



Sociaal Economische Raad
Social Economic Council

COPY

To the Minister of Justice
Mr. V.H.C. de Weever
New Government Building
Soulaliga Road
Philipsburg
Sint Maarten

Philipsburg, April, 8th 2019



LETTER OF ADVICE

Our reference: SER /19/DCB/007

Re: Unsolicited letter of advice concerning the National Ordinance Admittance and Expulsion with respect to the refund of levies.

Honorable Minister de Weever,

This unsolicited advice reflects the opinion of the Social Economic Council (SER) on the National Ordinance Admittance and Expulsion with respect to the refund of levies.

Background Legal Framework:

Levies [in Dutch: “leges”] are payments for services rendered to the citizen by the government¹. These services rendered are in the individual interest or benefit of the person making use of that service. There are different types of levies that are called fees, charges, rates, duties.

Usually, the revenues from levies are used to guarantee or increase the quality of services rendered, and/ or to cover direct and indirect costs. Revenue from a levy should not exceed costs; in other words, no profit should be made on the rendering of government services. On the other hand, however, the revenue from levies should be cost effective.

The National Ordinance Admittance and Expulsion provides the legal basis for levies and indicates that levies should be paid for certain immigration services. Article 1 paragraph 2, article 7A, article 8 paragraph 3, article 20 under a and article 21 paragraph 3 of the National Ordinance Admittance and Expulsion and nowhere else in this national ordinance is it indicated *when* the levies should be paid:

- whether levies are required to be paid at the moment of submission of the permit request, or
- when collecting the requested permit or declaration.

¹ See article 1 of the Ordinance on Levies, AB 2014 no. 23



Sociaal Economische Raad
Social Economic Council

The levies were introduced in 2014 through the National Ordinance of January 30th, 2014, introducing levies for residence permits and some other declarations².

The Elucidation [Memorie van Toelichting] to above-mentioned National Ordinance states that a (monetary) fee is required for **requesting**³:

- a permit for (Temporary) Residence [vergunning to (tijdelijk) verblijf], according to article 7a, first paragraph of the National Ordinance Admittance and Expulsion.
- Admittance by law [toelating van rechtswege], according to article 7 a second paragraph of the National Ordinance Admittance and Expulsion
- a declaration “[niet van toepassing verklaring]” according to article 1, second paragraph of the National Ordinance Admittance and Expulsion.
- a proof of return [bewijs van terugkeer], according to article 20 sub a of the National Ordinance Admittance and Expulsion.
- the declaration for extension of a permit for tourist residence [verklaring tot verlenging van toeristisch verblijf] according to article 8, paragraph 3 of the National Ordinance Admittance and Expulsion
- a re- entry permit [uitreis vergunning] according to article 21, third paragraph of the National Ordinance Admittance and Expulsion
- [kennisgeving verlies en het verzorgen van duplicaten inzake vergunning tot verblijf of tot tijdelijk verblijf], according to article 7a, first paragraph of the National Ordinance Admittance and Expulsion.

The elucidation further states that the levies are introduced to help cover direct costs (personnel costs) while processing the applications.

With above- mentioned information in the elucidation, it can be concluded that levies are supposed to be paid at the moment of submission of the permit request.

However, the National Ordinance Admittance and Expulsion [Landsverordening houdende regeling van de toelating tot en de uitzetting uit Sint Maarten⁴] states that these costs should be paid “for granting the permits or declarations⁵” (in Dutch: [voor de verstrekking van...], which leads to the conclusion that payment must be upon obtaining the permit [achteraf], since it is by the current wording of the law only required when a permit has been granted.

This is conflicting with article 1 of the Ordinance on Levies, which states that levies are charged for services rendered.

² Landsverordening van de 30ste januari 2014, houdende wijziging van de Landsverordening toelating en uitzetting en van de Landsverordening in verband met de afschaffing van de vrijstelling van zegelbelasting, de invoering van leges voor vergunningen tot tijdelijk verblijf of verblijf en enige andere verklaringen

³ Onder meer is besloten over te gaan tot het heffen van een vergoeding voor de aanvraagprocedure voor verblijfsvergunningen en aanverwante documenten op basis van de Landsverordening toelating en uitzetting (verder: LTU) See page 5, second paragraph Memorie van Toelichting A.B. 2014, G.T. no. 23

⁴ AB 2014, no.23

⁵ See National Ordinance Admittance and Expulsion, article 1 paragraph 2, article 7A, article 8 paragraph 3, article 20 under a and article 21 paragraph 3.



Sociaal Economische Raad
Social Economic Council

In practice levies are collected at the same time the request is submitted. And in case a request is denied, the applicant should be reimbursed, because the current wording of the law states that levies should be paid when a permit is obtained. [“ ... *voor de verstrekking van*⁶...”]

The SER is of the opinion that it could have never been the intention of the lawmakers to refund applicants in case the request is denied, since it was explained in the Elucidation that these levies are meant to cover the costs for the work that was done (the service that was provided) with regard to a certain application.

However, in reality, over the years 2014 up to 2016 applicants who were rejected a permit were refunded, as outlined below:

Year	Number of rejected and refunded residence fee
2014	302
2015	668
2016	352

In the year 2014 a total of 302 applicants were rejected and refunded the residence fee.

In 2015 a total of 668 applicants were refunded the residence fee.

In 2016 a total of 352 applicants were refunded the residence fee⁷.

Advice:

Pursuant to the SER meeting on this topic, the SER **unanimously** advises:

- To revise the following articles of the National Ordinance Admittance and Expulsion in such a way that it is clear that levies are introduced to help cover direct costs prior to processing the applications,
article 1 paragraph 2,
article 7A,
article 8 paragraph 3,
article 20 under a and
article 21 paragraph 3.

The SER suggests changing the words [*voor de verstrekking van*] in above- mentioned articles into: [*voor het in behandeling nemen van*]

⁶ See National Ordinance Admittance and Expulsion, article 1 paragraph 2, article 7A, article 8 paragraph 3, article 20 under a and article 21 paragraph 3.

⁷ Information received per email from Mr. Robert Barbij in his capacity as Head of Admission, Immigration & Naturalization Department on July 11th, 2017. On March 22nd, 2019 and April 2nd, 2019 the SER requested an update on the years 2017 and 2018, but this could not be provided at that time.



Sociaal Economische Raad
Social Economic Council

- To add an article that explains that restitution is only possible in exceptional cases, such as paying an excessive fee, a formal exemption ground, or an otherwise undue payment (for example, a second payment for the same application).

We trust to have informed you sufficiently herewith.

Should you require any additional information after reading the above, please feel free to contact us at your earliest convenience.

Respectfully,

Ir. Damien D.E. Richardson
Chairman

Gerard M.C. Richardson
Secretary-General