanuel.

12. It was stated that the age should increase based on increase life expectancy and the general improvement of quality of life based on better health care. Can the minister explain how the Minister can determine that life expectancy has increased on sxm? Can the minister provide documentation to support this statement? Can the minister outline in which areas the general quality of life has improved? Can the minister provide the report that support this statement? Can the Minister explain in which ways health care has improved on the island and how this correlate specifically to the general quality of life and increase life expectancy? I would like to know what that is based on?

Answer: There is not a particular study on this subject. However, it is general knowledge life expectancy is rising, also in Sint Maarten. When the research was done for example on the raising of the pension age on Sint Maarten (the pension national ordinance which was approved this year in parliament), the actuaries looked at global and regional trends, also for the eastern Caribbean, and Curacao and Aruba, and they found they are all rising. This trend has not been different for decades. The local figures from STAT and Civil registry, are from a population that is considered too small to have a reliable stable reading. It means it can fluctuate per year because of coincidences. Therefore, they are used mostly to verify if they do not statistically deviate too much from the regional trends. Our local figures have been consistently showing the same trend for decades. Next to that, as mentioned, we can all see, especially in our environment our professionals are living longer. we all know at least one retired civil servant who is still active and productive. In the case of the member of the High Council of State, the proof is right there.

13. By presenting this law the Minister is stating there are no qualified persons below the age of 70? Can the minister explain how they came to this conclusion (no young persons for these position) can this be provided in writing?

Answer: I have personally approached some young professionals to get to know their interest in becoming (part time) member of some of the High Councils. There has been little interest from them as they are still actively building their careers and experience, as well as growing their families to extend themselves with this extra responsibility. However, please note that we do have young persons employed in the secretariat where the lion's share of the work is done.

14. Is the minister of the opinion that raising the age limit 70 to 75 is sustainable?

Answer: The answer is yes. Although I will wait and see what the decision of parliament is, based on this draft, I consider 75 to be a reasonable age and that it is sustainable. Although initially young professionals are not the intended target group to become a member they are not exempted and therefore, I can imagine, that we may need to create more awareness that these kinds of functions are available for our professionals with the relevant experience in the profiles and competencies as described earlier.

15. Is this an indication that a way down the road the pensionable age should be raised to 75 years?

Answer: This of course not an indication. Again, I want to stress, that we are talking about the members (part-time functions) and not the staff of the secretariat. Therefore, no, this is not an indication of a trend to raise the pension age for civil servants to 75. As a matter of fact, the 70 year limit was based on the retirement age of 60, and as such looked at productive years post the regular employment on a part time basis. As such the increase is in line with the trend established by the pension age and not the other way around.

MP Buncamper

1. Maybe we need to make the positions more compatible with the needs of the society, and or raise income.

Answer: It is indeed something we have thought about, especially as it pertains to the Chair. It was brought to my attention upon entering this function that the workload is much more than the other members and should be better compensated. This will be carefully reviewed, and decided upon, but would not solve our immediate challenge especially considering our small size and available professionals especially with a legal background. As mentioned before, High Councils all over the world recruit seasoned and mostly retired, or close to retired persons to carry out these functions.

2. Are they compensated via a stipend or salary?

Answer: They receive stipends – however, as mentioned previously, this information will be sent in writing since these are regulated by national decree, and parliament will receive the relevant documents.

3. Make it more compatible with the market conform so to increase.

Answer: this was answered already at Question 1.

MP Rolando Brison

1. I too, have a question to whether age should be a factor at all for these positions in keeping with the suggestion of MP Marlin.

Answer: This can be looked into, if Parliament is in favor of this pending the advice of the Council of Advice as was explained in response to MP Marlin.

2. Concern about the source of the issue regarding the remuneration of the members?

Answer: This was considered part time work for person who it would have been assumed had already had a successful career, however concerning the remuneration of the members, as previously mentioned, I will send the regulations on this subject to parliament and have them assessed as well to see if they are fitting in this time.

3. Incompatibility of the members of the Council of Advice art 6. is left open unlike other functions who determines if its incompatible? Would the government consider making amendments to that to lessen the incompatibility or to define the incompatibility?

Answer: I take note of the comment of the honorable Chair, and I will instruct the department of Affairs to prepare an advice on this matter to be discussed in the Council of Ministers. Please bear in mind that such is seeing the lack of capacity and the focus on the other reform measure not of high priority.

Second round of questions/clarifications

MP SWW

1) in response to my question on the legislative priority of Government and changes that need to come to SXM to work with the WB. And then the Minister made a listing of the tax ordinances, and did they relate to the persons coming in or are they separate a issue and what is the gist of these changes?

Answer: Yes, it is related to the Establishment agreement. Most of the adjustments have to do with exemption of taxes.

2) at least one person at the CC awaiting this change. Are there in the other HoCs are there any other persons finding themselves in this similar situation?

Answer: In my previous answers I mentioned that to my knowledge the Council of Advice and the Constitutional Court.

MP Buncamper

No questions

MP Emmanuel clarification

1) The reason for this urgent change is only an issue mentioned by the CoA, is it justifiable to urgently increase the legal age to 75 bypassing the constitutional test by the Ombudsman?

Answer: Please bear in mind, that since we are aware of this predicament by the Council of Advice, I don't think it is good governance to await until the others are in the same situation to then have the law adjusted also for them. Also it is noteworthy to mention that no one is being negatively affected by the passing of this law and the institutions falling under the scope of this law do not have objections to this fact.

2) Head hunting was used to source individuals, can it be then concluded that no general recruitment process was done?

Answer: Indeed, no general recruitment was done as it had been become customary to approach individual persons who were deemed qualified by the sitting members. However, an open recruitment may be absolutely advisable in the future, and I recommend that younger persons interesting in serving the country in this manner would send an open application to the relevant councils for their perusal. Taking note that HoCs they are independent in how they do the recruitment and Government only facilitate these processes with the finalization of the LB upon recommendation of the sitting members.

3) What is the proof that persons can't be found if no open recruitment was done?

Answer: See my previous answer.

4) To her knowledge no one over 70 is currently at the HoCs is this verified or an assumption?

Answer: This is based on the information provided by the institutions themselves.

5) If no studies were executed as was the case with the pensionable age is it to be concluded that laws are being changed with out substantiated bases .

Answer: this is not completely correct. In my answer I mentioned based on what the conclusion was drawn. Mister Chair for all clarity I want to repeat my answer there is not a particular study on this subject. However, it is general knowledge that life expectancy is rising, also in Sint Maarten. When the research was done for example on the raising of the pension age on Sint Maarten (the pension national ordinance which was approved this year in parliament), the actuaries looked at global and regional trends, also for the eastern Caribbean, and Curacao and Aruba, and they found they are all rising. This trend has not been different for decades. The local figures from STAT and Civil registry, are from a population that is considered too small to have a reliable stable reading. It means it can fluctuate per year because of coincidences. Therefore, they are used mostly to verify if they do not statistically deviate too much from the regional trends. Our local figures have been consistently showing the same trend for decades.

MP Brison

1. Is it possible for persons or young locals a chance to apply for these positions?

Answer As long as they comply with the requirement they may apply, as mentioned earlier, they are encouraged, if they can spare the time for such a part-time function to send an open application to the relevant HC.

2. Does the parliament have a role to play in the appointment of various members of the council or can ask pertinent questions. What I mean to say is that there is a fail safe built in there for Parliament to review.

Answer : In MP Brison in so far as the role of Parliament has been regulated as such of course Parliament such use its



GOVERNMENT OF SINT MAARTEN

Prime Minister and Minister of Finance of Sint Maarten

June 23th 2021

NOTE FOLLOWING THE FINAL REPORT

Parliament in its meeting of the Central Committee has exchanged views with the Government on the Draft National Ordinance on the Temporary National Ordinance Covid-19 cuts employment conditions for civil servants.

Parliament considers the present draft to be sufficiently prepared if the questions asked below are answered in time for the public meeting so that the draft can be discussed in a public meeting.

In order for Parliament to consider the present draft to be sufficiently prepared, so that the draft can be discussed in a public meeting, Parliament is hereby provided with the answers to the questions stated in its final report.

The text of the questions as stated in the final report is expressed in black, while the text of the answers are provided in blue and brown.

Questions and Answers

MP William

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Answer: The legislations regarding the High Councils of State of the countries of the Kingdom all have a maximum age for its members. The maximum age is presently 70 years. The motive behind this retirement age is that, just like almost every labor relation, there comes an end to that when a certain (old) age is reached. The proposal to eliminate the age limit all together will bring a prompt end to this general belief and practice in our political and constitutional system. This is a drastic change in the system. If Government or even Parliament want to introduce such a drastic amendment of not only the age limit of the members of the Council of Advice, but members of all the other High Councils of State, it is imperative to consult the Council of Advice about this intention before it is put on the table for decision making by Parliament. This is also the ruling of the Constitutional Court in its verdict of July 7, 2016, in the case of the Ombudsman regarding the National Ordinance Integrity Chamber. During the legislative procedure Government introduced an amendment of the draft ordinance during the meeting in Parliament after the Council of Advice already rendered its advice on the draft national ordinance. Parliament approved the draft national ordinance, including the amendment as proposed by Government. The Ombudsman did not agree that Parliament approved the draft ordinance, including the amendment, without requesting advice from the Council Advice

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Answer: The answer is yes. Although I will wait and see what the decision of parliament is, based on this draft, I consider 75 to be a reasonable age and that it is sustainable. Although initially young professionals are not the intended target group to become a member they are not exempted and therefore, I can imagine, that we may need to create more awareness that these kinds of functions are available for our professionals with the relevant experience in the profiles and competencies as described earlier.

15. Is this an indication that a way down the road the pensionable age should be raised to 75 years?

Answer: This of course not an indication. Again, I want to stress, that we are talking about the members (part-time functions) and not the staff of the secretariat. Therefore, no, this is not an indication of a trend to raise the pension age for civil servants to 75. As a matter of fact, the 70 year limit was based on the retirement age of 60, and as such looked at productive years post the regular employment on a part time basis. As such the increase is in line with the trend established by the pension age and not the other way around.

MP Buncamper

1. Maybe we need to make the positions more compatible with the needs of the society, and or raise income.

Answer: It is indeed something we have thought about, especially as it pertains to the Chair. It was brought to my attention upon entering this function that the workload is much more than the other members and should be better compensated. This will be carefully reviewed, and decided upon, but would not solve our immediate challenge especially considering our small size and available professionals especially with a legal background. As mentioned before, High Councils all over the world recruit seasoned and mostly retired, or close to retired persons to carry out these functions.

2. Are they compensated via a stipend or salary?

Answer: They receive stipends – however, as mentioned previously, this information will be sent in writing since these are regulated by national decree, and parliament will receive the relevant documents.

3. Make it more compatible with the market conform so to increase.

Answer: this was answered already at Question 1.

MP Rolando Brison

1. I too, have a question to whether age should be a factor at all for these positions in keeping with the suggestion of MP Marlin.

Answer: This can be looked into, if Parliament is in favor of this pending the advice of the Council of Advice as was explained in response to MP Marlin.

2. Concern about the source of the issue regarding the remuneration of the members?

Answer: This was considered part time work for person who it would have been assumed had already had a successful career, however concerning the remuneration of the members, as previously mentioned, I will send the regulations on this subject to parliament and have them assessed as well to see if they are fitting in this time.

3. Incompatibility of the members of the Council of Advice art 6 is left open unlike other functions who determines if its incompatible? Would the government consider making amendments to that to lessen the incompatibility or to define the incompatibility?

Answer: I take note of the comment of the honorable Chair, and I will instruct the department of Affairs to prepare an advice on this matter to be discussed in the Council of Ministers. Please bear in mind that such is seeing the lack of capacity and the focus on the other reform measure not of high priority.

Second round of questions/clarifications

MP SWW

- 1) In response to my question on the legislative priority of Government and changes that need to come to SXM to work with the WB. And then the Minister made a listing of the tax ordinances, and did they relate to the persons coming in or are they separate a issue and what is the gist of these changes?

Answer: Yes, it is related to the Establishment agreement. Most of the adjustments have to do with exemption of taxes.

- 2) at least one person at the CC awaiting this change. Are there in the other HoCs are there any other persons finding themselves in this similar situation?

Answer: In my previous answers I mentioned that to my knowledge the Council of Advice and the Constitutional Court.

MP Buncamper

No questions

MP Emmanuel clarification

- 1) The reason for this urgent change is only an issue mentioned by the CoA, is it justifiable to urgently increase the legal age to 75 bypassing the constitutional test by the Ombudsman?

Answer: Please bear in mind, that since we are aware of this predicament by the Council of Advice, I don't think it is good governance to await until the others are in the same situation to then have the law adjusted also for them. Also it is noteworthy to mention that no one is being negatively affected by the passing of this law and the institutions falling under the scope of this law do not have objections to this fact.

- 2) Head hunting was used to source individuals, can it be then concluded that no general recruitment process was done?

Answer: Indeed, no general recruitment was done as it had been become customary to approach individual persons who were deemed qualified by the sitting members. However, an open recruitment may be absolutely advisable in the future, and I recommend that younger persons interesting in serving the country in this manner would send an open application to the relevant councils for their perusal. Taking note that HoCs they are independent in how they do the recruitment and Government only facilitate these processes with the finalization of the LB upon recommendation of the sitting members.

- 3) What is the proof that persons can't be found if no open recruitment was done?

Answer: See my previous answer.

4) To her knowledge no one over 70 is currently at the HoCs is this verified or an assumption?

Answer: This is based on the information provided by the institutions themselves.

5) If no studies were executed as was the case with the pensionable age is it to be concluded that laws are being changed without substantiated bases.

Answer: this is not completely correct. In my answer I mentioned based on what the conclusion was drawn. Mister Chair for all clarity I want to repeat my answer there is not a particular study on this subject. However, it is general knowledge that life expectancy is rising, also in Sint Maarten. When the research was done for example on the raising of the pension age on Sint Maarten (the pension national ordinance which was approved this year in parliament), the actuaries looked at global and regional trends, also for the eastern Caribbean, and Curacao and Aruba, and they found they are all rising. This trend has not been different for decades. The local figures from STAT and Civil registry, are from a population that is considered too small to have a reliable stable reading. It means it can fluctuate per year because of coincidences. Therefore, they are used mostly to verify if they do not statistically deviate too much from the regional trends. Our local figures have been consistently showing the same trend for decades.

MP Brison

1. Is it possible for persons or young locals a chance to apply for these positions?

Answer: As long as they comply with the requirement they may apply, as mentioned earlier, they are encouraged, if they can spare the time for such a part-time function to send an open application to the relevant HC.

2. Does the parliament have a role to play in the appointment of various members of the council or can ask pertinent questions. What I mean to say is that there is a fail safe built in there for Parliament to review.

Answer : In MP Brison in so far as the role of Parliament has been regulated as such of course Parliament such use its