



# Parliament of Sint Maarten

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## Staten van Sint Maarten

**Parliamentary Year 2020-2021-147**

**National Ordinance amending the National Ordinance of General Audit Chamber, the National Ordinance Constitutional Court, the National Ordinance Ombudsman and the National Ordinance Council of Advice in connection with raising the age limit for members**

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**Report  
No. 5**

Parliament, in its meeting of the Central Committee, has exchanged views with the Government on the Draft National Ordinance amending the National Ordinance of General Audit Chamber, the National Ordinance Constitutional Court, the National Ordinance Ombudsman, and the National Ordinance Council of Advice in connection with raising the age limit for members.

Parliament considers the current draft to be adequately prepared when the questions below are answered in time for the public meeting to discuss the draft public meeting.

**The National Alliance-faction** has taken note of the draft with interest and mentions that it is unfortunate that this has taken so long to get to Parliament. This has been ongoing going back to 2016 – 2017. At that time, we had one of the main legal minds on the Council of Advice who was about to turn 70 the following year, and we could not find replacements. This proposal was to do just that. The faction opines that with the proposed change, we are kicking the can further down the road, and that may be the more the simple thing to do is to take away the age limit. The faction proposes that the age should be dropped, and then the problem is solved once and for all. We appoint persons, and when the

person is no longer functioning for whatever reason, then the person can be removed.

**The United Peoples Party-faction** has taken note of the draft with interest and believes that perhaps it might be time to consider whether age should be a factor at all. The faction would like to hear the Government's sentiments in that regard. The faction mentions article 6, paragraph 3, National Ordinance Council of Advice, where it talks about the incompatible functions. In this case, who determines whether a function is incompatible? Would Government consider making amendments to article 6, paragraph 3, to define what is incompatible or lessen the incompatibilities? Then we would have younger people that are practicing law. Are there any changes in that regard?

The faction further mentions the following. If Parliament proceeds with this change and we go up to 75, is it still possible that someone under 70 can still apply and still join the Council? It is not eliminating the possibility to give young locals the opportunity. Is that possibility still there? With regards to the General Audit Chamber and the Ombudsman, isn't it that the Parliament has a significant say in the appointment of these members?

**The United St. Maarten Party-faction** has taken note of the draft. The faction questions if it has been considered to make the seats on these High Councils compatible so that someone can have a job and sit on a High Council. If you don't do this, you will never have young professionals who have a good salary sit on a Council. They are not going to give up their job making 10 to 15 thousand to take a stipend of a thousand. We have to be honest and understand the dynamics of a small island. While we want to change the age now to accommodate the acute problem, the faction believes we should look a little further down the road and make some of these functions compatible.

The faction would also like to know if the positions on these councils are compensated with a salary or a stipend? Is it

regulated by law, and if so, where can that be found? Do they vary per Council?

Would Government consider making the salaries at these councils compatible with market salaries so that you can then apply for a job there? Then you have a decent income and grow the pool of candidates you would be able to put in these functions?

**The United Democrats-faction** has taken note of the draft and mentions the following. First, the faction indicates that this has been a matter that has had the attention of the Government and Parliament for some time now. A similar situation like described at the Council of Advice existed and probably still exists at the Constitutional Court.

The faction would like to know the legislative trajectory of the Government and the priority legislation that the Government is working on right now. What are some of the proposed draft laws that Parliament can expect in the short term?

The faction would also like to know who are currently the Members of the Constitutional Court. The faction would further like to see the status of the finances for these institutions and mentions that these institutions are financed via the National Budget.

The faction mentions that the Government stated that at least one Member of the Constitutional Court has passed 70 and is awaiting this change. Are there, in the Membership of the other Councils of State, any other persons finding themselves in that situation? That would necessitate the urgency of these changes.

**The independent Member Emmanuel** has noted the draft and mentions that this draft came in labeled urgent. The faction would like to know how many cases have arisen whereby it has been challenging to find a replacement for a High Council of State member after a member reached the age of 70? Furthermore, the faction mentions that the explanatory notes that the position of the Vice-Chair of the Council of Advice has been vacant since January 2020. Can a detailed

explanation be provided of what efforts have been made to replace the Vice-Chair of the Council of Advice from January 2020 to date?

What are concrete measures being taken going forward to ensure qualified younger persons are hired to fill these positions within a couple of years? Can the Minister indicate if there have been any challenges in finding replacement members in the other High Councils of State and what those challenges, if any, may have been?

The faction mentions that it is stated that the age increase is being applied to the other High Councils of State and Constitutional Court based on an urgent need. Would the faction like the Minister to explain the urgent need as it relates to these institutions?

The faction further indicates that in the advice of the Council of Advice, reference is made that the Government intended to institute the increase in age retroactively to March 1, 2018. The Council of Advice goes on to state that the motive for the retroactivity lies with the fact that there may have been members on a High Council of State who were allowed to remain beyond the legally established maximum age. Is this true? Can the Minister indicate if there were members of any Council of State who remained in function beyond the legally established age of 70? If there were instances when this transpired, can the Minister indicate who authorized such? How was the authorization granted and formalized?

The faction would like to know the age of the oldest person working at the moment in one of the Councils. Can the Minister indicate how these persons are legally being compensated? The faction would like all documentation to be provided to Parliament about any such cases. Suppose such a situation exists, as referenced in the last question. Can the Minister indicate what the relevant High Council took actions or decisions during the period since the Member reached the legally established age of 70? Can a comprehensive listing writing be provided to Parliament?

The faction continues and indicates that the Council of Advice also recommended increasing the age at the Social Economic Council, the Central Voting Bureau, and the Electoral Council. The Government, in their response, indicated that the

matter would be discussed with the relevant agencies. Can the Minister provide an update on that discussion and the outcome thereof? Can the Minister explain why the law has been presented to Parliament without these entities being incorporated? Can the Minister explain the procedures that each High Council of State generally employs to recruit new members? Can the Minister explain what efforts have been made to ensure that possible replacement candidates are trained before members reach the age of 70?

The faction states that it is mentioned that the age should increase to 75 given the increased life expectancy and the general improvement of the quality of life, which is stimulated by improved healthcare. The faction would like the Minister to explain how it has been determined that life expectancy has increased on St. Maarten and provide the documentation to Parliament that supports this statement.

The faction would like the Minister to outline in which areas the general quality of life of residents of St. Maarten has improved and provide the report that supports this statement? Can the Minister explain in which ways healthcare has improved on the island and how this correlates specifically to the improvement in the general quality of life and increase life expectancy? On what is that based?

The faction goes on to state that the Minister, when presenting this law to Parliament, is stating to the population of St. Maarten that there are no qualified persons below the age of 70 to fill the positions in these institutions and would like the Minister to elucidate how the Government came to such a standpoint. Can the Minister provide Parliament with documentation supporting this standpoint?

The faction would like the specific qualifications needed to be hired at each mentioned agency to be provided in writing. The faction further mentions that the Government speaks of the necessity of having a sustainable, technically employable candidate given the role of the Vice-Chairman of the Council. Is the Minister of the opinion that raising the age limit from 70 to 75 years could be considered sustainable? Would it not be more sustainable and pertinent to train and recruit persons below the age of 70 to take over these specialized functions for the sustainability goal to be achieved? Is this also an indication or away down the road that the

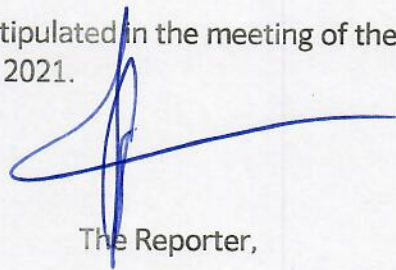
Government is saying that the pensionable age as well should be raised to 70 or 75?

The laws are presented as an urgent matter, whereas the issue mentioned exists only at the Council of Advice. The faction would like to know how it is justifiable to urgently increase the age in the various High Councils bypassing the constitutional review by the Ombudsman. Is the Minister stating that no general recruitment process was used to find qualified persons? If that is the case, why was it not advised to engage in a recruitment process before deciding that the law needed to change to increase the age? What is the proof that persons cannot be found if no open recruitment process was used?

The Minister mentioned that no one over 70 remained functioning in any of the mentioned entities to her knowledge. The faction would like to know if this was verified? If no studies were executed, as was the case with the increase of the pension age, is this Government stating that laws are being changed without any substantiated basis? How can this be considered proper governance?

This report is to be considered the Final Report.

Stipulated in the meeting of the Central Committee of June 15, 2021.

A handwritten signature in blue ink, appearing to be 'R. Brison', written over the printed name.

The Reporter,

R. Brison