

St. Eustatius, Caribbean Netherlands, November 7, 2021.

Dear Chairman and members of the Kingdom Relations Committee,

I do not have anything really new to say but if the power of the message lies in repetition then I would like to elaborate on one aspect of my previous letters.

My overall idea is that the inhabitants of the Caribbean Netherlands (whereby I wish to limit myself in principle to the island of St. Eustatius), without realizing it themselves, actually find themselves in a legally comfortable, perhaps even privileged position.

After all, with a Dutch frame of reference - in which the Netherlands is in the world's top ten in many rankings, such as most prosperous, best education system, etc. - and the possibility to write their own, island laws: you could say, it does not get any more comfortable than that!

I base this on article 132a of the Constitution - in which the Caribbean public entities are defined - and of which paragraph 4 reads as follows: *"For these public entities, rules can be established and other specific measures can be taken in view of special circumstances that make these public entities substantially different from the European part of the Netherlands"*.

Great was my dismay when in a column of DossierKoninkrijksrelaties.nl on October 9 last (Kadushi, Er ingeluisd) ¹ I learned of the very same article but then in a negative context. This column ends as follows: *"Those who really want to combat the disadvantage of the BES citizens compared to their overseas compatriots, must open the attack on the discriminatory Article 132a in the Constitution, unworthy of a constitutional state"*.

Well, I will try to take up that gauntlet. Feel free to call me naive, but I thought I understood from the cited article of the Constitution that Article 132a was not intended to be discriminatory. From the Explanatory Memorandum to the introduction of this article in the Constitution I also understand that the principle of equality according to Article 1 of the Constitution is leading anyway. A disadvantage of the Dutch Caribbean citizens can therefore never have been intended.

The Explanatory Memorandum also speaks of a duty to provide reasons in the sense of *why* a specific law is applicable in the BES region (or rather: on a specific island, since the three islands are three separate public entities!). When I search the overview of laws that apply exclusively in the BES region

¹ <https://dossierkoninkrijksrelaties.nl/2021/10/09/column-er-ingeluisd/>

I see about 600 laws. With many of them I wonder "*why should there be a specific law for the Caribbean public entities?*"; with some I browsed through the law to see if I could find a justification, but that was not the case.

It appears that the legislation of the (no longer existing) country Netherlands Antilles has been used as a set of legislation, applicable to the Dutch Caribbean. This seems understandable but of course it is not. The Dutch Caribbean islands belong to the country of the Netherlands so - I would say - let's start with the legislation in force in the European Netherlands (until it turns out that we are dealing with *special circumstances* that are *substantially different* from those in the European Netherlands). That seems to me a correct and pure approach.

Apart from obvious distinguishing aspects (such as the tropical climate in the Caribbean Netherlands), there are probably also cases for which this essentially distinguishing character depends on how you look at it: as a European Dutchman or as a Caribbean Dutchman. For those cases, it seems to me that agreement with the Island Councils of the individual islands is required before specific legislation can be arrived at *in consultation*.

An example that I have mentioned more often concerns not granting a BSN to Caribbean Dutch nationals. Why not? The simple answer is "because the Basic Registration of Persons is not used in the BES region". But this does not seem to me to be an essential distinguishing feature, because it can be objected to: "well, then we will introduce it anyway". But that does not happen. And then - as far as I am concerned - you are already very close to 'discrimination'. This may be a somewhat heavy-handed concept, but then again, I don't know of a good argument not to introduce the BSN either. For example, for me (and for all other Statians who have been vaccinated against COVID19) a 'workaround' had to be made to have a QR code at my disposal. In the European Netherlands this is linked to the BSN.

The discussion about a social minimum in the Dutch Caribbean seems to me to be completely non-existent when the Dutch legislation is applicable in the Dutch Caribbean. Why should the Caribbean Dutchman have a structurally lower minimum income (which the actual benefits are then below) than any other Dutchman? Why is there no unemployment benefit in the Dutch Caribbean? Why are the social assistance and the AOW called 'onderstand' and 'AOV' respectively in the Dutch Caribbean; is that because another name also justifies another (lower) level? Is the Kadushi article (see footnote 1) right after all?

Why is there a different level of income tax? In the European Netherlands there is a progressive tax rate which means that the proverbial strongest shoulders bear the heaviest burden. In the Dutch Caribbean there is a fixed rate for almost all incomes that ensures that the higher incomes are not taxed extra. The income inequality in the Dutch Caribbean is therefore about thirty percent greater than in the European Netherlands (ref. the Gini factor on the islands as mentioned in the annual 'Trends in the Caribbean Netherlands' published by the CBS).

Why is there a US dollar and not a Euro? Why does the bank on St. Eustatius fall under the supervision of the Central Bank of Curaçao and St. Maarten (both are countries in the Kingdom other than the Netherlands). Why is there a 'modified' deposit guarantee scheme in the Dutch Caribbean?

I am sure I am not being exhaustive here, but the message seems clear to me. The questions I raise here are of course intended as examples and by no means exhaustive. In this context, the question why your Commission has commissioned the report 'The Kingdom against the Light'² but then does nothing with it, seems relevant to me. For the islands belonging to the Dutch Caribbean, it seems to me that the French model does the most justice to the way things should be (with the addition of the benefits that the public body could bring).

It also seems to me a consideration to request (through the intervention of the government) the Council of State for a further interpretation of article 132a paragraph 4 of the Constitution.

I conclude with the request to you to take a closer look at this point. The column 'Kadushi' of October 9 in DossierKoninkrijksrelaties.nl drew my attention to the other side of the coin regarding what I believe is still a well-intentioned article in the Constitution. In all our interests, let me wish you much wisdom.

With kind regards,

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² https://www.jhtm.nl/statianews/bibliotheek/rapport_het_koninkrijk_tegen_het_licht.pdf