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Ordinance of November 11, 2002, providing for rules for the service responsible for the protection of the democratic legal order of Aruba (Ordinance Security Service Aruba)

Published, December 17, 2002

The Minister of Justice,

H.R. Croes

IN THE NAME OF THE QUEEN!

THE GOVERNOR of Aruba,

Having considered:

that it is expedient considering the guaranteeing the democratic legal order in Aruba to establish rules concerning the institution by ordinance of an intelligence and security service with its accompanying tasks and powers and therein also to stipulate the position of this service within the political structure of Aruba;

Has, having heard the Advisory Council, in joint consultation with Parliament, resolved the subsequent ordinance:

§ 1. General provisions

Article 1

In this ordinance and the provisions based thereupon is understood by:

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|----------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| the Service | : | the official service, mentioned in article 2, first paragraph; |
| the Committee | : | the committee, meant in article 22, first paragraph; |
| the administration | : | the services, public corporation and limited liability companies pertaining to a ministry in which the Land Aruba has a participation greater than 50%; |
| the Minister | : | the minister of General Affairs; |
| the ministers | : | the Minister and the minister entrusted with judicial affairs; |
| the Head | : | the functionary entrusted with the direction of the Service; |
| the personnel | : | the civil servants employed by of the Service; |
| confidential function | : | a function with the Land or somewhere else in Aruba of which the method of fulfillment may constitute a danger or risk for the continuance of the democratic legal order, the integrity of the public administration or the security and other vital interests of Aruba; |
| security clearance investigation | : | an investigation as to the person who wishes to fulfill a confidential function. |

§ 2. Tasks and powers of the service

Article 2

1. There is a Security Service Aruba, which has as objective to promote the fundamental interests of Aruba in the continuance of the democratic legal order, in the integrity of the administration, in the internal security and other vital interests of Aruba and, where necessary, the Kingdom of the Netherlands.

2. The Service pertains to the Minister. The minister, entrusted with judicial affairs, has joint responsibility with regard to the bearing of the Service.

Article 3

1. The Service has as task to pursue within the limitations of the law the objectives as stipulated in article 2, first paragraph, by means of protecting the interests named in its objectives by assessing the risks for those interests and by contributing to diminish and controlling those risks.

2. The tasks of the Service consist of:

- a. gathering information of persons and organizations, which because of the objectives they pursue, or by their activities give cause for serious suspicions that they present a danger for the interests named in article 2, first paragraph;
- b. to perform security clearance investigations with regard to confidential functions;
- c. to further the taking of measures for the protection of the interests named in section a, which include in any case measures for the security of information which has to be kept secret in the interest of Aruba and, where necessary, the Kingdom of the Netherlands, and for the preservation of those parts of the administration which are of vital importance for the social life.

3. The Head informs the ministers continually about the results of the activities of the Service and informs these concerning everything which could be of importance for the exercise of their functions.

Article 4

1. The Service gathers the information meant in article 3, second paragraph, section a, from public sources for objectives which fall within the scope of the tasks legally assigned to the Service.

2. The Head and the personnel authorized by him to that end are additionally empowered to approach for the gathering of information any person who may be considered in the position to provide the Service with information relevant for it.

3. The civil servant, entrusted with the direction of a government's service provides the Head on his request the information required by him. In the

event of a special obligation to secrecy for that service, that civil service complies only with that request, in so far the interest served by the Service exceeds the interests served by the government's service in question; then any possible special legal regulations applicable on that provision do not apply.

Article 5

1. The Service only gathers personal information of those:
 - a. whose activities lead to serious suspicions that they are a danger to the democratic legal order, the integrity of the public administration or the security and other vital interests of Aruba or the Kingdom of the Netherlands;
 - b. who have given written permission for a security clearance investigation;
 - c. who are employed or have been employed by the Service;
 - d. about whom information has been requested by another intelligence or security service within or outside the Kingdom of the Netherlands;
 - e. whose information is necessary to support a proper execution of tasks by the Service.

2. The Service does not gather information concerning someone's religion or convictions about life, race, health or sexual life, unless this occurs in addition to the gathering of other information, and this is inevitable for the objective of the gathering last-mentioned.

Article 6

1. The personnel is civil servant in the meaning of the Ordinance material civil servant right (AB 1989 no. GT 37). It is appointed, promoted and dismissed on recommendation of the Minister.
2. The personnel does not possess any investigative power.
3. The personnel will not be instructed to perform activities which are contrary to the task of the Service, nor will this personnel perform any such acts.

Article 7

1. Without prejudice to the power to gather information, as meant in article 4, the Service is authorized to apply the following special intelligence devices:
 - a. to conduct surveillance on natural persons or objects and with that to record information, whether or not with the aid of observation and registration instruments;
 - b. to trail natural persons or objects and with that to record information, whether or not with the aid of observation and registration instruments;
 - c. to use natural persons, being non-personnel, who, whether or not utilizing

an assumed identity or capacity, occasionally or for a certain amount of time, are entrusted with the gathering of information about organizations or individual persons;

- d. to enter and search enclosed places;
- e. to open and search closed objects;
- f. to wiretap, record and tap conversations, telecommunication or automated data transfer utilizing a technical device;

2. Under opening of a closed object as meant in the first paragraph, section e, is also included to open letters and other addressed consignments, as well as to break into automated files.

3. The special intelligence devices as mentioned in the first paragraph are only utilized, if the Head has stipulated that the contemplated gathering of information cannot be achieved with any method described in article 4, first, second, and third paragraph.

4. Of the use of special intelligence devices in each specific case the personnel involved makes a written report, which immediately is presented to the Head.

Article 8

1. The use of persons as meant in article 7, first paragraph, section c, by the personnel is done only with a special written authorization of the Head. Then the Head additionally bears the responsibility that the person to be used is not under investigation, or that he is irrevocably condemned.

2. The special intelligence devices, described in article 7, first paragraph, section d, e and f, are only applied, provided the ministers and the minister entrusted with telecommunication, on a proposal of the Head for each specific case have granted a written permission thereto. A copy of the permission is sent by the Head within 2 x 24 hours to the Committee.

Article 9

1. If the Head considers applying a special intelligence device not described in article 7, first paragraph, and such application may lead to infringement on the private life of a citizen, he only proceeds after the ministers have granted him a written permission thereto. Of the such application the Committee is advised.

2. Within six months after having granted the permission for the utilization of a device as meant in the first paragraph, the government introduces a bill to the Parliament to regulate that device.

Article 10

- 1. In case for the application of article 7, first paragraph, section d, it is

necessary to enter a residence, the personnel, in case the occupant is not present, for the lawful entry of that residence the possession of a written authorization as meant in article I.17, first paragraph, of the Constitution of Aruba is not required, and the stipulations of article I.17, second paragraph, first and third sentence, of the Constitution of Aruba are not applicable. With the stipulation in the second sentence of that article, instead of in 2 x 24 hours, is complied within a term of eight years after the date of the entry, unless by decree, having heard the Committee, otherwise is determined.

2. In case for the application of article 7, first paragraph, section e, it is necessary to open and read letters and to make copies thereof, the confidentiality of the mail, as meant in article I.18, first paragraph, of the Constitution of Aruba, is not applicable to the personnel, with regard to every sender or addressee separately, who has been authorized thereto by the judge.

§ 3. Provision of information

Article 11

1. The Head is authorized, after the ministers have granted him a general or special written permission thereto, concerning certain information or categories of information, to provide such to:

- a. other ministers;
- b. an Aruban government's entity;
- c. another intelligence and security service within or outside the Kingdom of the Netherlands;

2. The forwarding of information by the Head is done considering the conditions to be stipulated by him for each separate case:

- that the information is only used for the purpose for which it was provided, and
- that it is not passed on by the receiver to others without previous authorization by the Head.

3. Information, received from other intelligence and security services within or outside the Kingdom of the Netherlands, is only forwarded by the Service to other persons or entities, after written permission is granted thereto to the Head by the issuing organization.

Article 12

1. The forwarding of information as meant in article 11, is done in writing. Of each forwarding the Head keeps a record.

2. In cases of urgency the information may be provided verbally,

followed within 48 hours by a written confirmation of the verbal provision with a description of the information provided.

Article 13

1. Persons about whom the Service has gathered or is gathering information, are not notified thereof.

2. Contrary to, if required, the Ordinance publicity of administration (AB 1999 no 12) a petition of a person to have the question answered, if with regard to him information has been gathered, or to have access to possible information gathered about him, is only honored, in case the ministers on a proposal of the Head have established that by completely or partially granting such, no interests to be protected by the Service are harmed.

3. Of the refusal of a petition as meant in the second paragraph, the party involved with reference to the second paragraph is notified in writing.

Article 14

1. The Head bears the responsibility that information gathered by the Service about a person, which later proves to be incorrect, are corrected. The entities to which this information is forwarded are informed of the corrections.

2. The Head bears the responsibility that the personal information which no longer is necessary for the objective for which it was gathered, is removed and destroyed.

3. By decree, containing general provisions, rules are given concerning the method of removal and destruction of the information as meant in the second paragraph.

§ 4. Security clearance investigation

Article 15

By decree, containing general provisions, the confidential functions are stipulated.

Article 16

1. It is prohibited to entrust a person with a confidential function, unless the Minister previously on the grounds of a security clearance investigation by the Service has declared that there are no objections against the fulfillment of that function by the person involved from the standpoint of the continuance of the democratic legal order, the integrity of the public administration or the

security or other vital interests of Aruba.

2. A security clearance investigation is only performed after written consent by the person involved.

3. By decree, containing general provisions, rules are established concerning the method how security clearance investigations are conducted.

Article 17

1. The Minister performs with regard to the persons who fulfills a confidential function, every three years and, if established facts or circumstances give reason thereto, occasionally a renewed security clearance investigation.

2. The Minister with regard to a person of which appears to him that insufficient guarantees are present that the person involved under all circumstances will faithfully fulfill the duties arising from the confidential function, revokes the declaration, meant in article 16, first paragraph.

3. If with regard to a civil servant a situation should arise as meant in the second paragraph, the person involved immediately will be relieved from his duty to perform the tasks attached to the confidential function by the minister under whose responsibility he resides and as soon as possible from said function. Is a non-civil servant involved, then the minister concerned conduces towards an expeditious discharge of the person involved from the confidential function.

4. It is prohibited to continue to entrust a person with a confidential function, after the Minister has revoked the declaration relevant to that person, meant in article 16, first paragraph.

Article 18

1. The Ordinance civil servant tribunal is not applicable to an objection and appeal against not granting the declaration as meant in article 16, first paragraph and against the revocation as meant in article 17, second paragraph.

2. Contrary to article 2, second paragraph, section c of the Ordinance administrative procedure (AB 1993 no. 45) the stipulations thereof are applicable on dispositions as meant in the first paragraph, and those as meant in article 13, third paragraph, provided that:

- a. in attending a notice of objection regarding that not granting or revocation the Committee performs the functions which in the abovementioned ordinance are assigned to the advisory committee for objections;
- b. the hearing is conducted with closed doors;
- c. the pleading is not accessible for inspection and that the Committee has the powers to keep parts of the pleading from becoming known to the proposer.

§ 5. Cooperation with other entities

Article 19

1. The Head and the attorney-general regularly consult each other for a good and coordinated fulfillment of tasks by the Service and the public prosecutor.

2. The Head and the attorney-general communicate with each other concerning information which has come to their knowledge which for the fulfillment of the duties of the Service, respectively of the public prosecutor, may be of importance.

Article 20

1. The Head regularly consults with the chief of the Police Force Aruba, the public prosecutor, the Inspector of import duties and excises and the head in charge of the execution of the Ordinance admittance and deportation (AB 1993 no. GT 33) concerning matters of common interest.

2. The police and customs officers report to the chief of the Police Force Aruba, respectively to the inspector of import duties and excises, information they have acquired which might be of importance for the execution of the tasks of the Service. This information is sent as soon as possible by the head of the department concerned to the Head or is brought forward in the consultation, meant in the first paragraph.

Article 21

The Head bears responsibility for maintaining relations with the intelligence and security services of the Netherlands Antilles, the Netherlands and with those states and international organizations which to the judgement of the Minister qualify thereto.

§ 6. Supervision on the service

Article 22

1. There is a supervisory committee entrusted with the following tasks:
- a. to exercise supervision on the performance of tasks by the Service;
 - b. to investigate and to judge complaints against the behaviour of the Service.

2. The Committee is formed by:
- a. a person appointed by the president of the Common Court of Justice of the Netherlands Antilles and Aruba, who is part of the judicial power of one of the countries of the Kingdom, as president;

- b. the president of the Advisory Committee for Objections, meant in the Ordinance administrative procedure;
- c. the speaker of the Parliament of Aruba.

The president, meant in the second paragraph, section a, also appoints a substitute for the president from the members of the Court.

3. The clerk of the Court in first instance fulfills the function of secretary of the Committee.

4. The president, in case he is not a civil servant, is granted by decree on his request a remuneration. The actual expenses for both traveling and to and from Aruba as well his stay in Aruba are also reimbursed, if he is not registered in the basic administration of personal information of Aruba.

Article 23

1. The Committee performs, if it deems such necessary, investigation of the manner in which the Service has acted in certain matters. It informs the ministers of a proposed investigation, stating the reasons for performing an investigation.

2. The Minister may request the Committee to perform an investigation as meant in the first paragraph.

3. The Committee makes a report as result of an investigation performed by it for the minister mentioned in the first paragraph, in which it gives a judgement of the lawfulness of the action of the Service. The report may contain recommendations.

Article 24

1. If the Head receives an instruction, which he considers in defiance of the objectives of the Service, he sends a note to the Committee in which he explains the grounds on which his view with regard to the instruction is founded, accompanied by any possible other documents relative to the instruction concerned; a copy of the note is sent to the Minister. Until the Committee gives a decision, the obligation of the Head to perform the instruction is legally suspended.

2. The Committee put its decision in writing and sends this immediately to the Head and the Minister.

3. If the verdict of the Committee is that the instruction is in defiance of the objectives of the Service, then the Head does not comply with it. If the Committee considers such conflict to be absent, then the Head complies with the instruction.

Article 25

1. The ministers and the personnel provide if required, to the Committee all information it considers necessary for a good execution of it tasks.

2. If the provision of the information requested from the personnel may cause damage to the secrecy of the sources from which the information requested originated, or to the security of the persons with whose cooperation the information requested was gathered, that information is only provided by the Head.

3. The Head gives the president of the Committee on his written request access to the information gathered by the Service.

Article 26

The Committee may request other persons than those meant in article 25, first paragraph, to provide information with regard to the performance of the tasks of the Service.

Article 27

1. Every person who considers that the Service has unlawfully acted against him, can submit a complaint with the Committee regarding that.

2. Complaints concerning actions taken by the Service, which are submitted with an administrative organ, are turned over by that body for review to the Committee.

3. The Committee investigates a complaint as meant in the first paragraph, and submits its judgement in writing to the complainer and the ministers.

4. If the Committee considers a complaint justified, it advises the Minister with regard to the question, which consequences its judgement should have. The Minister only deviates from the advice, if the security of the State demands such.

Article 28

1. The Committee annually draws up a written report of its activities and submits this to the ministers. It gives these a period of at least thirty days to present their vision on the draft.

2. In the month of May at the latest the Committee approves the report and subsequently sent it to Parliament. It does not contain information or wording that is traceable to individual persons or instances.

§ 7. Secrecy

Article 29

1. Every person involved in the execution of this law and in that event acquires information of which he knows the confidential nature or reasonably

must presume this, is obliged to keep the secrecy thereof, except to the extent to which some legal regulation obliges him to disclose such. This obligation remains after his involvement with the execution of this law has ended.

2. Article 285, second paragraph, of the Penal Code of Aruba is not applicable in case of acts done or omissions made in violation of the obligation described in the first paragraph.

Article 30

The Head bears the responsibility for:

- a. the protection of the information gathered by the Service and of the identity of the sources from which this information originated.
- b. the security of the persons with whose cooperation this information was gathered by the Service.

Article 31

The personnel who by virtue of a legal provision is obliged to appear as a witness or as an expert, provides in the respective court procedure only a declaration regarding matters not covered by his obligation to secrecy, unless the Minister has completely or partially relieved him in writing of that obligation.

§ 8 Accounting provisions

Article 32

1. The articles 3, first paragraph 18, 23, first paragraph, 25, 26 and 42, second paragraph, section 7, of the Accounting Ordinance 1989 are not applicable to the Service.

2. The general binding regulations stipulated for the execution of the Accounting Ordinance 1989 are applicable on the Service only, if those administrative rules explicitly state such.

3. The verification, meant in article 9 of the Accounting Ordinance 1989, of the administration of the Service is done exclusively by the civil servant entrusted with the direction of the central accounting service of the Land.

Article 33

1. The exercise of the powers mentioned in article 33 of the Ordinance Auditor General Aruba (AB 1998 no. GT 20) of that body with regard to the Service are exclusively executed by the president of the Auditor General Aruba.

2. Legally valid decisions with regard to an investigation performed at the Service as meant in article 24, first paragraph, of the Ordinance Auditor

General Aruba, contrary to article 15 of that ordinance, are exclusively taken by the president of the Auditor General Aruba.

Article 34

The powers stipulated in articles 32, third paragraph, and 33 are not to be mandated.

§ 9. Penal and final provisions

Article 35

1. He who violates a prohibition stipulated in article 16, first paragraph, or article 17, fourth paragraph, will be punished with an imprisonment of up to one year and with a fine of up to twenty-five thousand florins.

2. The punishable acts, meant in the first paragraph, are offences.

Article 36

The ministers yearly, at the latest in the month of June, give a written account to the Parliament of the tasks of the Service in the thereto preceding calendar year.

Article 37

By or by virtue of a decree, containing general provisions, further rules may be established for the execution of this ordinance.

Article 38

1. This ordinance will come into force on a date to be stipulated by decree.

2. It may be cited as the Ordinance Security Service Aruba.

Done in Oranjestad, November 11, 2002
O. Koolman

The minister of General Affairs,
N.O. Oduber

The minister of Justice,
H.R. Croes

The minister of Finance,
N.J.J. Swaen