

Opinion: Personal liability of politicians

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With the birth of a new government that does not include the United People's party, the fate of Vromi-Minister Maurice Lake could take a turn for the worse concerning his potential personal liability for the overpriced purchase of the Vorst Estate in Cay Hill. If the UP had been part of the government, chances that anyone would ever call Lake with success on his liability would have been zip. But now, with a coalition of National Alliance, Democratic Party and United St. Maarten party in the works, the minister's fortune could change dramatically.

The pivotal question is whether Lake was authorized to sign the \$5.5 million deal with the Vorst family. The court has ruled that the contract is valid and that the fact that the minister overstepped his authority does not affect the contract's validity. The Accountability Ordinance gave Lake authority up to 150,000 guilders, while the recently published register on the page of the finance ministry shows that ministers are authorized to sign contracts up to 500,000 guilders; above that, they need approval from the Council of Ministers. That Lake failed to inform the Council of Ministers about the Vorst-deal is not even a point of discussion. This is a fact.

How would this affect the minister's personal liability, now that the government is bound by the contract he signed?

Karel Frielink, a civil law attorney in Curacao, sent us a ruling from the Common Court of Justice dated September 21, 2010. It concerns a conflict between Aruba and Glenbert Croes, who was the country's minister of transport and communication in 2000. Croes instructed the government-owned company Utilities NV to pay 677,000 florins (a bit over \$378,000) to the employees of WEB Aruba NV, the country's water and energy company.

Croes had made a deal with the unions to pay the employees this money without following proper procedure. Utilities NV balanced the payment against a debt it owed to the treasury.

The budget for 2000 did not contain a provision for the payment Croes authorized. The court ruled that the responsible minister binds the country to a contract or a decision with his signature, not the Council of Ministers.

The court established the following standard: "If an entity of the government, such as a minister, behaves wrongful in the task he has been charged with by overstepping his legal authorities, this action can be attributed to him personally if he is to blame for it. That is: when, taking the circumstances into account, it is possible to reproach him personally in a sufficiently serious manner."

Aruba has had quite some experience with the Accountability Ordinance and with ministers flaunting the rules. Hence, the explanatory notes contain since 1998 the following statement: "Practice shows that every time several ministers abuse their authority by exceeding their budgets without considering the required approval from the minister of finance and with neglect for the other rules of the Accountability Ordinance. This could have far-reaching and possibly negative consequences for the country's finances if the ministers continue this practice unauthorized."

Furthermore the explanatory notes state that a minister who exceeds his budget unauthorized can be held personally accountable by the government. This approach aims to prevent that ministers exceed their budgets in the future.

The budget Croes had at his disposal in 2000 did not contain a provision to pay 677,000 florins to the WEB-employees. Croes said in his defense that the decision had been taken in the Council of Ministers, but at least in Aruba, that is not part of the procedure described in the Accountability Ordinance.

The court concluded that Minister Croes had acted wrongfully by authorizing the payment of money that belonged to the country without proper authorization. The court furthermore ruled that the minister is personally responsible for the wrongful act, adding that the minister must have been aware of the Accountability Ordinance, and of the crucial importance of this ordinance for his functioning. Furthermore, the minister had been informed that the WEB-employees were not entitled to compensation, based on other court rulings.

The Common Court confirmed the earlier decision from the Court in First Instance that had sentenced Croes to repay the 677,000 florin, plus interest (over a period going back to December 2005), and more than 26,000 florin in legal costs.

The Croes-case has obvious similarities with what Minister Lake did with the Vorst Estate purchase. There is no doubt that the minister overstepped his authority by signing a contract with a value that far exceeded his authority based on the Accountability Ordinance.

That did not seem to be a big deal as long as the UP reclaimed its place in the next government. Now that that option is off the table, Lake may very well have a lot of concerns on his mind, given the fact that the coalition partners that will be in charge come October 10, all have said on one or more occasions that he should be held personally responsible.

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