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1961 EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of
the European Social Charter

submitted by

**THE GOVERNMENT OF CURAÇAO
(Caribbean part of the Kingdom of the Netherlands)**

Articles 5 and 6

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CYCLE 2022

REPORT ON THE EUROPEAN SOCIAL CHARTER

Article 5 (Freedom of Organization)

Article 6 (Collective Bargaining) on
the European Social Charter

Answers to the Non-Conformities on **Article 5**

Answers to the Non-Conformities on **Article 6 paragraph 1- 4**

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Ministry of Social Development
Labor and Welfare of Curaçao

CURAÇAO
Kingdom of the Netherlands

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INTRODUCTION

This document is divided in two sections. In the first section the alleviation packages to mitigate the effects on the working population due to the Covid 19 pandemic is shortly elaborated.

Here, after information is granted on the gradual implementation of the articles 5 and 6 of the European Social Charter in Curaçao.

In the second section of this document, information is granted on the gradual implementation of the article 5 and 6 of the European Social Charter and answers are supplied on the so called Non-Conformities.

In both sections is clearly brought forward that our limited human and financial resources still continues to form unnecessary challenges in achieving full adherence to the European norms and standards laid down in the Charter.

PACKAGES OF MEASURES FOR ALLEVIATION DUE TO COVID-19

1. The Covid-19 effects for Curaçao

1.1. Economic consequences for Curaçao

The economy regarding tourism has come to a complete stop. Other economic sectors in conjunction with it, the prudent consumer behavior or simply due to the prescribed lockdowns, are also forced to a complete downtime. This implies that employers do not generate income or sufficient to pay the personnel costs and/or the ongoing fixed costs; leading to a massive dismissal which could develop the already too high unemployment rate in Curaçao to a level of 60% or higher and a series of bankruptcies.

Meantime the social safety net (welfare) is so limited that great part of the population is unable to get by financially, which will lead to a complete social disruption and restlessness.

The Central Bank of Curaçao and Sint Maarten (CBCS) has preliminary identify the macro-economic outputs in several scenario results. These data will be updated as institutions like the IMF also appear with their impact studies.

CBCS uses a reduction of 2.5% and an inflation of 4% as baseline scenario, mainly due to the intended introduction of the ABB as of April 1st, 2020 (which in the meantime is no longer achievable). For the time being, the government uses the 3-month closure model followed by a gradual recovery. As a matter of fact, we do not believe that exports will recover immediately to the baseline scenario when the borders open again. This is particularly relevant for the overnight tourism: it can be expected that during a certain period after the crisis there will be a certain reluctance in booking long-distance trips.

Considerable indicators from the current used CBCS model (3 months - gradual recovery):

GDP nominal baseline ANG 5,751.2 million

Domestic spending:	-5,2% (private sector -5,2% and the government -0.7%)
Net foreign expenses	-9,7% (export -27,3% & import -17,6%)
Effect on real GDP (annual basis)	-14,9%
Inflation	4,0% (introduction of ABB in particular; has already been deferred)

Expected nominal GDP ANG 5,048.6 million

May the lockdown be extended until **6 months** with a gradual recovery also thereafter, the numbers then become as follows:

GDP nominal baseline ANG 5,751.2 million

Domestic spending:	-6,8% (private sector -5,7% and the government -1.1%)
Net foreign expenses	-12,6% (export -36,7% and import -24,1%)
Effect on real GDP (annual basis)	-19,4%
Inflation	4,0% (introduction of ABB in particular; has already been decreased)

Expected nominal GDP ANG 4,793.6 million

Looking at the unemployment development, perhaps the picture is even more miserable. Prior to Covid-19 unemployment had quickly risen to a percentage of 21% on a labor force of 73,097. As indicated below, it is expected that within a few weeks 7.492 freelancers and 6.916 flex workers (a total of 14.408 people) will become unemployed. Because of this the unemployment rate will very soon reach 41%. To prevent also permanent employees to get fired in the coming weeks, it is important that the suggested compensation scheme (NOW) is introduced. With its introduction hopefully this level can be maintained; without introduction it is expected that unemployment will increase to an estimate of 64%.

Both the government and the Covid-19 Emergency Fund Committee have spoken extensively with numerous (interest) groups within society the past weeks and received a lot of input for further thoughts and decision making. In appendix 2 of this Commission report a list of the main sources consulted is included. It concerns companies, agencies and organizations that have been consulted or have provided written suggestions, analyzes or impact studies. It became

clear that conserving many employment opportunities as possible and the related activities were by far the most important aspect. Due to organizations such as CHATA (tourism), the Chamber of Commerce, the Curaçao Business Association (VBC), trade unions and interest groups from specific sectors, that employment and the saving of micro, small and medium-sized enterprises were indicated without exception, as main points of the quick to implement crisis policy. After a call from the government, the financial sector has almost uniformly declared itself prepared to grant a deferment of payment for several months on existing interest and relief mortgage obligations and other money loans, which can be called a nice first contribution for relief. And logically there must be attention for other social complications that will arise and require solutions also.

It is evident that especially the government is being looked at to come up with appropriate measures and solutions. That is also her job. This does not alter the fact that this Covid-19 crisis will require sacrifices from all sectors within society. The government will have to try to mitigate the effects as much as possible according to ability, but also considering the financial position of the island, even if the Netherlands would support generous within the Kingdom, it is an indisputable fact that the crisis will be felt hard.

Through our import dependency, the logistic supply to our island is of vital interest. Especially nutritional resources, medication and fuel are crucial. Due to the COVID-19 matter the purchasing behavior of the consumer has changed a lot. Hoarding is taking place causing available stocks to sell faster than normal and running out. The government is in dialogue with importers, wholesalers, the supermarkets and pharmacies and tries to prevent this. After all the limited offer of crucial products can lead to emotional and aggressive conditions and social restlessness.

Most companies had to cease all commercial activities, due to the measures that were necessary to protect the health of our community. The stagnation of the economy, the insecurity, job losses, lack of financial resources and scarcity contribute to crime. This is the case for the large group of undocumented persons, who, due to lack of work and shelter because of the crisis can be tempted to engage in criminal activities. For this group also care is required.

A threatening and constant lack of future perspective can lead to panic and an exodus to other countries, especially to the Netherlands, particularly the underprivileged. This exodus is harmful for the local labor market item-Covid-19 and clears the way for more illegal immigrants who are looking for work. On the other hand, there is a chance that the Netherlands will be overwhelmed with residents of the Caribbean part of the Kingdom.

1.2 Financial consequences for Curaçao

The Commission, experts from all parties involved and specialists added in areas, made extensive as possible an analysis of the current situation and perspectives. Based on this an assumption has been made of the extensive consequences that this crisis will have for Curaçao, and measures have been determined on the following (temporary and indicative) classification:

- a) Due to the stagnation of the economy and the strong contraction of employment opportunities the government incomes, and in particular the tax incomes, will sharply fall back in 2020. Calculations show that revenue decline related to Covid-19 can be estimated on **ANG 304.2 million** on liquidity for 3 months of lockdown. Other not Covid-19 related income reducing corrections amounts to ANG 81,3 million so the total need for support on the income side amounts to **ANG 385.5 million**.
- b) It is not a discussion whether government actions must be taken (and finance largely also) to control unemployment and conserve the business as much as possible. The question is only which one. In case of a wave of dismissals in professional organizations and the committee, around 14.000-30.500 employees and a possible bankruptcy of estimated 2.500 – 3.000 within micro, small and medium-sized companies, the consequences will be simply incalculable and the risks too high. Although exact data will only be known during the implementation throughout the next 3 months, the government must consider the introduction of a package of measures of which the costs could amount to about **ANG 291.8 million** the next 3 months, including implementation costs. The costs of the previous announced package Alivio 1 of **ANG 33.9 million** are (excluding new payment arrangements of the tax authorities; PM) **excluded**;
- c) Because the implementation of measures concern income support over which no taxes and social contributions must be paid and part of the employer's share of social security contributions shall be exempt for certain sectors, the Social Insurance Bank ultimately lack premium income pertaining the obligations. This amount is temporary estimated at **ANG 54.4 million** for 3 months. These extra amounts will be deposited in the form of additional Contributions to maintain the social system for now.

Abovementioned measures in connection with the previous limited and often announced fiscally oriented measures require in the coming 3 months, extra liquidity space and mostly budget space also of more than **ANG 765.6 million (see appendix 1)** or an average about **ANG 255.2 million per month** compared with the originally established budget of 2020.

Besides there are other aspects that need to be addressed, such as:

- a) Supporting the foreign exchange position of Curaçao with amounts around ANG 60 - 70 million per month. The Commission Financial Supervision (Cft) therefore has advised the RMR to engage the Dutch Central Bank for further advice, which seems to be a good solution, if handled appropriately and leading to fast result. Perhaps Curaçao through the Netherlands can appeal on the funds that the IMF makes available for this purpose to its member states.
- b) Multiple considerable entities such as CUROIL, the Airport and AQUALECTRA have already announced that closure, with the corresponding loss of turnover and eventual losses since customers can no longer pay, will have a particular strong effect on their 2020 outcomes and on the liquidity position of these companies. There are already specific requests from some entities to receive the financing support. Although this situation was expected, yet the Committee suggests the government initially to try in consultation with the banking sector to come up with a solution of possible liquidity problems through supplementary credit facilities, independent if guaranteed by the government. In case this does not succeed (completely), then it is to be expected that in continuation of the crisis, liquidity support is needed in a later stage.
- c) The health ministry has mapped out what the imminent consequences of Covid-19 are for the health sector in the next three months. The purpose of this exercise is to achieve better protection for the groups at risk (elderly, disabled people, care workers, etc.) and increasing care and hospital facilities and capacity for the care and treatment of the Covid-19 patients, with the aim to save human lives. The costs involved are currently being mapped and not included in this report as such.

In further continuation of this report the recommendations implemented by the government are discussed in more details, the indispensable financial support and the way in our opinion this could be given shape, also from an organizational point of view.

Package Alivio 1 – Measure 1: Economic Support Actions

Measure/Action	Package Alivio 1 – Measure 1: Economic Support Actions		
Sector	Business world and citizens	Target group	
Ministries a/o organizations involved	MEO	Priority	High
Period	Medium	Impact	Center
Critical success factors			
1. Execution, 2. Communication.			
Decision points			
1. Measures already announced, 2. Decisions about execution partly still need to be determined			
Risks			
1. Insufficient development of arrangements, 2. Capacity for execution Alivio 1 vs. 2.			

Reason measure background

As part of the developments around the Covid-19 pandemic which on a global level hits the public health, the government is forced to take measures to mitigate the effects of the pandemic as much as possible for both the citizen and the entrepreneurs.

These are the first economic measures as taken under the package Alivio 1 and communicated on March 23rd, 2020.

Outputs and targets

One should consider that there is no other approach for the consequences on our health, our social life and on our economy also. We must attempt urgent actions to survive and at the same time develop policy to maintain monetary stability and in a financially responsible manner reduce the effects on the economy.

Content of measure (detailed)

In this aspect the government of Curaçao has announced a package of economic measures to mitigate the effects of the Corona virus and which is targeting the hardest-hit sectors of our

economy such as tourism and the Small and Medium Enterprises (SMEs), but also the citizen. These measures are urgent to mitigate the consequences and negative impact it will have on these sectors. These are the first economic measures:

1. *Ministerial regulation with general action of 19th March 2020 in execution of Article 2 of the 1961 Prices regulation to establish the maximum wholesale margin and the maximum retail margin for products that are crucial for the spread of COVID-19.*
2. Support for local companies by third parties. Appointments and mediation with stakeholders such as banks, insurance companies, real estates, to compensate companies and private parties in these difficult times. Some financial institutions have made access to business loans more flexible and simplified to guarantee the liquidity of medium and small companies and the tourism sector also. Deferral of payments and interest on mortgages and bank debts with a few months for all customers.
Almost all local banks and insurance companies have committed to these relieving measures.
3. Development of a crisis credits and financing program for entrepreneurs. This program has been announced with a limited budget (ANG 2 million) as part of Alivio 1, but will be expanded to ANG 40 million as part of Alivio 2, as elaborated in detail in the template 'SME/freelancer-credits.
4. Virtual Platform: minegoshi.org to support SMEs along with local stakeholders such as Chamber of Commerce, Citi, EU Desk, KORPODEKO, QREDITS, OBNA, BAB, besides Ministry of Economic Development.
5. Support and counseling program of Chamber of Commerce for companies in difficulties.
6. Scheme negotiated with AQUALECTRA which enables consumers and companies to defer or arrange their payment, and those consumers who were previously disconnected of water consumption to reconnect again, because of the importance of water access to combat COVID-19.
7. Continuous consultation with the syndicates about possible complications and solutions in the tourism sector.
8. Online training program Klá pa Turismo 2.0 focused on virtual training.
9. Supporting Export while the (world) markets are accessible; and for products that are required in this situation, such as toilet paper, paper towels, soap, Glacial, hand sanitizer, and

Aloe Vera supplements.

Package Alivio 1 – Measure 2: Tax support actions

Measure/action	Package Alivio 1 – Measure 2: Tax support actions		
Sector	Finance	Target group	
Ministries a/o Organizations involved	Ministry of Finance Tax authorities (Inspection and Recipient) Inspection of import duties and duties	Priority	High
Period	Medium (6 months)	Impact	High
Critical success factors			
<ol style="list-style-type: none"> 1. The speed by which requests for deferment and payment arrangement should be handled. 2. The introduction of 0% sales tax when selling: <ul style="list-style-type: none"> ○ Latex and silicone gloves; ○ Hand disinfectants; ○ Disinfection wipes and sprays; ○ Cleaning alcohol (70% or more) ○ Thermometers (at salespoints; cash registers need to be adjusted) 3. Payroll programs must enforce the adjustment in the basic discount. 			
Decision points			
Risks			

Reason measure-background

Liquidity position support for employers short and medium term in response to COVID-19 crisis.

Outputs and targets

Current measures are set on those sectors that have been hit the hardest by the Corona virus. Main target is to grant a compensation to those entrepreneurs with the condition that the personnel remain in service. By exempting import duties and sales tax on certain goods and increasing the basic discount in 2020, a compensation will be granted to society.

Content of the measure (detailed)

Deferral for all outstanding tax and premium debts can be obtained and ongoing payment arrangements may be suspended or adjusted for the months of April up to September 2020, unless the liquidity problems are related to COVID-19. Payment is only postponed, the taxpayer is given a longer period to pay tax debt and premiums. The compliance project is also being postponed during this period. Finally, collection costs, penalty and interest are not being charged.

Remittance of the employer's contribution of premium AOV/AWW is omitted for employers in the hospitality sector, beauty salons, travel industry, car rentals, car wash and transportation 2. This measure includes that the employer no longer must pay the employer's contribution.

Sales tax compensation. Entrepreneurs in the hospitality sector, beauty salons, travel industry, car rentals, car wash and transport, must charge sales tax upon deliveries and services but do not remit the withheld sales tax to the government. This measure includes that the withheld sales tax no longer must be remitted.

Reduction of the import duties rate and sales tax to 0% when importing Latex and silicones gloves, hand sanitizers, disinfectant wipes and sprays, cleaning alcohol (70% or more) and thermometers, during the months of April up to September 2020.

In 2020 the basic discount will increase in the income tax.

Package Alivio 1 - Measure 3: Social support actions

Measure/action	Package Alivio 1 - Measure 3: Social support actions		
Sector	Labor, Family & Youth and Social development sectors	Target group	Curaçao population
Ministries a/o Organizations involved	Ministry of Social Development, Labor and Welfare	Priority	high
Period	3 months with the possibility of extension with 3 months	Impact	high
Critical success factors			
<ol style="list-style-type: none"> 1. Close cooperation with the organization in charge of execution within the social midfield. 2. Cohesion with NOW, temporary assistance independent entrepreneurs, the unemployment benefit and the resilience benefit. 3. Upscaling/Intensifying communication capacity and the collaboration between communication teams for social support. 4. Inter ministerial and intersectoral coordination and communication runs efficiently. 5. Financial resources are easily available through efficient processes. 			
Decision points			
<ol style="list-style-type: none"> 1. Accord for financing and effort of social organizations that on occasional basis will execute the appointed support actions on short term. 2. Amendment of the 2020 budget with prioritization to finance several (new) social support actions in case extension is necessary. 			
Risks			
<ol style="list-style-type: none"> 1. Possibility for reprioritization within the budget is limited, putting financing of social support actions at risk. 2. Social organizations cannot be deployed quick enough because of the applicable financial administrative organization and processes. 			

Reason Measure-background

The outbreak of the corona virus and all measures announced by the government have a major social impact. The challenges related and other significant increase of unemployment are huge and the different results can emphasize inequalities. The social restlessness due to fear of getting sick, the psycho-social effects of isolation or quarantine and the closure of schools are some of

the aspects that have major social consequences. The effects of this should immediately get special attention.

Outputs and targets

The aim is to continue to offer qualitative and quantitative good social support to the citizen of Curaçao and given the challenges arising from the COVID-19 taken measures, to intensify this support. The actions are divided into directly executable support actions, preliminary requesting support actions and fixed structural support actions aimed at permanent expansion of relief - and services to act quick and adequate in case of crisis moments in the future.

The output is to make the population defensible to bounce back after the impact of COVID-19; **“Kai, Lanta i Sigui” (Resiliency)**

Content of measure (detailed)

Immediate executable support actions:

- Once a month, **emergency food and hygiene products packages** are available for 550 families in urgent need based on established criteria. Distribution takes place biweekly.
Organization in charge of execution: Sector Family and Youth
- One time providing a **package with hygiene products** to 7.200 assistance recipients related to COVID-19 outbreak.
Organization in charge of execution: Sector Social Development (Regional offices - the so-called ‘Kas di Bario’)
- **Visiting single elderly** with the goal to intercept the consequences of social isolation;
Organization in charge of execution: Sector Social Development
- **Reconnection of water supply** for the poor and needy citizens
Organization in charge of execution: Sector Social Development
- **Communication campaign with tips for recognizing and dealing with stress in crisis-situations;** Guide with instruction for recognizing and dealing with families and juveniles.
Organization in charge of execution: Sector Family & Youth with other stakeholders;

Planning request support actions, from 2 months after now:

- Introduction of **awareness campaigns, empowerment programming and courses via media** to bridge this period of time; several alternative time commitment, also for

domestic violence prevention.

Organization in charge of execution: Sector Family & Youth

Structural fixed support actions:

- **Debt mediation on request** to citizens facing complicated debts
Organization in charge of execution: Sector Family & Youth
- Announcement (and expansion) **Helpdesk center for family and youth** for social - emotional problems
Organization in charge of execution: Sector Family & Youth
- Announcement '**Helpdesk' Labor center** concerning several labor aspects for support to employers and employees mainly related to COVID-19 measures
Organization in charge of execution: Labor Sector of the Ministry of SOAW;
- Re) introducing an **on-call service of the Ministry of SOAW for emergencies** after working hours.
Organization in charge of execution: All sectors of the Ministry of SOAW

Appendix 4, Package Alivio 2

Package Alivio 2 – Measure 1: Emergency measure Bridging Employment (NOW)

Measure/action	Package Alivio 2 – Measure 1: Emergency measure Bridging Employment (NOW)		
Sector	Hospitality and all other sectors affected by more than 25% lost sales due to Covid-19	Target group	Employers and employees
Ministries a/o Organizations involved	SVB, Finances, MEO	Priority	High
Period	short and long	Impact	High
Critical success factors			
1. On time announcement, 2. Ratio to unemployment benefit measure (timing and amount), 3. On time availability, 4. Fast processing and payment (before May 25 th), 5. Sufficient funding, 6. On time suspension, 7. SVB Communication settlement right in case of a too high declared stated lost sales, 8. Modification of employment law so that the employer is not obligated to pay salaries above the SVB minimum daily wage during the NOW period.			
Decision points			
1. Height maximum percentage (in relation to other measures and to working hours reduction paid by the employee), 2. Amount maximum salary, 3. Available in order of priority by Ministry of Fin/MEO approved sector, 4. Determination and sectors prioritization, 5. Availability scheme for government companies (not assumed at present), 6. Passing through exemption of employer's contribution AOV/AWW remittance, and application on all NOW sectors (pro rata), for support.			
Risks			
1. Late announcement, 2. Capacity organization in charge of execution (SVB), 3. Misuse (in advance lost sales estimated too high), 4. Misuse (actual lost sales stated too low).			

Reason measure background

As a result of Covid-19, many companies are facing direct loss of sales, and due to the losses suffered, must lay off employees, and even face bankruptcy. Supporting these companies with a sales decline-related compensation in wage costs is a powerful measure to maintain as much employment as possible, disrupt the economy as minimal as possible, and enable a rapid return to employment opportunities as before the crisis.

The suggested measure is mostly identical as the measure for loss of wages and income (Dutch Caribbean Measures) as recently announced for the BES islands, and also in line with the NOW in the Netherlands. This because this measure is very effective for keeping employment opportunities. However the costs of the proposed NOW for Curaçao are lower than these schemes for the following reasons: i) minimum percentage of lost sales is 25%, versus 20% in the BES and the Netherlands, ii) there is a sector approach where the scheme is selectively opened, iii) maximum percentage is 80%, versus 90% in the Netherlands, iv) there is a maximum wage on which an allowance can be obtained, comparable to the BES, versus no maximum wage in the Netherlands, and v) depending on the expected lost sales the percentage compensation in wage costs is lower ($80\% * 25-100\% = 20-80\%$), versus a fixed percentage in the BES (80%).

Outputs and targets

The NOW enables employers to keep employees and (mostly) continue to pay, even if they are 'technically' unemployed. This occurs in the form of a compensation that is rational simple to determine, proportionate to the loss of sales which the employer is confronting. Outputs are keeping employment and prevention of company bankruptcies.

Content of measure (detailed)

An employer with more than one employee (Managing Director is also an employee) who relates to loss of sales (at least 25%) and due to that is no longer able to keep staff, can contact the SVB to apply for a compensation of wage costs for every employee for a period of three and half month (retroactively until March 15th). This compensation is equal to a percentage of the SVB wage, up to a maximum equal to the maximum ZV/OV daily wage (sickness and injuries insurance).

A scheme which connects to the Health insurance in Curaçao is chosen. Depending on the developments, extension of the period is possible.

The percentage of compensation of the wage costs depends on the percentage of lost sales that the employee expects, as follows:

Compensation = 80% of the percentage lost sales multiply wage costs (based on SVB wage, with a maximum of the SVB maximum daily wage)

Example:

- Expected lost sales 90%; compensation = $80\% * 90\% = 72\%$ of the wage costs;
- Expected lost sales 40%; compensation = $80\% * 40\% = 32\%$ of the wage costs.

If the actual lost sales are lower and as a result of that the compensation has been too high, the difference can be reclaimed from the employer after the compensation period.

Employers who are using this emergency measure are obligated to keep their permanent staff during the period the compensation is valid and continue to pay them fully. So the employer is significantly compensated.

Employers may apply unilateral for short-time employment for employees who earn more than the maximum daily wage ZV/OV (SVB), in such way that the employer does not have to pay these employees more than that maximum daily wage.

The employer can also apply for compensation for employees with a zero-hours contract or a temporary contract, if they remain employed during the period the compensation is valid.

Package Alivio 2 - Measure 2: Temporary (personal) assistance for independent entrepreneurs

Measure/action	Package Alivio 2 – Measure 2: Temporary (personal) assistance for independent entrepreneurs		
Sector	SME's	Target group	Independent entrepreneurs
Ministries a/o Organizations involved	SOAW, MEO, SVB, VVRP, Chamber of Commerce, Tax Office	Priority	High
Period	Short	Impact	High
Critical success factors			
<ol style="list-style-type: none"> 1. Timely notification 2. Timely availability 3. Fast processing and payment 4. Sufficient funding 5. Adequate system and applications 6. Adequate database comparison between SVB, SOAW, VVRP, MEO, Chamber of Commerce and Tax Office 7. Sufficient capacity (quantitative and qualitative) organization in charge with execution 8. Coordinated communication campaigns for several measures 			
Decision points			
<ol style="list-style-type: none"> 1. Maximum payable amount 2. Agreement on the definition of Independent entrepreneurs 3. Eligibility conditions for temporary assistance. 			
Risks			
<ol style="list-style-type: none"> 1. Insufficient funding 2. Unfairly favored person 3. Insufficient capacity organization in charge of execution (qualitative and quantitative) 4. Insufficient communication and explanation can lead to inefficiencies in the execution. 			

Reason measure background

As a result of the Covid-19 virus, the government had to take several measures to prevent the virus from spreading as much as possible. As a result of this many companies are facing direct loss of sales, and due to money losses have to lay-off employees, and even face bankruptcy.

The proposed measure aims at:

- Owners of a sole proprietor without any employee;
- Entities of which the Director-major shareholder is the only employee;
- Bus drivers and Taxi drivers
- Exhibitor

The target group described will be further in this document referred to as independent entrepreneurs. Due to the measures taken by the government, many independent entrepreneurs suffer revenue losses. A temporary assistance is proposed for 3 months. Independent entrepreneurs whose income fall to the minimum wage due the measure taken by the government to prevent the spread of the virus, can appeal for this temporary assistance.

The temporary assistance for living expenses will complete the income up to a maximum amount of 1,335 guilders per month (80% minimum wage). The proposed measure is largely equal to the extra temporary support for established entrepreneurs, freelancers in the Netherlands and the Dutch Caribbean.

Outputs and targets

The purpose of the proposed measure is to provide for independent entrepreneurs when the income decreases below the minimum wage due to the measure taken by the government to restrain the spread of the virus.

Content of measure (detailed)

To obtain the temporary assistance, the independent entrepreneur must submit his application as far as possible in digital form to Mi NEGOSHI and must declare that he expects his income to be less than the set minimum wage in the next 3 months because of the measures taken by the government to restrain spread of the virus. The income is complemented for a maximum period of 3 months. It is a gift. The amount is not a loan and does not have to be refunded. Self-employed who earn more than the minimum wage or receive more wage from a regular employment, will not receive any supplement.

Conditions to become eligible for temporary assistance:

- The independent entrepreneur must declare to the application that he expects his income to be less than the minimum wage over the next 3 months due to the measures taken by the government. If this turns out to be different afterwards, the self-employed must inform this to the Ministry of Economic Development.
- No research will take place on the vitality of the company. Besides, the assets (such as a savings account and home ownership) and the income of the partner have no impact on the assistance. The scheme is so simple and quick to execute.
- The scheme applies to independent entrepreneurs who are registered and live in Curaçao and mainly work.
- The independent entrepreneur should be registered at the Chamber of Commerce before the measures of the government were announced, so before March 17th, 2020 and must have an entrepreneur's crib number. (Registration permit holder for taxi and bus drivers who are not registered at the Chamber of Commerce)
- All independent entrepreneurs must submit their sales tax declaration monthly and ensure that the declarations from January 2020 up to today are submitted.

The scheme is temporary and lasts three months (April, May and June 2020). An application for living expenses can be submitted up to June 30th, 2020. The payment lasts a maximum of three months. Applications for assistance of living expenses can be applied on a retroactive basis up to April 1st, 2020. Retroactive effect is possible for all applications submitted within duration of the scheme (April 1st to June 30th, 2020).

The Ministry of Economic Development communicates clearly towards independent entrepreneurs to only make use of the scheme in case of real need to prevent misuse of public funds and unnecessary pressure on execution. Afterwards the necessary control will take place. In case of identified irregularities (fraud), the Ministry of Economic Development is obligated to reclaim the granted assistance and enforce a penalty.

Package Alivio 2 – Measure 3: Job loser allowance

Measure/action	Package Alivio 2 – Measure 3: Job loser allowance		
Sector	Labor/Social Development	Target Group	Job losers
Ministries a/o Organization involved	Ministry of Social Development Labor and Welfare, Economic Development	Priority	High
Period	3 months with possibility of a 3 months extension	Impact	High
Critical success factors			
<ol style="list-style-type: none"> 1. According NOW measure and the measure Assistance independent entrepreneurs – measure determined. 2. Financing is obtained. 3. Reach of the target group is achieved. 4. The process of notification, registration screening and benefit are related and efficient by making use of adequate applications, skilled personnel and coordination with NOW and independent entrepreneurs – process. 5. The benefit is available in a timely and efficient manner. 6. Cooperation is obtained from the Population Register and the SVB for access to their databases for verification of the data submitted by the job loser when applying for an unemployment benefit. 7. Coordinated communication campaigns for the different measures especially from NOW and those related to independent entrepreneurs. 			
Decision points			
<ol style="list-style-type: none"> 1. Amount of the support in relation to the last received income: the proposition is to pay a maximum of ANG 1,000 per person per month. 2. Criteria job losers must comply to. 			
Risks			
<ol style="list-style-type: none"> 1. Capacity of the Labor sector and the sector Social Development of SOAW. 2. Misuse of legislation. 			

Reason measure background

The measures taken by the government to prevent the spread of COVID – 19, lead to financial problems for companies, causing them as expected to engage in mass dismissals. This, unless the government sets up a bridging measure. The government wants to establish a Curaçao edition of the NOW in the Netherlands/Measures Dutch Caribbean. The goal is to do as much as possible, to prevent people from losing their jobs. Unemployment threatens, especially contractors as well as those hired on a temporary basis. The government wishes to take a temporary measure to enable this group to get through financially during the COVID-19 period and to stay available for work. To prevent this measure from having a suction effect, the benefit will be less than when preserving a job. Besides this measure, a measure for the assistance of independent entrepreneurs will also be published.

Outputs and targets

The unemployment benefit shall give those who lost a job as of March 15th, 2020 an income guarantee with job opportunities.

Outputs are the maintenance of a subsistence level and the prevention of profound poverty.

Content of measure (detailed)

People who lose their job can apply at the Labor sector of the Ministry of SOAW for a benefit of three months. The benefit amounts 60% of the minimum wage, however it cannot be more than the average of the income received over the past 2 months. The payment takes place by the Ministry of SOAW. The benefit period can be extended with three months, in case of need in the event of an ongoing emergency. This benefit is also valid for persons who have lost part of their job. Part of a job means: at least half of the working hours and the wage for those hours. The job losers should be immediately available for paid work. The job loser benefit is only for people who became unemployed. As soon as the situation allows it, the job loser should actively go look for work. In the meantime, the job loser should be willing to volunteer, even if it is from home.

Package Alivio 2 – Measure 4: Resilience benefit

Measure/action	Package Alivio 2 – Measure 4: Resilience benefit		
Sector	Social Development/ Family & Youth	Target group	The poorest: structural unemployed and welfare recipients
Ministries a/o Organizations involved	Ministry of Social Development, Labor and Welfare	Priority	high
Period	3 months with possibility of 3 months extension	Impact	high
Critical success factors			
<ol style="list-style-type: none"> 1. In relation to welfare - scheme is clear and established. 2. Financing has been obtained. 3. Reach of the target group has been achieved. 4. The process of application, screening registration and payment is coherent and efficient by making use of adequate applications, skilled personnel and coordination with NOW and independent entrepreneurs - process and the job loser benefit. 5. The vouchers are timely and efficient available. 6. Cooperation from the Population Register and SVB has been acquired for access to their databases verification of the data submitted by the applicant when applying for a resilience benefit. 7. Coordinated communication campaigns for the different measures with NOW in particular and those relating to independent entrepreneurs and the job loser benefit. 8. The target group is willing to learn during the period of the resilience benefit. 			
Decision points			
<ul style="list-style-type: none"> • The benefit is not in cash, but in vouchers for the necessities of life at the value of ANG 450, - (monthly). • Criteria the target group must comply to qualify. 			
Risks			
<ul style="list-style-type: none"> • Capacity of the Social Development sector and the Family & Youth sector of SOAW. • Misuse of regulations. 			

Reason measure-background

The measures taken by the government to prevent the spread of COVID – 19, not only lead to financial problems for companies, but poverty among the poorest also threatens to rise to an

incomparable level. Primarily this concerns the group struggling with structural unemployment and previously has been without work and with little prospects for a job. The second group are the so-called "welfare" recipients, they depend on an amount of ANG 195, - every two weeks. It is not surprising that every now and then many of them seek for some extra, which is permitted up to an amount of ANG 600, -. They no longer have that option, causing extreme poverty. Despair is literally written on the faces of these people. The aim is to avoid as much as possible, that people through despair harm themselves or others. The government wishes to institute a temporary measure for these marginal groups also, which will enable these groups to survive the period of COVID - 19 financially, but also socially and mentally, by working at home on their own personal development and new perspectives at work. To prevent this measure from having a suction effect, the benefit will be less than with a job and in the form of a voucher for basic necessities, public transport and gas.

Outputs and targets

This resistance benefit ensures food for everyone.

Outputs are preservation of a subsistence minimum and the prevention of extreme poverty.

Content of measure (detailed)

People who were not employed before March 15th, 2020 or are welfare recipients can receive a monthly voucher worth ANG 450, -. This benefit is granted for 3 months. The payment is made by the Ministry of SOAW. The benefit period can be extended with three months, when the need arises in the event of an ongoing emergency.

Those who receive a voucher should be willing to stay home and work on their own personal development through educational programs. They must also be immediately available for paid work, where their health permits. The resilience benefit is only intended for individuals who became unemployed earlier than March 15th or are welfare recipient.

Package Alivio 2 – Measure 5: Credit facility SME/Freelancer – “Resilient Entrepreneurship Development Program ”(REDEP)

Measure/action	Package Alivio 2 – Measure 5: Credit facility SME/Freelancer - “Resilient Entrepreneurship Development Program ”(REDEP)		
Sector	Several	Target group	SMEs/freelancers
Ministeries a/o Organizations involved	<ul style="list-style-type: none"> • MEO • Chamber of Commerce • KORPODEKO 	Priority	high
Period	Short	Impact	high
Critical success factors			
<ul style="list-style-type: none"> • Effective communication with SMEs • Quality control execution program • Monitoring the development of SMEs 			
Decision points			
<ol style="list-style-type: none"> 1. Facility height (now ANG 40 million; ANG 2 million existing and ANG 38 million additional) 2. Institution in charge of execution 3. Conditions for loans 			
Risks			
<ol style="list-style-type: none"> 1. Speed application procedure 2. Credit process 3. Counsel/training capacity 			

Reason measure-background

The SMEs are the "backbone" of the economy and therefore very vulnerable and important in an economic crisis. This also applies the Curaçao economy. The SME sector forms 98% of the companies in Curaçao and is responsible for 60% of employment. Even in the current Covid-19 crisis it is crucial that the SMEs are supported. The reason for making a SME/freelancer credit facility available is that companies besides supporting their wage costs also need support for other ongoing costs, and especially for rent.

The Ministry of Finance has ensured tax deferral. Several financial institutions have applied access to flexibility on operating loans and simplified to guarantee liquidity of the companies.

Deferment for a few months on mortgage payment and bank debts has also been set in motion for those who request it.

Outputs and targets

Targets:

- Continuity management;
- Preserving employment;
- Preparing entrepreneurs for the item-Covid-19 economy
- Encouraging import - replacement production

Outputs:

Short-term

- Complement cash flow;
- Cover non-wage costs;
- Training entrepreneurs.

Long-term

- Encouraging business innovation (new business processes and models);
- Registration of businesses and/or sectors;
- Generating foreign exchange through export

Content of measure (detailed)

Through the REDEP program a SME company or a freelancer can qualify for the following 3 types of support:

1. Loan;
2. Free counselling;
3. Free training and capacity building.

The private sector will be involved as much as possible for this. The entrepreneurs who will be involved for consulting and training, are at home because of the “social distancing”

measures and often have time available.

Ad. 1. SME/freelancer loan

SME's and freelancers who that financing will be guided by the consultant pool and the Mi NEGOSHI Team to qualify for a loan to bridge this period and with long-term refund conditions and at a lower interest rate, to assure that they are able to meet their obligations. The funds made available for this will be managed by KORPODEKO, the government development bank of Curaçao. When the granted loans are refunded, this money will go to the Credit Fund so that others (or the same companies again) can qualify for a loan. For the time being the amount of the credit facility has been made on ANG 20 million (ANG 2 million existing; ANG 38 million additional). Based on the number and amount of the requests this may change.

Ad. 2. Free advice

Currently, qualified consultants are invited to become part of a *Consultants Pool*. Using this Pool, as well as the services of the Mi NEGOSHI team, CITI, SOAB and Chamber of Commerce advice will be given to SMEs and freelancers to survive during these difficult times and afterwards. Consultancy will mainly consist of hands-on advice regarding affairs like marketing, e-commerce, “strategizing” and “business model re-inventing”, tax affairs and administration. The consultants will receive a social rate for their services or provide for free.

Ad. 3. Free training and capacity building

Qualified trainers will be invited to become part of a *Trainers Pool*. These trainers will provide the necessary training for SMEs (virtually in the beginning), based on the specific needs of each company. The trainers will receive a social rate for their services or provide for free. The funds made available for both trainers and consultants will be managed by MEO, eventually supported by the Chamber of Commerce.

PROVISIONS FOR FOOD SUPPLY AS MEASURE FOR ALLEVIATION DUE TO COVID-19

Beside the provisions made for the unemployed workers due to the Covid-19 and the employers to maintain the human capital capacity in their companies as much as possible, arrangements were executed by the NOGO's such as the International Red Cross Curacao and the Food Bank Curacao in close cooperation with the government to guarantee the most essential for the needy”

1. Foodpackages;

2. Warm meals.

A short summary

The total lockdown (shelter in place) announced on the 15th of March 2020 due to the Covid 19 pandemic made free movement on halt for the first 2 upcoming weeks and later on this lock down was extended with 2 extra weeks, until the 15th of April 2020

Without free movement and shelter in place made obligatory a large group of citizens were unable to attend work, companies shut down all economic activities and only vital organizations were allowed to continue their services

The citizens belonging to the most vulnerable groups soon were not able to meet their basic needs, such as food. The Foodbank Curacao(In Dutch language: ‘Voedselbank’) was flooded with petitions for food assistance. In the past the Foodbank only provided 300 food packages per month to the most impacted by the pandemic, but now within a period of 4 weeks the need amounted to 5000 food packages. The increased demand for food assistance weighted heavily on the government and other NGO’s such as the Foodbank.

The government and the previously installed Crisis team found solutions internationally accepted such as a balanced combination of warm meals and food packages on one hand and on the other hand a combination of food vouchers, the so called electronic social card for food and cash in the form of 1000 Antillean guilders per month, the so called ‘Fondo di Sosten’ and the ‘Food cards’¹ (Alleviation Packages, already mentioned in this Report on the pages 4 – 26).

So shortly after the government made the already mentioned form of humanitarian assistance its own, the government joined forces with several NGO (Food bank, The Red Cross of Curacao) in lessening the worse cases of food shortage, for all groups (elder, sick, unemployed and migrants).

The distribution of food packages is now, a year later, still being distributed, because the economy still suffers the devastating impact of the pandemic. However, because food packages, in general, contain canned food (too much salt, sugar and fat), the government stepped out to a more durable solution by offering mainly the social card for food and cash (1000 Antillean guilders per month). The social card for food makes it possible that fresh vegetables, fruit and meat can be bought in the local supermarket of the card owner’s choice.

Only in households without a refrigerator or other cooling devices, the provision of handing out food packages remains the solution to this date. These households are offered on regular basis, beside their food packages, a healthy alternative in the form of a warm meal made of local, fresh vegetables and fruits. The warm meals offered by the government take into account the special diet needs of each household member.

¹ Food cards (monthly): for parents with children: Nafl 450,-- Antillean guilders per month; Single parents: nafl 350,-- Antillean guilders per month;

1. Food packages

The government bought in food packages, with the logistic help of the Foodbank Curacao (registration point, storage and distribution depot) while stakeholders took care of the distribution. The Foodbank, through private and corporate donations, financed the food packages arrangements. Beside the Foodbank, other organization of volunteers, did also a tremendous job in providing food packages, solely with their own funds. In order to increase efficiency in the distribution of the food packages the government assumed a role of facilitator.

Figures till December 2020 regarding distribution of food packages

Amount Foodbank Curacao: Almost 12.000 households received a food package or more on a regular basis, summing up to 18.580 persons in total. A total of 85.000 food packages were handed out;

Figures till December 2020 regarding distribution of food packages

Amount government: In close cooperation with the Foodbank and other NGO's/volunteers distributed 11.545 food packages in total to 5635 households.

2. Warm meals

Another provision to meet the needs of the most vulnerable groups affected by the pandemic, was the provision made possible by whole sale distributors and the hotel and restaurant sector. The private sector joined forces and handed out warm meals to citizens in need. In those dark times these companies shifted their operations from merely commercial and profit driven to philanthropy. In order to increase efficiency in the distribution of warm meals the government, once again, assumed a role of facilitator.

FIRST SECTION:

REPORT SECTION:

In this Report Section the activities of the following department (Bureau Mediation) under paragraph A and tripartite organs such as the Social Economic Council (paragraph B) and the Stakeholders meeting (former tripartite Platform Dialogo Nashonal Kòrsou ta Avansá) in paragraph C is shortly narrated upon.

Last but not least the so called Landspakket-Arrangement 2020 is being scrutinized under D

A. Labor Mediation Bureau:

BUREAU MEDIATION



MINISTERIE VAN
SOCIALE ONTWIKKELING, ARBEID EN WELZIJN
LANDSBEMIDDELAAR

14. Labor Conflicts, Curaçao						
	2015	2016	2017	2018	2019	2020
Number of meetings with government	79	95	76	47	60	44
Number of work stoppages	19	16	13	7	21	13
Number of working days lost due to stoppages						
Number of collective labor agreements	10	12	9	5	0	1
Source: Government Labor Mediator						

SUMMARY of the Mediation and Conciliation Sessions held, Amount of strikes, Collective Agreements reached, Referenda held by the Bureau for Labor Mediation in the years 2018 – 2020:

SUMMARY 2018:

The sessions held were 51, the strikes amounted to 7, 11 collective agreements were reached and 6 referenda held;

B. SOCIAL ECONOMIC COUNCIL

This tripartite council, predecessor consists of representatives of the unions, employers and independent members, celebrated already its 50th anniversary in 2016. The Council was instituted by Ordinance as laid down in P.B. 1966, no 25.

The Council has always had the statutory authority to advise the Government on a requested or unsolicited (own initiative) and as off the year 2018 the Council is authorized to advise the Parliament as well.

Despite the COVID 19 pandemic times the Council, gave the Government in 2020 as much as 20 advices regarding topics such as flexible work (088/2020 SEC/SER), the Early Retirement for Civil Servants (067/2020 SEC/SER) and the advice on the Special Assistance Measures to workers and employers during COVID 19 pandemic laid down in the Ordinance P.B 2020 no 95.

(www.ser.cw) and in February 2021 an advice was given on the Proposal to Adapt the Labor Ordinance of 2000 (098/2020 SEC/SER). Please see Annex I of this Report.

In conclusion, the Social Economic Council strive to create a qualitative support base to reach in a consensual manner accordance between all partners concerned (worker, employer and government) on social economic issues in order to guarantee welfare and sustainability for all.

C. STAKEHOLDERS MEETING (TRIPARTITE PLATFORM DIALOGO NASHONAL)

During the period 2020 up till now, the tripartite Platform Diálogo Nashonal Kòrsou ta Avansá has been transforming its activities into smaller groups of committees, the so called Stakeholder meetings, in order to meet the needs of social dialogue and consultations in a more effective way.

The Ordinance of Special Measures during COVID 19 -period (the so called Alleviation Packages, elaborated upon in the Introduction of this Report), laid down in PB 2020 no 95 has been discussed, adapted constantly and agreed upon by all stakeholders and partners involved as of March 2020 up till now.

After an intensive period of work made by the inter ministerial Committee on 'Revision Labor Laws', adaptations made in the the Ordinance on Labor 2000 (P.B. 2000 no 67 and 68) has been handed out in February 2021 for advice to the Stakeholders meeting. The Committee on Revision on Labor Laws, under the presidency of mr Roy Bottse LLM, also worked and will continue to work in close cooperation with the Stakeholders meeting and the larger tripartite setting the Platform Diálogo Nashonal Kòrsou ta Avansá. (see ANNEX I for the Draft which is not yet approved by supervisory bodies nor the Parliament)

A second most important proposal of adaption on the Ordinance of PB 1973 no 89 on Temporary Work ('Landsverordening ter beschikking stellen van Arbeidskrachten', in the Dutch Language, laid down in PB 1989 no 73) was also brought in February 2021 under the attention of the social partners (smaller unit: Stakeholders meeting) and this final advice of the tripartite Platform is still in progress in due consultations with the Government and other entities.

D. COHO ARRANGEMENT 2020 (LANDSPAKKET- ARRANGEMENT)

This Revision Commission, in consultation and dialogue with the social partners, was clearly assigned to update a few national labor laws. The tripartite platform, the Diálogo Nashonal Kòrsou ta Avansá (Stakeholders meeting) has an advisory role, based on the principles of the ILO Convention no 144.

So far, the Commission Revision made some adaption proposals to the Government about several Laws such as the Labor Regulation 2000 (working hours and rest, additional articles about work and persons with limitations. P.B 2000 no 67 & 68)), the Ordinance on Labor Migrants (P.B 2001 no 82)² and the Ordinance on Temporary Employment (P.B 1989 no 73).

The full blown Covid-19 pandemic effects, forced the Government to appeal on Dutch financial support which resulted in the so called 'Landspakket'-Agreement³. This agreement on kingdom

² The Ordinance on Labor Migrants (P.B 2001 no 82) is offered for advice to the Platform on the 5th of February 2021 and the Ordinance on Temporary Employment (P.B. 1989, no 73) on the 8th of February

³ This agreement is the basis for financial aid provided by the Netherlands, whereas in exchange Curaçao will have to reach financial, economic, administrative reforms to reverse the existing deficits in its budget. This aid is not only financial, but includes the revision of outdated labor laws and the task of the Commission Revision Labor forms now an integral part of the package of alleviation called the Landspakket;

level, will provide Curaçao with the needed technical, financial and administrative assistance to adapt, update and implement new laws and regulations.⁴

The assignment, granted in 2019 to the Commission of Revision of Labor Laws, by the Government now forms an integral part of the 'Landspakket'- Agreement (COHO) and will shortly be continued with the involvement of all local stakeholders.⁴

Is an agreement between Curaçao and the Netherlands to achieve structural reforms through measures on financial, economic and administrative level in order to become more resilient. In exchange for these reforms on above mentioned areas, the Netherlands will provide financial support. Beside the latter, aid in the form of development investment will also be handed out.

Moreover, due to the Corona pandemic, Curaçao encountered huge financial deficits in its budget, and the Netherlands together with all local ministries and stakeholders concerned agreed to continue budget aid. The supervision to this aid is assigned to the authority organ named the COHO (the Caribbean Reforms and Development Authority). The COHO will supervise the implementation of the structural reforms and if Curaçao is not willing to cooperate the population will have to attain to the financial and economic consequences.

In theory, no authority will be taken over by this supervision organ, called the COHO. The Parliament, the Government and all other administrative government organs will maintain, as agreed upon and laid down in the 'Landspakket-Agreement' their constitutional powers.

⁴ Bron: 'Dynamiek Arbeidsmarkt', issued 12 of May 2021, advise of an interministerial group of experts;

⁴ The Landspakket-agreement will consider for the upcoming years the following labor laws revision: the Bankruptcy Decree (1931), The Ordinance on Labor Dispute (1946), Ordinance on Minimum wages (1972) and the Dismissal Ordinance (2000) and more;

SECOND SECTION

ANSWERS NON CONFORMITIES:

Article 5 Right to organize

Situation in law and practice with regard to the right to organize regarding:

- A) The formation of trade union;
- B) Representativity by criteria: B1 public sector and B2 private sector B3 procedure representativity;
- C) Autonomy and prerogatives;
- D) Personal scope.

ANSWER:

A.FORMATION OF TRADE UNION under article 5 under a)

Unions played no role in Curacao before 1922. There were two possible reasons for this: it can be attributed to workers, as members of a racist colonial society, not yet being ready for this level of organizations and they may have been avoiding repression from the government. In 1913, a large dock strike, the earliest recorded strike by free workers in the history of Curacao took place on the island, but it was entirely a wildcat strike. Employers brought in workers from St Thomas and Venezuela and broke the strike. It did not give rise to any permanent workers organizations.

In April 1922, another dock strike broke out, again without union involvement. The Royal West Indian Mail Service (KWIM), acting on behalf of a number of shipping companies, lowered dockworkers' wages. It claimed that wages had risen excessively during World War I. The Roman Catholic People's Union intervened and mediated negotiations between workers and employers. The People's Union was not a labor union, but mostly middleclass organization looking to advance the interests of the people. When negotiations failed, workers decided to form a Dock Workers' Union on July 1st.

The Union successfully reached an agreement with the local management of the KWIM to end the strike. When the company's general management in New York rejected the compromise, a riot ensued at its offices in Curacao capital Willemstad. The police needed military assistance to put it down, killing four and wounding nineteen in the process. As a result, the KWIM accepted the original compromise⁵.

Relations between labor unions and political parties took a new turn around in 1955. New labor unions came into being, with political figures participating to maintain contact with political parties. Though the unions which were established after that period were not allied to a specific political party, clear connections with the political parties existed, until May 1969

In 1969 again it was a labor conflict, which developed into riots, thang rang in a new era. Looking at trade unions from a sociological point view one can state that just like political parties, after the second World War they have become channels for social mobility. Being a union leader now means belonging to a new kind of elite.

It is though quite difficult to fix exact boundaries, the concept of labor union calls up a more limited picture. By a labor union it seems likely to understand an organization of wage-earners with the explicit aim of pursuing the betterment of their socio-economic position. Though not considered to be their explicit aim this does not exclude political actions by the contemporary labor unions. In other words, labor unions do not have political objectives, but their influence on political development can be very great. Thus labor unions in other parts of the Caribbean had a distinctly anti-colonial undertone in the past. As far as Curacao is concerned, the so called voting advices of the union to their members before elections have unmistakably influenced the voting behavior of the laborers.

After the 30th of May 1969 general strike the relations between labor unions and political parties have been characterized as 'flirtations' without commitments, led to frictions and a gradual but final drifting apart between the two groups.⁶

As for legislation, in spite of the prevailing opinions in Europe in the end of the twenties, no trace of labor legislation was to be seen yet in Curacao. Concerning an important

⁵ 'Labor Unions and Labor Conflicts in Curacao', professor R. Romer, page 140, 1981;

⁶ Rapport 30 May 1969, an analysis on the outcome of the general strike (disturbances) on political, social and cultural level;

subject such as the labor contract, the provisions of 1863, were still operative. Article 3 of this regulation of 1863 stated that the master's word was law as regards the most important elements of labor relations, such as wages and working hours.

Labor legislation, which began to take shape in the thirties, was clearly the initiative of the colonial Governor, mr W.T. Slobbe.

The first Act in this field was the 'Winkelsluitingsverordening' (Shop Closing Act) of 1932, then followed the 'Ongevallenverzekering' (Sickness Insurance Act) of 1936 and the labor contract in the Civil Code in 1941. By far the greater majority of the companies had no labor contracts until that year. It was not until 1958 that the Act on Collective Labor Agreements followed. Though the colonial Government's actions in its endeavors to maintain order were decidedly repressive as regards the laborer, the initiatives to improve the latter's position mainly originated with this same authority.

Later on the Ordinance on Labor Disputes (installation of the Bureau Mediation) in 1946, after the 30th May 1969 general strike more laws on social terrain were put in place (Basic Health Care, Old Age Pension Act etc).

The Social Economic Council (1970) and the tripartite Platform Dialogo Nashonal Kòrsou ta Avansá in 2014 marked the structural institution of the tripartite consultations held between the government, employers and workers on all labor, social and even national issues (ratification of the ILO Convention no 144)

Answer:

B1. REPRESENTATIVITY & CRITERIA LABOR UNIONS under article 5 under b)

As for the Public Sector National Ordinance containing general measures, from July 11th, 2016 in execution of article 2, third paragraph, of the National Ordinance on Organized Consultation in Civil Service matters (P.B. 2008 no. 70) (National decree on the representativeness of Central Commission organizations)

LOCATION: PB 2016 no 45

7 1st of July 1863, the legal abolition of slavery in Curacao;

PURPOSE: it is desirable to establish standards for the assessment of the representativeness of organizations which aims to represent the interests of public servants for the admission to the Central Commission of Trade Unions

REPRESENTATIVENESS

Since the National decree, containing general measures, that determines the standards for representativeness has not yet been established, a connection has been searched for with the criteria prescribed by the ILO. The ILO indicates that the criteria for representativeness of organizations should be regulated by law and not left to the government.

In its conventions, the ILO outlines the following criteria that an organization must comply with to be considered representative:

1. The organization must maintain good relations with its members in order to ensure that their interests or ideas are taken into account;
2. The organization must designate a person as its representative in the consulting institution;
3. The statutory purpose of the organization must include the representation of the legal status matters of its affiliated civil servants;
4. The organization must have legal capacity for at least one year;
5. The organization should be independent from any other organization in its policymaking (ILO Recommendation no 151);
6. The organization's structure and financial capacity should be such to ensure regular continuation of work;
7. An organization of workers can only be representative for a particular group of workers which it intends to organize, if it represents a substantial portion of the employees (ILO Recommendation 152).

Jurisprudence has shown that a labor union can force admission to a consultation only if that union is sufficiently representative. In its ruling [Abvakabo FNV⁸ against BVOK \(HR June 8th 2007, JAR 2007/162\)](#), the Supreme Court considered in principle that the labor union that represents a large number of employees in that branch and is more representative than the other unions, is entitled to admission to negotiations, unless a balancing of interests justifies an exception to that main rule.

In setting the standards, the Government on one hand is taken into account the fact that no fragmentation of organizations should be encouraged and on the other hand that the support of the consultation result must be as broad as possible.

⁸ FNV, abbreviation: Federatie Nederlandse Vakvereniging (Netherlands Union Federation, section Abvakabo). Latter is the section destined for civil servants;

Article 1

The organization's structure and financial capacity should be such to ensure regular continuation of work. The stipulations of Book 2 of the Civil Code shall apply accordingly (mutatis mutandis applicable) to this national decree.

Not every organization can be considered representative (see the judgment above of the Supreme Court, Abvakabo FNV against BVOK). In the assessment of the actual number of members of the respective organization also are taken into account:

- Who is considered a civil servant. Pursuant to Article 1, paragraph one of the National Ordinance on Material Civil Servants Law (in Dutch: Landsverordening Materieel Ambtenarenrecht, abbreviation 'LMA'), a public servant is within the meaning of the LMA and the regulations issued thereunder, he who has been appointed or assigned to public service to work on behalf of the Country of Curaçao. The third paragraph of this article provides that non civil servants within the meaning of this National Ordinance and the regulations issued pursuant thereto, are those with whom a contract of employment has been concluded in accordance with civil law, and the workers;

Article 2

The organization must submit a number of documents at its request to be considered representative. The organization must be established by a notarial act and the statute will include the purpose of the organization. The organization must also have rules of internal procedures.

To ensure greater security about the representativeness of organizations is included that an auditor with certified authority must provide a verified statement of the members of the organizations and the data of these members (name, first names, identity number, address and the department in which the members are employed). The organization may choose instead of an audit certificate, to request a copy of the records of all members from the Civil Registry Population Registry and Elections (in Papiamentu called The Civil Registration Office, the 'Kranshi') and present it to a notary for the preparation of a certified record in this regard. A review of the composition of the board or other entities and the correspondence address of the organization petitioner are necessary for transparency in the organization.

1. NUMBER OF MEMBERS REQUIRED

In order not to violate what has been stipulated in the international law (article 14 European Convention on Human Rights) with non-discrimination, possible distinction in handling between organizations should be based on an objective and reasonable justification in order to be justified. The Government has chosen for the minimum of

5%, because in the static world, it is considered to the extent to which the respondents are a good reflection of the population from a sample (target group of the research) and talk about static representativeness if there is 8% of the population, where a minimum of 5% is still acceptable in statistics.

2. REPRESENTING SPECIFIC INTERESTS

The Government is aware of the judgments (ECLI:GHARN:1995,AG1061) and Court in First Instance in Utrecht (Netherlands), April 1st 2009, Argument no 48 (ECLI:RBUTR:2009:BH9295) where indicating that the possibility exists that a (smaller) labor union might have such experience and expertise, or can stand up for such specific interests, which are neglected by the other (larger) unions, so that consulting with such a smaller union could be of added value and therefore should also be taken into account when assessing the representativeness of such an organization.

This issue does not appear in the context of negotiations in the GOA platform. The National Ordinance on Organized Consultation in Civil Service Matters provides a consultation platform where the employee organizations can negotiate on behalf of the legal status of all civil servants, regardless of function(group). Therefore the requirement that the affiliated members, of the organizations participating in the Central Committee of the Trade Unions, must be officials on the basis of the LMA (National Ordinance on the material rights of civil servants).

Distinction in function or any other kind of categorization of staff members that may exist, does not apply in the GOA platform, which means that there cannot be an organization considering his expertise towards a particular personnel category that, regardless of the size of the organization, should also be admitted to the Central Commission for Unions (in Dutch: 'Centrale Commissie voor Vakbonden', abbreviated: 'CCvV').

Answer:

B2.REPRESENTATIVITY in JURISPRUDENCE under article 5 under b)

Jurisprudence in the following case illustrates clearly the criteria for representativity established by the judge through using national and international laws. The case is laid down as ECLI: OGEAC, year 2016, [SEU \(workers union\) against AQUALECTRA](#) (semi public utility company

LITIGATION

4.1.

It is not up for discussion, between the parties, that SEU, as the labor union of AQUALECTRA'S executives, negotiated with AQUALECTRA on December 31st, 2013. At the end of the last signed collective labor contract (hereinafter: CLC) for the executives to reach a new CLC. Negotiations did not lead to a new CLC between parties.

4.2.

In this respect, AQUALECTRA states that the consequence of the (binding) result of the referendum of September 18th, 2015 that it is not (no longer) required to negotiate a new CLC, now that SEU is not presentable. SEU itself requested a referendum to establish that she was authorized to represent the entire staff. Now that no success was booked, the SEU could not choose for herself to stand up/speak up again for only the staff. Therefore, AQUALECTRA has no commitment to negotiate with SEU regarding engaging in a CLC.

AQUALECTRA communicated the above-mentioned position to SEU by letter dated September 22nd, 2015. Subsequently, AQUALECTRA suspended regular consultations with SEU, cancelled the special mediator and denied SEU the usual facilities for a labor union.

On top of that AQUALECTRA does not respond at all on to (written) requests of SEU for consultation. There was also no response on the last request of April 13th, 2016 from the authorized representative of SEU. Under these circumstances, there is a sufficient level of urgency on the part of SEU in the present proceeding. The Court will thereby support the claims of SEU, as AQUALECTRA also did according to its pleading, as a request to order AQUALECTRA to recognize SEU as a labor union within the meaning of article 14a paragraph 4 of the Labor Disputes Ordinance;¹

4.4.

In this context, the Court considers the following. There is no dispute between the parties that the purpose of the September 18th, 2015 referendum was to determine whether a labor union and, if so, which labor union, SEU or STK, would be appointed by the majority of AQUALECTRA'S employees to represent them in the representation of their labor affairs. It is certain that neither of the labor unions achieved the needed majority of votes in the referendum;

4.5.

In the temporary judgment of the Court, taking into account the aforementioned, it can no longer be distracted from the outcome of the referendum that it has not proved possible at

¹ According to 'Landsverordening Arbeidsgeschillen 1946' (Ordinance on Labor Dispute, 23rd July 1946);

AQUALECTRA to designate one labor union for the entire staff, namely staff and operational staff. Linking the failure to achieve the majority of the votes at the consequence that AQUALECTRA no longer has to recognize any labor union as the representative of the workers goes too far. The above applies now the more it is not disputed that until the referendum the labor unions were recognized by AQUALECTRA as unions for employees in the categories of staff and operational personnel. As such, AQUALECTRA has also closed collective labor contracts in the past with these unions. At the negotiation on August 18th, 2015 it was thereby informed by the National Mediator, in the presence of AQUALECTRA, that if none of the parties achieved the majority, everything would remain the same. At that time AQUALECTRA did not notify that it did not rely on this principle.

4.6.

Furthermore, the National Mediator notified AQUALECTRA by letter dated September 25th, 2015 that SEU must be considered the labor union of the staff category and STK must be considered the labor union of the operational staff category. Thereby emphasizing that in the referendum no verification has taken place of the representation of the labor unions among the categories they represent and that no reason exists either to doubt the representation of the labor unions;

4.7.

Considering the above, as well as the fact that AQUALECTRA has not disputed that SEU represent 96% of the staff personnel, also after the referendum, AQUALECTRA cannot be followed in its assertion that SEU should have gone back to the National Mediator with a request under Article 14a section 1 Ordinance on Labor Dispute. The National Mediator expressed himself in clear words by the aforementioned letter of September 25th, 2015 on whether SEU was still to be considered a labor union for the staff. Partly because AQUALECTRA has failed to object to this secluded decision in aforementioned letter, SEU should be considered a labor union for the staff, judged for the time being, even after the referendum;

4.8

Therefore AQUALECTRA will be ordered to recognize SEU as the labor union for staff personnel and to act accordingly. In particular article 14a section 4 of the Ordinance on Labor Dispute entails that AQUALECTRA should negotiate (further) with SEU on a new collective labor contract for the staff. Based on the court verdict of September 23rd, 2014 AQUALECTRA will also have to discuss with SEU the agreement on the collective labor conditions closed with STK and the "protocol for determining work conditions for personnel classified in function groups 01 and A to H of December 17th 2015" agreed with STK, now that these work conditions have also been applied to the SEU members;

The Court will thereby determine that AQUALECTRA must approach SEU no later than two weeks after the date of the present judgment to set a date to start with the aforementioned negotiations and discussions. In order to avoid delay, taking into account the upcoming summer vacations, the Court will determine that the date of this first negotiation between AQUALECTRA and SEU should be no later than August 15th, 2016.

The Court sees in AQUALECTRA's stance after the referendum, reason to attach a penalty payment of Antillean guilders (NafI) 10,000, with a maximum of Antillean guilders (NafI) 100,000, to each day that AQUALECTRA, after the aforementioned two weeks, fails to contact SEU to fix a date for the aforementioned first meeting between AQUALECTRA and SEU.

4.11.

From both parties may be expected, in the interest of the work peace, to move beyond this period of no-communication and the visor is set on (good collaboration in) the future. Obviously this will require several meetings. In what form further meetings will take place (in the presence of or without the other labor unions) will be determined on the basis of the circumstances of the case. AQUALECTRA is thereby obliged, with respect to the collective labor terms relating to work conditions and agreed upon with another labor union, to comply with the order in the Court judgment of September 23rd 2014. Considering that this order was already issued by the Court, the Tribunal sees no reason, partly because further justification of SEU's claims is lacking, to issue an (additional) order in this regard. AQUALECTRA may be expected to, in consideration of the aforementioned court ruling, to inform SEU of the (contents of the) conversations held on the basis of the collective labor agreement with STK.

4.12.

Regarding the advanced order of information supply, the Court considers that it is obvious that AQUALECTRA should, as far as possible, make information available to the labor unions equally and simultaneously. Now that it has not been stated nor shown that this has not happened in the past, the Court does not see any reason to give a warrant.

4.13.

AQUALECTRA as the party to be ruled against will be sentenced to pay the costs of the proceedings. Up to now on the part of SEU these costs are estimated at Antillean guilders (NafI) 837.95 for expenses (including 450,= Antillean guilders for court fees) and Antillean guilders (NafI) 1,000.= for attorney's fee.

5. The decision

The Court:

Judging in summary procedure:

- orders AQUALECTRA to recognize and act upon SEU as the labor union for staff personnel;
- orders AQUALECTRA to approach SEU no later than two weeks after the date of the present verdict to set a date, which may not be later than August 15th 2016, for an initial discussion as referred to in legal considerations 4.8. and 4.9., under penalty of Antillean guilders (NAfl) 10,000.00, for each day that AQUALECTRA fails to comply with this order, with a maximum of Antillean guilders (NAfl) 100,000.=;
- orders AQUALECTRA to pay the costs of the proceedings, estimated on the part of SEU at Antillean guilders (NAfl) 837,95 for expenses and Antillean guilders (NAfl) 1,000.00 for attorney's fee;
- declares this verdict executable on hand;

As for the PRIVATE SECTOR, on the contrary to the earlier mentioned public sector (P.B. 2016 no 45) under B 2 of this Report, the authority to determine the representativity is granted to the Mediator of the Bureau Mediation within the Ministry of Social Development Labor and Welfare and is laid down in the Ordinance of Labor Dispute of 1946.

ANSWER:

B) 3 PROCEDURES REPRESENTATIVITY UNION article 5 under b)

The procedures instituted in Curacao for solving collective labor disputes are laid down in the following articles, extensively described in the Ordinance for Labor dispute of 1946 and revised by the Commission Revision Labor Laws as of 201910.

Firstly the individual disputes are brought to the Ministry of Social Development Labor, the Complaints Department, where capable officers mediate between individual worker and

10 This revision project of the outdated labor laws such as the Ordinance on labor dispute (1946) will be continued by the arrangement called the 'Landspakket'- Arrangement of 2021. The arrangement includes an agreement between the Netherlands 'Landspakket'- Arrangement Netherlands and Curacao, as partners in the Kingdom, agreed to, with the technical support of Dutch experts, continue the adaption of laws in order for these to meet international standards;

employers. If the dispute is not settled through mediation the Government offers free judicial assistance where independent judges in the Court of Justice of Curacao opinated and legal binding sentences. The legal sources on which these sentences are based are the Civil Code (labor contracts) and the Dismissal Ordinance.

ANSWER:

C) AUTONOMY AND PREROGATIVES article 5 under c)

Article 10 and 11 of the Constitution of Curacao guarantee the right to organize for all residents.

There are no restrictions in general with respect to this right for employees. Anyone may establish an association under the general rules of Book 2 (Civil Code of Curacao) Only a notarial record containing the statutes is required for the association with full legal capacity. These statutes are freely recorded in which the required ministerial declaration of no objection is not required.

There are no specific requirements for the establishment and activities of workers or employers associations. It is required by the way for legal collective action, that the association (with full legal capacity has chosen to have its statutes contain such purpose.

In accordance with the ILO conventions no 87, which Curacao has declared co-equal, organizations have the right to free structuring of their activities. Free structuring includes among others the following

1. The right to hold meetings;
2. The right for labor representatives to enter the workplace and speak with the management;
3. The right to strike;
4. The right to founding confederations;
5. Any activity to stand up for the best interests of its members.

The free exertion of the right to organize is sufficiently protected in Curacao so no discriminatory acts can be undertaken against the representatives of the workers regarding the unions right in general.¹¹

¹¹ Decent Work op de Agenda, ILO Norms, Ministry of Social Development and Employment, 1999, page 44-45;

D) PERSONAL SCOPE (article 5 par d)

No information can be supplied by the Government because of the issue concerned is not clear to the Government;

ARTICLE 6 NEGOTIATION PROCEDURES

Article 6 par 2 under a) Number of employees covered by Collective Agreements and b) Collective bargaining is sufficiently promoted

The total sum of worker within the private sector who resorting under the scope of collective agreements:

ANSWER:

The Government has started some years ago already a digitalization process in order to promote adequate data collection in all issues related to the labor market and also in particular to the amount of workers covered by collective agreements. Due to financial restraints however the implementation of this process encountered some challenges and delays, but the Government is fully aware that continuation of this process is of utmost importance to monitor and (re)direct the developments on the labor market in the most extensive sense of the word and thus will leave no stone unturned to finalize the digitalization for the upcoming years so this information will also be available to share with the social partners. Local public and with international institutions such as the distinguished Committee for Social Rights as well. In awaitance of the actual formalization of this process, estimations show that the majority of workers, and also migrant workers, are covered by existing collective agreements in respective economic branches.

Is the instrument of collective bargaining sufficiently **promoted** by the Government:

ANSWER:

This instrument is not only promoted but is also well known by the public and all stakeholders involved. This tool is also laid down in the Ordinance of Collective Labor Agreements of the 12th of May 1958. Moreover, the last article of this Ordinance clearly states in article 24 paragraph 4 that all parties are obliged to inform the Ministry of Social Development Labor and Welfare, within one month, about the existence of a settled collective labor agreement and a copy of this document should be handed out officially to the Bureau of Mediation.

Is the public **informed** about the tasks and authority of the Bureau Mediation:

ANSWER:

The Government reserved on its Annual Budget 2021 a sum of approximately NafI 50.000,00 Antillean guilders to continue raising awareness about the tasks and authority of the Bureau Mediation in collective disputes, collective agreements through mediation, arbitration, as laid down in the Ordinance of Collective Agreements 1958 and the Ordinance of Labor Dispute 1946. However, both workers and employers' organization are, for decades, well known with the role of the Bureau Mediation and the tools used by this Bureau. These organizations frequently and successfully make use of these legal provisions.

ARTICLE 6 par 3 CONCILIATION & ARBITRATION

Article 6 par 3 under a)

The Bureau for Labor Mediation deals with collective disputes, conciliation and arbitration but it is the Complaints Bureau in the Ministry of Social Development Labor and Welfare which deals with individual labor complaints and the used tools also constitute in settling these individual conflicts between one worker and one employers are mediation and conciliation methods.

On yearly basis a total amount of approximately 553 workers found their way to the latter Bureau (Complaints Bureau). Beside the collective dispute handling (Bureau Labor Mediation), the individual complaint handling (Bureau Complaints), the Ministry of Social Development Labor and Welfare also offers mediation in divorces, alimony and neighbors disputes and it is called the Bureau for Social Mediation.

Approximately 251 clients found their way, successfully to this provision of social mediation at the Bureau for Social Mediation during the reporting years 2018 - 2020.

Last but not least, the system of free judicial assistance is in place for some decades already and prove its existence in great ways. This provision is laid down in the Ordinance Free Judicial Assistance (P.B. 1959 no 198) and is destined for clients with a yearly income between NafI 0 - 12.000,00 (Antillean guilders: US Dollars 0 – 7000 on a yearly basis).

The client can make an appeal on these provisions, both for labor related and social related issues.

This system is financed with public funds and is provided by lawyers and attorneys registered on a so called PIKETLIJST. The lawyers on the latter list, perform their service to community and receive in return a compensation of Nafl 1000,00 Antillean guilders per client. The service belongs to the social advocacy.

A third group, beside the above mentioned categories of low income clients, also qualify for this assistance free of any costs and that group can be categorized under the welfare clients (in Papiamentu 'Onderstant') which receive an unemployment benefits

ANSWER:

PREVENTION OF DISPUTES article 6 par 3 under b): Bureau for Labor Mediation (collective)

Article 14A and 14 B of the Ordinance of labor dispute (1946) on the contrary deals with collective disputes between the employer 's and worker's organizations.

The representativity procedure is as follows (mentioned in article 5 under b)

Article 14 A chapter III paragraph 1 – 4 of the Ordinance of Labor Dispute (1946):

Article 14 A

Paragraph 1

The mediator may hold a referendum among one or more categories employees in a company, determined by him, at the request of the employer or the board of employees association. In order to determine which association shall be designated by the majority of those employees to represent them in their labor affairs. Only incorporated association of employees, whose statutes in particular refer to the authority to engage in collective labor contracts, may participate in the referendum. And who in fulfillment of the mediator has submitted documentation indicating that the majority of the concerning/regarding category or categories of employees are members of that association;

Paragraph 2

The employer is required to give the concerning/regarding category or categories of employees time off on the day on which the referendum is held, during the time determined by the mediator, in so far as it falls within their working hours, with full payment, in order to cast their vote;

Paragraph 3

The mediator shall notify the employer and the concerning employees associations as soon as possible of the result of the referendum, in writing;

Paragraph 4

The employer is required to negotiate with the board of the association of employees, regarding the conclusion of a collective labor contract. Which board was appointed at the referendum by the majority of workers to represent them in their labor affairs;

ANSWER:

PROCEDURE MEDIATION & CONCILIATION article 6 par 3 under b: Bureau for Labor Mediation (collective)

The procedure for mediation and conciliation of the Bureau Mediation installed by the Government in the Ordinance of Labor dispute 1946 is as follows and laid down in article 14 b chapter III paragraph 1-3 of the Ordinance on Labor dispute 1946:

Article 14 B Ordinance of Dispute 1946

Paragraph 1

The mediator shall, at the request of an employer or the board of an association of employees, provide mediation during the negotiation regarding a collective labor contract;

Paragraph 2

The mediator may cause the employer and the board of the association of employees to appear before him in order to attempt to assist the parties with all resources at his disposal during the negotiations concerning the conclusion of a collective labor contract;

Paragraph 3

The parties are required to show up/appear and provide the mediator with all the assistance and cooperation requested from them, which they are reasonably capable of doing;

COURT OF JUSTICE CURACAO

Last resort, if in the process of conciliation or mediation, the Bureau Mediation fail to reach an agreement then all parties concerned can put their disputes under the attention of the Court of Justice of Curacao for a judicial settlement.

ANSWERS TO NON CONFORMITIES:

Article 6 Right on collective bargaining

Answer:

A. Right to strike in general

Article 6 par 4 under a), b), c), d), e), f)

a) Right to strike in private sector, b) the definition of collective action and circumstance, c) Lawfulness, entitlement, d) restrictions of collective actions, e) the right for procedural requirements and f) consequences of a strike:

The right to collective actions, also the right to strike is a social fundamental right licensed in several international treaties. But the right to strike is not absolute. The legitimacy of a strike can be submitted to the judge. The judge first of all rules whether there is collective action in terms of international law.

This is the case if the action can reasonably contribute to the effective practice of the right to collective negotiation. Technically, the labor union is free to choose resources to achieve the goal. But this liberty is not infinite. The court may outlaw certain actions if it is established that a restriction is urgently required from a 'socially' perspective or if there is any 'need' depending on all circumstances involved. These may include:

1. The nature and duration of the action (strike);
2. The relation between the action and the pursued goal;
3. The therefore damage caused to the interests of the employer or third parties;
4. The nature of those interests and the damage.

Also, the question if certain rules have been taken into account (whether the action was announced in advance or was a last resort ('Ultimum Remedium') or if vulnerable people (disabled) are affected, the strike more likely will be illegal.

Like the Amsterdam court ruled in the Netherlands (these sentences are also valid and applicable to Curacao) that the members of the FNV (Labor Union) were not allowed to strike further for better contracts in school transportation because the social interest of students (a

vulnerable target group) is at stake: going to school should outweighed the labor union's interest. In this case a restriction of the right to collective actions was urgently needed.

In another recent lawsuit, the judge temporarily prohibited the strike of one part of the KLM ground staff because of the major vacation rush, the terrorism threat at the airport and the expected damage.

On September the 15th, 2016 the day of the general strike, a summary procedure was held between the AAV (employer's organization) and the SGTK (labor union) in Curacao. Unfortunately the summary procedure was only about the question whether the strike actions were legal. The judge ruled that these actions were part of the definition of 'collective actions' in terms of international laws. Then the judge concluded that it was not imperative to prohibit the strike. It was considered that although the AAV suffers damage, the damage in strikes is inherent. The damage caused by the general strike which resulted that the SGTK actions was not taken into consideration (which according to some, ran into millions of Antillean guilders)

This because according to the judge, the effects of the general strike could not definitely be attributed to SGTK and apparently because the parties had not raised this as an objection. Including the fact that it was not submitted to court that weaker people of society were disproportionately affected by the consequences of the general strike. This certainly can be considered as a missed opportunity.

What about the strike of the CAPRILES CLINIC (clinic for mentally deceased)? It seems that the strikers are pursuing a legitimate interest. If the 'strike rules' have been fulfilled, is unknown. It is obvious that the weak (disabled people) are victimized by the strike.

The right to strike is a fundamental right of workers that must be respected, but not at all cost.¹²

ANSWER:

B. RIGHT TO STRIKE OF THE POLICE article 6 par 4 under g)

THE RIGHT TO STRIKE AND THE POLICE

¹² Article in Antillean Newspaper, 26 of September 2016, Ms Annemarijke Bach Kolling

Conform Article 6 paragraph 4 of the Charter there is no prohibition of strike for a police officer. In 2017, the Kingdom of the Netherlands, on behalf of Curaçao, withdrawn the reservation on the right to strike for civil servants (including the police force). (withdrawal of the reservation on article 6 paragraph 4 of the Charter, registered under ETS no 35, withdrawal date 29 May 2017)

INTRODUCTION

The police force should maintain the daily public order and should, by the nature of their profession, handle the right to strike very carefully. At least when exercising this right, it should be expected that well before the strike, there will be an official notice by a recognized labor union. In this case the two labor unions in question are the NAPB¹ or the SAP².

In general, Curaçao is very quick to resort to the means of striking but very often it remains a threat to strike or take actions. Much more often the threat culminates in a conversation between the representatives of the labor unions and the government (Minister).

In the years 2017 - 2019, Curaçao experienced a number of strikes, of which the following stands out due to the massive nature of the action and the unity among the labor union system and the population.

A. MASSIVE ACTION in 2017

On December 5th, 2017, 15 labor unions (including the police unions) united and called on their members, together with the public, to come and protest in downtown Willemstad. The unions demanded an increase of the minimum wage, reversing the 13.5% premium increase in the Public Liability Insurance of private cars and reversing/stopping the layoffs that threatened at the government company of Telecommunication, the UTS.

During an urgent dialogue between the labor unions and Premier Eugene Rhuggenaath, the Government met up with two of the three demands of the unions. Mandatory increase in third-party liability car insurance was discontinued. Within the next six months, any increase would be re-evaluated.

Second, the minimum wage was increased³ with Nafl 0.10, but the last demand about the discontinuation of layoffs, in accordance with the collective bargaining agreement, at the government's UTS⁴ was not met.

B. JURISPRUDENCE: LAND - NAPB STRAF SAP SITEK: ECLI:NL OGEAC, 2019 nr. 58

This jurisprudence clearly states the applicability of the article 6 paragraph 4 of the European Social Charter, in the following argument under no 3.8 of the Jurisprudence registered under ECLI:NL OGEAC, 2019 no 58.

PROCEDURE

On February 21st, 2019 the Country of Curaçao filed a petition with exhibits. On behalf of the labor unions, a counterclaim was filed with exhibits.

CLAIMS and DEFENSE

- The Country seeks an injunction against the labor unions to end the currently ongoing strike of government employees and impose a ban on the labor unions to once again declare or support strikes, all under penalty payments;
- The unions primarily claim payment of the wage rate by the Land to their members. 3% regulation and indexation. In the alternative, the labor unions are seeking an order for the Land to enter into consultation with them as referred to in Article 4 of the National Ordinance on Central Organized Consultation in Civil Service Matters, under penalty payments;

ASSESSMENT

Substantially, three issues are at play in this case:

- (i) Increase in salaries effective January 1, 2019;
- (ii) The 3% regulation which provides for a payment to be made, every two years, to civil servants equal to 3% of the salary, for those who have already reached the highest salary scale and pay grade;
- (iii) The indexation according to the TAPI system on which entitlement exists in case inflation exceeds 2%.

In Argument 3.3. of the ruling, the Minister of BPD, by letter dated February 19th, 2019, gave the following notice to the labor unions:

1. Payment of the wage rate will take place at the end of March 2019;

2. Payment of indexation will be evaluated in the context of the results of the Committee on Budgetary Screening;
3. Compliance with the 35-lump sum arrangement will also be evaluated in the context of the results of the Committee on Budgetary Screening;
4. The Government always respects the consulting body CGOA (between the Civil Servants labor Unions and the Government) and complies with dialogue and agreements within the context of this organization.

Argument 3.4 of the ruling states the following: The labor unions subsequently urged the Land to discuss the first three points in the letter of 19th February 2019 in the CGOA platform. The Land has taken the position and is taking the stand in the Summary Proceedings that there are no topics that need to be discussed in the CGOA and that the Country must wait for further decisions with the recently agreed 2019 budget amendment by the Financial Supervision Board.

In Argument 3.6 of the ruling, the labor unions, at the hearing, stated and the Country did not dispute that the wage rates, the 3% lump sum arrangement and the indexations were paid in the past, with the understanding that temporary agreements were made in 2014 in a Covenant between the Country and labor unions. These agreements are no longer in effect;

In Argument 3.7. in the Court's preliminary opinion, it is stated that the labor unions have a legitimate interest in consulting with them on the negotiated issues as referred to in Article 4 of the National Ordinance on Organized Consultation in Civil Service Matters, because paragraph 1 stipulates that these consultations must be held on all matters of general interest for the legal status of the civil servants, including general rules according to which the personnel policy will be conducted;

Even if the Country were to assume that the aforementioned National Ordinance does not force consultation in the present case, in the Court's provisional opinion, in the circumstances of the present case, the Country may be required to enter into consultations with the labor unions regarding the period within which the Country will comply with the payment obligation acknowledged by the Country and regarding the wage rate, as well as regarding the way in which the issues of the 3% rule and indexation and the interpretative differences existing in this regard for the time being are to be approached.

Notwithstanding the fact that it is obvious that the Government and the States are in charge of the Budget and not the labor unions. **However, that need not prevent constructive consultation.**

In Argument 3.8: *The Court considers that Article 6 paragraph 4 of the European Social Charter acknowledges the right of workers to take collective action in case of conflicts of interest, including the right to strike. The right to strike is limited (among others) by the principle of proportionality, in which context needs to be evaluated whether the interest in making use of the right to strike outweighs the disadvantages of the strike for third parties and for public order, national security, public health or morality as Article 9 G of the ESC;*

DECISION

The Court ORDERS, ruling, in SUMMARY JUDGMENT, as follows:

In Argument 4.1: the Court orders the defendants (labor unions) within two hours of judgment via radio, TV, or social media to call their members to resume work according to the applicable duty schedule;

In Argument 4.2: the Court commands the Land to consult the labor unions on the occasion of the CCGOA consultation of February 28th, 2019 and any follow-up consultations on the payment of indexation (agenda item 8 of the Civil Service Unions-Government Dialogue), the granting of the salary rate as of January 1st, 2019 (agenda item 9) as well as the the 3-way rule

ANNEX I: Draft of the new to be approved Ordinance on Labor Regulation (P.B. 2021/2022, no ...), not yet approved by the Parliament but already scrutinized on February 2021 by the Social Economic Council, advice nr 098/2020, see page 6 of this Report:

PARLIAMENT OF CURAÇAO
SESSION YEAR 2021 -2022

NATIONAL ORDINANCE of the 2021
laying down new rules regarding
working hours, working hours and overtime (Arbeidsregeling 2021)

DESIGN

No. 2

IN THE NAME OF THE KING!

The Governor of Curaçao

Having taken into consideration:

that it is important to implement as much as possible the provisions of the Constitution of Curaçao, namely article 22 paragraph 2 and article 26;

that it has proved desirable to bring the National Ordinance Labor Regulation 2000 more into line with national and international developments in the field of labor regulations;

that, on the basis of modern views, it is important to promote proper fulfillment of duties by employees while at the same time stimulating the combinability of work and care duties as well as other responsibilities outside of work.

Having heard the Advisory Council, has adopted the following national ordinance in consultation with Parliament:

CHAPTER 1. GENERAL PROVISIONS

Article 1. Scope of application

1. This national ordinance and the provisions based on it are applicable to the performance of and having work performed.

2. This national ordinance and the provisions based on it do not apply to work performed:
 - a. by the head or the director of the enterprise and his spouse or relative in the first degree, or performed by persons, other than the head or director, who have the same powers as the head or the director;
 - b. by street vendors, fishermen, small traders and farmers and horticulturists, who do not need a permit under the Business Establishment Regulations;
 - c. with a scientific purpose;
 - d. by physicians and midwives, as well as by persons working in a hospital or care institution other than on the basis of an employment contract or a public-law appointment;
 - e. by persons of 18 years of age or older on behalf of airline companies and directly related to the arrival or departure of aircraft and the persons or goods carried with them;
 - f. by persons of 18 years of age or older as crew for the aircraft on which they serve;
 - g. by persons aged 18 years or older on behalf of shipping companies and directly related to the arrival or departure of ships and the persons or goods carried with them;
 - h. by persons of 18 years of age or older on board the ship on which they serve;
 - i. by dock workers aged 18 or older, subject to the Stevedore's Ordinance dening 1946 applies;
 - j. by persons aged 18 or older who are civil servants within the meaning of the National Ordinance Material Civil Servants Law or whose employment conditions must be approved by or pursuant to statutory regulation by the Governor.
 - k. during a period in which the exceptional situation has been declared by means of a national decree to that effect

Article 2. Definitions

1. In this national ordinance and the provisions based on it, the following terms have the following meanings:
 - a. employee: the blue-collar worker as referred to in article 1613a of the Civil Code of Curaçao;
 - b. employer: the employer, as referred to in article 1613a of the Civil Code of Curaçao, with the exception of the person who professionally makes workers available to a third party as referred to in the National Ordinance on the provision of workers, but including those to whom workers are be made available as referred to in that national ordinance;
 - c. children: persons who have not yet reached the age of fifteen;
 - d. juveniles: persons who have reached the age of fifteen, but not yet the age of eighteen;
 - e. Director: the Director of the Labor Sector of the Ministry of Social Development, Labor and Welfare;
 - f. The Inspectorate: The Inspectorate of the Ministry of Social Development, Labor and Welfare.
 - g. The Inspector General: The head of the Inspectorate.
2. In this national ordinance and the provisions based on it, the following terms have the following meanings:
 - a. working hours: the number of hours that the employee works per week or per day, with the exception of overtime;
 - b. working time: the times during which the employee performs work;
 - c. working hours: the times when the work starts and ends;

- d. rest time: the time during which it is prohibited to have work performed other than by way of overtime;
- e. schedule work: work, not being overtime, performed according to a periodic work schedule at various times, which are necessary in view of the nature of the company, as a result of which the working time falls wholly or partly within the rest period referred to in Article 9, first paragraph;
- f. overtime: work performed during the rest period applicable to the employee, as well as work which, with regard to the employee, exceeds the maximum permitted working hours per day or per week on the basis of this national ordinance or the provisions based thereon;
- g. week: a period of seven consecutive days;
- h. day of rest: the Sunday or the day that replaces the Sunday for the employee who performs schedule work on Sunday according to his work schedule. The Director is authorized, upon request, to determine that for a professor of a religion who prescribes a different weekly rest day than Sunday, the prescribed day for the application of this national ordinance will take the place of Sunday.

Article 3. Income limit

1. This national ordinance does not apply to employees whose gross annual income is more than 260 times the daily wage, as referred to in Article 8, second paragraph, of the National Ordinance Health Insurance.
2. For the purposes of this national ordinance and the provisions based on it, income is understood to mean: all income from work in a single enterprise, including wages determined by time, holiday pay, commission and profit bonuses and the like, which serve as the basis for the income tax, with the exception of the allowance for overtime and the allowance referred to in Article 11, ninth paragraph.

Article 4. General prohibition

It is prohibited to have work performed in violation of the provisions of this national ordinance or the provisions based thereon.

Article 5. Parental responsibility of young employees

The parent or guardian of the child or young person who is under his parental authority or guardianship, or the head of the family in which the child or young person is raised, ensures that the child or young person in question does not work performed that is prohibited by or pursuant to this national ordinance.

Article 6. Combined employership

For the purposes of this national ordinance and the provisions based on it, several employers may be regarded as one employer by the Director towards the employee, if the ownership of the

companies is largely in the hands of the same natural person or legal entity, or if the actual administrative authority or any form of management is in the hands of the same natural or legal person.

Article 7. Non-derogation prohibition

It is not possible to deviate from the provisions of or pursuant to this national ordinance to the disadvantage of the employee, unless expressly provided for in the national ordinance.

CHAPTER 2. GENERAL PROVISIONS RELATING TO WORK DURATION, WORKING HOURS AND REST PERIODS.

Article 8. Working hours

1. The working hours are a maximum of 40 hours per week, calculated over a period of four weeks, on the understanding that the working hours per day do not exceed ten hours.
2. The working hours for the employee who performs scheduled work will not exceed 45 hours per week, calculated over a period of four weeks, on the understanding that the working hours per day do not exceed ten hours.
3. It is prohibited to have an employee perform work, as a result of which the working hours referred to in the first and second paragraphs are exceeded, other than by way of overtime.
4. Deviations from the first and second paragraphs may be made by collective labor agreement.

Article 9. Rest times

1. The following applies as rest time:
 - a. daily time before 7 a.m. and the time after 8 p.m., on the understanding that for the employee in a company who has a prescribed closing time by virtue of any statutory regulation, the last rest period referred to is no more than half an hour after that closing time, whereby the time of commencement of the work on the following day must be such that for that employee a consecutive rest period of at least 11 hours applies;
 - b. the weekly rest day;
 - c. weekly at least twice the part of a day, other than the rest day referred to under b, prior to or after 1:00 pm;
 - d. public holidays, as referred to in Article 23.
2. Contrary to the first paragraph, the rest time for the employee who performs schedule work is:
 - a. the daily time outside the times of the start and end of his working time, on the understanding that his rest time in a consecutive time space of 24 hours is at least 11 consecutive hours, although the consecutive rest time is once in a consecutive time space of seven times 24 hours, starting at the time of the day on which the employee performs work, may be shortened to at least eight hours;
 - b. the weekly rest day applicable to the employee according to his work schedule;

- c. at least once a week for the part of a day, other than the rest day referred to under b, before or after 1:00 pm;
 - d. public holidays, as referred to in Article 23, insofar as the employee does not perform work on those public holidays in accordance with his work schedule, on the understanding that the employee is exempt from work on at least five public holidays per calendar year.
3. The employer organizes the work in such a way that the rest day of the employee who performs schedule work falls on a Sunday at least once every seven weeks, all this with due observance of Article 2, second paragraph, under h, second sentence. The provisions of the first sentence may be deviated from by collective labor agreement.
 4. It is prohibited to allow the employee to perform work during the rest period applicable to him, other than by way of overtime

Article 10. Break

1. The working time of an employee must be interrupted by a break of at least half an hour after a maximum of five hours of work on every day on which he, whether or not by way of overtime, works more than six hours.
2. It is prohibited to let the employee perform work during his break, other than by way of overtime.
3. An interruption of working hours of less than 15 minutes does not count as a break.
4. The employer must provide a suitable place with the necessary facilities for the personnel to take their breaks and to eat their meals. The Director can give instructions about this upon complaint.

Article 11. Consignment service

1. For the purposes of this national ordinance, consignment is understood to mean: a period of time between two consecutive shifts or during a break, during which the employee is obliged to be available to perform the stipulated work as soon as possible in the event of unforeseen circumstances.
2. It is prohibited to impose consignment on employees under the age of 18.
3. The employer schedules the work in such a way that:
 - a. no on-call duty is imposed on the employee for at least 14 consecutive days every four weeks;
 - b. no consignment is imposed on the day or days on which night shift work is performed.
 - c. Contrary to Article 8, second and fourth paragraph, the working hours calculated over a period of 13 weeks will not exceed 40 hours per week, if the on-call duty also covers the period between 00:00 and 06:00.
 - d. Working time during on-call is the time actually worked as a result of a call, on the understanding that the work as a result of one call or several calls within half an hour is deemed to last at least half an hour. If after termination of the work as a result of a call, another call is made within half an hour, that intermediate period also counts as working time.
4. The work resulting from on-call duty does not count towards the calculation of the total working hours referred to in Article 8.
5. Articles 9 and 10 do not apply to the work resulting from consignment.

6. The work performed during on-call duty is overtime, the remuneration of which is in accordance with Article 15.
7. Unless otherwise agreed by written agreement, the employer pays the employee on whom consignment is imposed, without prejudice to the eighth paragraph and regardless of whether calls have actually been made or work has been performed as a result of a call, per day on which that consignment is imposed. , an allowance of one percent of his gross monthly salary.
8. The Director is authorized to prohibit the imposition of an on-call duty on one or more employees in a company, or to attach further conditions or impose restrictions on this if this is done with a view to the health or well-being of the employee or employees concerned. desirable.

Article 12. Night shift

1. There is a night shift if the employee, who performs scheduled work, performs work according to his work schedule at or after 0.00 am or before 6.00 am, other than by way of overtime.
2. The working hours per night shift, excluding breaks, are no more than eight hours.
3. Contrary to Article 8, second paragraph, the working hours of an employee who performs work in night shifts, calculated over a period of 13 weeks, shall not exceed 40 hours per week.
4. The employer schedules the work in such a way that:
 - a. the employee performs a maximum of 14 night shifts in each period of four consecutive weeks;
 - b. after performing work in the night shift, the employee has an uninterrupted rest period of at least 12 hours if the night shift ends before or at 2.00 hours or 14 hours if the night shift ends after 2.00 hours, on the understanding that the rest period in a consecutive period of seven times 24 hours can be shortened once to at least 8 hours;
 - c. the employee has an uninterrupted rest period of at least 48 hours after having performed night shifts no more than 6 consecutive times.
5. The provisions of the fourth paragraph, under a, do not apply to an employee whose activities by their nature are mainly or exclusively and wholly or partly performed between the times referred to in the first paragraph.
6. Deviations from the second and third paragraphs may be made by collective labor agreement.

Article 13. Deviation from working hours

If the employee has to start his work on the instructions of the employer at a time that deviates by more than one hour from the applicable or usual working hours for the employee as indicated on the work list referred to in Article 28, or if the employer foresees that the employee longer will have to work than the working hours indicated on that list or deviations from the times indicated on that list other than by way of overtime, the employer is obliged to notify the employee of this assignment at least 24 hours prior to that deviating time. to make.

CHAPTER 3. OVERTIME

Article 14. Working hours including overtime

1. The working hours, as referred to in Article 8, first paragraph, including overtime, amount to a maximum of 50 hours per week, calculated over a period of four weeks, on the understanding that the working hours including overtime per day do not exceed 11 hours and the working hours including overtime calculated over a period of 13 weeks, does not exceed 45 hours per week.
2. The working hours referred to in Article 8, second paragraph, including overtime, amount to a maximum of 55 hours per week, calculated over a period of four weeks, on the understanding that the working hours including overtime per day do not exceed 11 hours and the working hours including overtime calculated over a period of 13 weeks does not exceed 50 hours per week.
3. The working hours of the employee who performs work in night shifts as referred to in Article 12, including overtime, amounts to a maximum of nine hours per day, on the understanding that the working hours including overtime calculated over a period of 13 weeks do not exceed 45 hours per week. amounts.
4. To determine the duration of overtime, the total number of minutes of overtime is rounded up to half hours each time.
5. For the purposes of this national ordinance and the provisions based on it, overtime that lasts less than 15 minutes per day and that is not regular in nature, is not considered overtime.
6. Without prejudice to the provisions of Article 17, the Director is authorized to determine that in a particular company, whether or not with regard to one or more employees, overtime, as referred to in the fifth paragraph, is considered overtime within the meaning of this national ordinance. must be considered if he considers that such overtime within that company, whether or not with regard to one or more employees, is of a regular nature.
7. Deviations from the first, second and third paragraphs may be made by collective labor agreement.

Article 15. Compensation for overtime

1. In addition to the full hourly wage applicable to him, the employee receives an overtime allowance of at least 50 percent of his hourly wage by way of compensation for overtime worked.
2. In addition to the overtime allowance referred to in the first paragraph, an employee who does not perform scheduled work must also be paid an overtime allowance of:
 - a. at least 25 percent of his hourly wage, if the overtime is performed during the rest period as referred to in Article 9, first paragraph, under c; then yes
 - b. at least 50 percent of his hourly wage, if the overtime is performed on his day of rest, as referred to in Article 9, first paragraph, under b; then yes
 - c. at least 100 percent of his hourly wage, if the overtime is performed on a public holiday, including the provisions of Article 22, first paragraph.
3. In addition to the overtime allowance, as referred to in the first paragraph, an employee who performs schedule work must also be paid an overtime allowance of

- at least 25 percent of his hourly wage, if the overtime is performed during the rest period as referred to in Article 9, second paragraph, under c; then yes
- b. at least 25 percent of his hourly wage, if the overtime is performed on the same day as the night on which work is performed; or at least 50 percent of his hourly wages, if the overtime takes place on the day that is a day of rest according to his work schedule; then yes
- c. at least 100 percent of his hourly wage, if the overtime takes place on a public holiday, including the provisions of Article 22, first paragraph.
5. Lower supplements than those referred to in the first, second and third paragraphs may be agreed by collective labor agreement.
6. If the overtime does not concern full hours, proportional compensation will be made on the basis of the first up to and including the third paragraph, with due observance of Article 14, first to third paragraph.
7. It may be agreed by written agreement that the compensation for overtime referred to in this article will be wholly or partly paid in paid leave on the basis of the allowances referred to in the first to the third paragraph.

Article 16. Special conditions for having overtime worked

1. If the employer calls on the employee to work overtime on a day on which he does not work, the overtime is deemed to last at least three hours.
2. If the working hours per day, including overtime, are at least ten hours, the employer is obliged to provide the employee with a hot meal or an adequate compensation.
3. Deviations from the first and second paragraphs may be made by collective labor agreement.
4. An instruction to work overtime is given by the employer to the employee as soon as possible. When giving an order for overtime, the employer must take the interests of the employee into account as much as possible.

Article 17. Limitation of overtime

The Managing Director is authorized to prohibit the work of overtime within a specific company, whether or not with regard to a specific employee or group of employees, or to impose conditions on this, if he or she does so with a view to the health or welfare of that employee or employees appears desirable, or if he considers that the need for overtime within that company is the result of a structural shortage of employees within that company.

CHAPTER 4 . LABOR BY CHILDREN AND YOUTH

Article 18. Prohibition of child labor

It is prohibited to have children perform work, whether or not in return for payment and whether or not on the basis of an employment contract.

Article 19. Exceptions to Child Labor

1. For the purposes of Article 18, work also includes all activities outside an enterprise, with the exception of activities:
 - a. in or for the benefit of the family in which the child is being raised;
 - b. in schools, labor camps and educational institutions, provided that these activities are of an educational nature and are not primarily aimed at obtaining an economic advantage;
2. By or pursuant to a national decree containing general measures, whether or not subject to restrictions or conditions, it may be determined that, for the purposes of Article 18, work does not include: activities performed by children aged twelve or older, who:
 - a. are necessary for learning a trade or profession, provided that it does not take place before 07:00 and not after 19:00;
 - b. by its nature usually performed by children, provided that it does not take place during school hours and not before 7:00 am and not after 7:00 pm;
 - c. Do not set high physical or mental demands or have a dangerous character, provided that it does not take place during school hours and not before 07:00 and not after 19:00.

Article 20. Prohibition of night work by young people

It is prohibited to have young people perform work during the time prior to 6:00 am and following 9:00 pm.

Article 21. Prohibition of dangerous work by young people

1. It is forbidden to let juveniles perform dangerous work.
2. By national decree containing general measures it will be determined which work must at least be regarded as hazardous work for the purposes of the first paragraph.

CHAPTER 5. SPECIAL CARE

Article 22. Health and other care.

1. In consultation with the employee with health problems, the employer must take all possible measures so that the employee can continue to work under adapted conditions.
2. The employer will take all possible measures to protect employees with disabilities, including the designation of personal guidance and adjusted working hours and circumstances in accordance with the situation of the employee concerned.
3. The Director can give instructions to the employer to comply with the provisions of the previous paragraphs.

CHAPTER 6. HOLIDAYS

Article 23. Wage scheme for work during public holidays

1. The employee retains the right to at least the wages on a public holiday that he would have earned on that day during the normal working hours applicable to him, if that day were not a public holiday.
2. Contrary to the first paragraph, the employee who actually performs schedule work on a public holiday is entitled to at least twice the wages that he would have earned on that day during the normal working hours applicable to him, if that day were not a public holiday. to be.
3. Any claim based on this article will lapse by operation of law if the employee is obliged to perform work on a public holiday and he fails to fulfill this obligation in whole or in part without legal reason.
4. The allowance for one or more public holidays may not be paid in the form of a surcharge on the wages.

Article 24. Public holidays

1. For the purposes of this national ordinance and the provisions based on it, public holiday is understood to mean:
 - a. New Year's Day;
 - b. the date after the date of the Carnival parade held (Grand Marcha)
 - c. the Good Friday;
 - d. the Easter Monday and Easter Monday;
 - e. the Ascension Day;
 - f. the Pentecost Sunday;
 - g. the Christmas Day and Boxing Day;
 - h. the day on which the King's birthday is officially celebrated;
 - i. Labor Day;
 - j. the date December 15 as being "Kingdom Day, or Dia di Reino, or Kingdom Day;
 - k. the date July 2 being Dia di Himno i Bandera di Korsou;
2. Labor Day is celebrated annually on 1 May, unless that day falls on a Sunday, in which case Labor Day is celebrated on the next working day.
3. By national decree containing general measures, it may be determined that days other than those referred to in the previous paragraphs shall be regarded as public holidays.

CHAPTER 7. SPECIAL PROVISIONS

Article 25. Extension of working hours

1. Contrary to Articles 8 and 14, on a request to that effect, the Director may, by decision, set the working hours including overtime for a company for a specific period of time at a maximum of

60 hours per week, calculated over a period of four weeks, insofar as for that company, given the special circumstances of the case, this is necessary for healthy business operations.

2. Conditions may be attached to the decision referred to in the first paragraph

3. Changes to the working hours, rest times and working hours in a company to which a decision as referred to in the first paragraph applies, as well as all other relevant changes to the operational management, will not be implemented without the prior written approval of the Director. The Director may attach further conditions to his approval.

Article 26. Special provisions with regard to domestic staff

1. Articles 8 to 17 do not apply to domestic work or personal services performed in the employ of a natural person in the household of that person, on the understanding that with regard to the employee who performs said work, does that count:

a. the working hours per day amount to a maximum of 11 hours and a maximum of 55 hours per week;

b. the employee takes his weekly rest day in every seven-day period;

c. the working time is between 06:00 and 22:00, unless the employment relates exclusively or mainly to the care of the natural person or one or more of his or her housemates and this care must take place exclusively or mainly outside the aforementioned times;

d. the employee takes a break of at least half an hour after every five hours of work;

e. the employee is exempt from work during public holidays with pay;

f. that work that exceeds the daily or weekly working hours referred to under a, as well as work performed outside working hours or during his break, is rewarded with a supplement of 50 percent of the employee's wages per hour worked, rounded up to half hours;

g. that work performed on the day of rest or on a public holiday is rewarded with a supplement of 100 percent of the employee's wages per hour worked, rounded up to half hours.

2. The obligations referred to in Articles 28 to 30 do not apply to the natural person referred to in the first paragraph.

Article 27. Special provisions for work in a fully continuous company

1. For the purposes of this article, work in a continuous company is understood to mean: work that is not exclusively of a supportive nature, and that is performed in an enterprise within which, due to the nature of the business or production process, during 24 hours a day without work must be interrupted.

2. Contrary to the relevant provisions of this national ordinance, the following applies with regard to work performed in a continuous company:

a. Article 9, second paragraph, under c, does not apply;

b. Contrary to Article 9, third paragraph, the employer organizes the work in such a way that the employee's day of rest falls on Sunday at least once every thirteen weeks;

c. Contrary to Article 10, first paragraph, the employer allows the employee a break of at least half an hour on a day on which he performs more than six hours of work, unless the service does not permit this;

- d. Article 11, third, fourth and ninth paragraphs, does not apply;
 - e. Article 12, third paragraph, is not applicable;
 - f. Article 14, second and third paragraph, does not apply, on the understanding that the working hours including overtime per week will in no case exceed 60 hours.
3. The Managing Director is authorized to determine with regard to a specific company that the work performed in that company is not regarded as work as referred to in the first paragraph.
4. Notwithstanding the provisions of the second paragraph, the Director is authorized to attach additional conditions to an employee or a group of employees who perform work as referred to in the first paragraph in a particular company with regard to the working hours, the working hours including overtime, working hours, breaks and rest periods, if he considers this desirable with a view to the health or well-being of that employee or group of employees.

Article 28. Further or deviating rules

By national decree containing general measures, further or deviating rules may be set with regard to articles 8 to 16 with regard to a specific industry or with regard to a specific type of work.

CHAPTER 8. ADMINISTRATIVE PROVISIONS

Article 29. Work list and work schedules

1. In the undertaking, a list of employees must be posted in a place that is freely accessible to the employees concerned in such a way that it can be easily read. The work list provides a systematic overview of the various positions present within the company and the budgeted workforce, as well as of the working hours or work schedules used within the company and of the rest periods applicable within the company.
2. If the working hours stated on the work list fall wholly or partly within the rest period referred to in Article 9, first paragraph, or if the work list relates wholly or partly to employees who perform scheduled work, the employer will immediately send a copy of the work list, as well as notification of any change thereof, to the Director.
3. The Managing Director is authorized to prohibit the application of the working hours or a work schedule, as included in the work list, with regard to an employee or a specific group of employees in a company, in whole or in part, or to give binding instructions in this regard, if: he is of the opinion that the nature of the company, as referred to in Article 2, second paragraph, under e, does not necessitate work during the working hours stated on the work list. All this only insofar as those working hours fall within the rest period referred to in Article 9, first paragraph; then yes
- b. to him that appears desirable with a view to the health or well-being of the employee or employees concerned.
4. If a decision, as referred to in Article 24, has been issued for the company concerned, a copy thereof shall be attached to the work list in such a way that it can be easily read by the employees concerned.

5. By national decree containing general measures, further rules may be set with which the work list must comply.

Article 30. Personnel register

At the request of the Director, the employer submits a personnel register, in which the names, dates of birth and nationalities of the employees in the company are stated. For employees who are not legally admitted to Curaçao, the number and date of issue of the residence permit are stated.

Article 31. Overtime register

At the request of the Director, the employer submits a register of the overtime worked within his company for no more than the previous twelve months. The register gives an overview of the names of the employees who have worked overtime, the dates on which the overtime was worked, the duration of the overtime worked per employee and the compensation given for the overtime.

CHAPTER 9. COMPLIANCE AND MONITORING COMPLIANCE

Article 32. Responsibility of the employer

1. The employer shall ensure that no work is performed in the company in contravention of the provisions of or pursuant to this national ordinance. The employer also ensures that the conditions set by the Director pursuant to this national ordinance are complied with.
2. The head and director of the company are equated with the employer referred to in the first paragraph.
3. Equal obligations as referred to in the first paragraph rest with the supervisory personnel, insofar as charged by the employer with ensuring compliance with the provisions referred to in that paragraph.
4. The employer or the supervisory staff are deemed to have fulfilled the obligations as referred to in the first and third paragraph respectively, if they demonstrate that they have given the necessary orders, the necessary measures have been taken, the necessary resources have been provided and the supervision that can be reasonably demanded is also required to ensure compliance with the provisions with which they are obliged to ensure compliance.

Article 33. Government supervision and enforcement

1. The officials and other persons designated by national decree are responsible for supervising compliance with the provisions of this national ordinance.
2. A designation as referred to in the first paragraph will be published in the Curaçaosche Courant.
3. In the performance of their duties, the supervisory officials and persons shall carry a proof of identity with them. Upon request, they will immediately show their ID. The proof of identity

contains a photo of the supervisory official or person and in any case states his name and capacity.

4. The officials and persons designated pursuant to the first paragraph are authorized, only insofar as this is reasonably necessary for the performance of their duties:

a. To initiate an investigation into the violation and thereby request all information;

b. to request inspection of all books, records and other information carriers and to make copies thereof or to take them with them temporarily for this purpose;

c. to enter all places, with the exception of houses, without the express permission of the occupant, accompanied by the persons designated by them;

d. dwellings or parts of vessels intended as dwellings without the explicit permission of the occupant to enter.

5. If necessary, access to a place as referred to in the fourth paragraph, under c, is provided with the help of the police.

6. On entering homes or parts of vessels intended for housing as referred to in the fourth paragraph, part d, Title X of Book Three of the Code of Criminal Procedure shall apply *mutatis mutandis*, with the exception of Articles 155, fourth paragraph, 156 (2), 157 (2) and (3), 158 (1), last sentence, and 160 (1), provided that the authorization is granted by the Attorney General.

7. Everyone is obliged to provide the officials and persons referred to in the first paragraph with all cooperation that is demanded on the basis of the fourth paragraph.

Article 34. Administrative sanctions

As long as no separate national ordinance for administrative sanctions is in force with which the Inspectorate will be charged, the following applies:

1. In case of violations of the provisions of this national ordinance, the Inspectorate will first interview the employer orally and, if desired, in writing.

2. The Inspectorate may cease activities involving a violation of the provisions of this national ordinance and temporarily close off a location or area for access to carry out activities.

3. In addition to preventive measures to be taken, the Inspector General may decide to file a criminal complaint under Article 36 of this national ordinance with the Public Prosecution Service.

4. On a complaint from the Inspectorate and / or the employee, the Director may impose double overtime compensation on the employer, to be paid to the employee in cases involving unacceptable violation of working hours.

5. In all other cases, the Director may, upon a complaint from the Inspectorate or the employee, take appropriate measures aimed at ending the violation.

Article 35. Confidentiality obligation

Anyone who is involved in the implementation of this national ordinance and who thereby obtains access to information of which he knows or should reasonably suspect the confidential nature, and for whom there is not already a duty of confidentiality with regard to such information by virtue of office, profession or statutory regulation, applies, is obliged to observe

secrecy of such data, except insofar as any statutory regulation obliges him to notify or to the extent that his task requires the disclosure.

CHAPTER 10. HEARING AND PARTICIPATION REGULATIONS

Article 36. Consultation with non-CAO employers

1. Employers who are not subject to a Collective Labor Scheme are bound by the intention to change working hours or other changes which will affect the private life or the income of the employees, to consult adequately with the employees and give the opportunity to participate in the proposed change.
2. Employees have the right, during consultations referred to in paragraph 1 of this article, to be assisted by an expert designated by them.
3. Following an employee's complaint, the Director can impose the consultation referred to in the previous paragraph on the employer and, if necessary, suspend the contested change until further notice.

CHAPTER 11. PENAL PROVISIONS

Article 37. Penalties

1. Anyone who deliberately violates articles 8, paragraph 3, 9, paragraph 4, 10, paragraph 2, 11, paragraph 2, 18, 20 or 21, paragraph 1, shall be punished by imprisonment not exceeding four years, a fine not exceeding the fifth category or with both penalties.
2. Anyone who does not or not fully comply with a rule, obligation or condition laid down by or pursuant to this national ordinance shall be punished with imprisonment of no more than one year, a fine of no more than the fourth category or with both penalties.
3. The offenses made punishable in the first paragraph are crimes. The offenses made punishable in paragraph 2 are violations.

CHAPTER 12. TRANSITIONAL AND FINAL PROVISIONS

Article 38. Validity of deviating regulations.

If and insofar as agreements or regulations exist at the time of entry into force of this national ordinance, which deviate from the provisions of or pursuant to this national ordinance in a disadvantageous sense, then the provisions of those agreements or regulations shall remain for a maximum of one year. after the entry into force of this national ordinance apply to that employee.

Article 39. Postponement applicable to employee

If the application of the provisions by or pursuant to this national ordinance is disadvantageous for the employee compared to the application of the Arbeidsregeling 2000 or the provisions

based thereon, then application thereof will not take place until one year after the entry into force of this national ordinance, unless the employee explicitly agrees in writing to an earlier application thereof, or if such earlier application is agreed by collective labor agreement.

Article 40. Postponement applicable to employer

The employer who, at the time of entry into force of this national ordinance, has an approved working hours scheme as referred to in Article 2, first paragraph, of Labor Decree I (PB 1954, no. 93), in which working hours are applied which deviate from Articles 8 or 14 of this national ordinance, it is deemed to have the permission referred to in Article 24 for a period of no more than one year, to be calculated from the date of entry into force of this national ordinance. The first sentence applies mutatis mutandis to the employer who has an approved working hours scheme, as referred to in Article 1, first paragraph of the Horeca Decree (PB 1968, no. 3) or an approved working hours scheme, as referred to in Article 1, first paragraph, of the Casino Labor Decree (PB 1977, no. 35).

Article 41. Free from charges

All documents drawn up, submitted and to be submitted as a result of this national ordinance are free of seal and, if registration is required, are registered free of charge.

Article 42. Entry into force.

1. This national ordinance shall enter into force on the first day of the month following the month of publication of the Official Journal in which its publication took place.
2. As of the date of entry into force of this national ordinance, the Arbeidsregeling 2000 (PB 2000, no.67) and the regulations based thereon will lapse, on the understanding that the Labor Decree for young persons (PB 1989, no. of the aforementioned time is considered to be in implementation of Article 21, second paragraph.

Article 43. Ministerial reporting

Within three years of the entry into force of this National Ordinance, the Minister of Labor and Social Affairs will send Parliament a report on the effectiveness and effects of this National Ordinance.

Article 44. Citation

This national ordinance can be cited as the "Arbeidsregeling 2021".