

**FORMER COURT RECORDER OF THE JOINT COURT OF JUSTICE AND THE CONSTITUTIONAL
COURT OF SINT MAARTEN SENTENCED FOR EMBEZZLEMENT AND FORGERY CHARGES
(TRIGGERFISH)**

On May 7, 2021 the Court in First Instance sentenced the former court registrar of the Joint Court of Justice and of the Constitutional Court of Sint Maarten on charges for embezzling of funds that were under her custody at the Courthouse and for committing forgery. The arguments of the defense that the public prosecutor should be barred from prosecution were dismissed.

charges of corrupt practices were brought against the former Sint Maarten branch manager of the Joint Court of Justice by the Prosecutor's Office after a criminal investigation, entitled Triggerfish, which included house searches, examination of several accounts of the Courts, investigation at banking institutions and hearing of witnesses.

The former court registrar was accused of committing a number of serious criminal offenses, such as embezzling funds to the tune of \$ 1.153.770,- from a third party bank account of the Joint Court of Justice in the period from January 2014 up to and including December 2017.

Third party bank accounts are bank accounts in which confiscated funds of third parties or monies in dispute between parties are placed in an escrow account. Based on decisions of the Court or the Prosecutor's Office, the funds from these third party accounts are recovered and returned to their rightful owners.

In the period referred to in the indictment, there were recurring amounts for which cheques were issued by the suspect. 177 cheques are involved. At any rate, it has to do with individual cases. For example, 19 cheques of USD 8.800,- and 18 cheques of USD 4.040,- were issued. The Court points out that it is remarkable that cheques were issued and cashed for recurring amounts, bearing in mind that amounts deposited in the third party bank accounts would vary per party and that the amount that is to be returned to its rightful owner should be the same amount that was deposited.

It is also significant to note that 38 cheques to the tune of \$5,500.- each were issued by the suspect and were cashed upon her instructions by the cleaner of the Court or by an employee of a law firm and were handed over to her.

Even in periods before the period mentioned in the indictment, 43 cheques to the tune of Naf. 5.500,- each were withdrawn in likewise manner from the third party guilder bank account and 23 cheques of US \$ 5.500,- each from the third party dollar bank account.

The Court did not consider the explanations given by the suspect for the withdrawals of these funds credible since they could not be substantiated. In one instance, the suspect stated that the late Judge [A] had given her instructions to pay these amounts to a third party via a bailiff in connection with a burglary that had taken place at the Courthouse in 2007. Both Judge [A] as well as the bailiff to whom the suspect stated that she initially gave the funds are deceased and as such, cannot corroborate the suspect's statements. In addition, the suspect indicated that she did not know the person who instructed her to give the money to a third party with the surname that sounded like "[B]" after the death of the bailiff. Therefore, the Court considers it wrong and hard to imagine, that the suspect, being responsible for the management of the third party bank accounts, throughout the years had the amounts of NAF 236.500,- and USD 335.500,- withdrawn from the accounts and paid out without any underlying documents, including receipts.

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The Court further noted that part of the monies referred to was cashed by means of cheques before the burglary at the Courthouse. Therefore, these cannot be related to that burglary.

In the judicial finding of facts, the Court further deems it significant that compared with the amounts that were cashed by means of a cheque, hardly any deposit of the same amount was made. That was only the case with 2 of the 177 cheques. After calculations made, the Court comes to the conclusion that an amount of US 892.667,98 was embezzled.

The suspect was also charged with embezzling Naf 153.679,-- from the Constitutional Court bank account, to which she was the only person representing the Constitutional Court of Sint Maarten, who had access. A similar method for committing fraud was applied here as the method used for embezzling funds from the Court of Justice accounts. The suspect has been acquitted of the suspicion that had to do with the period up to July 26th, 2017, because the explanation she gave about that, does not seem unlikely for lack of an in-depth investigation by the police. This is different with reference to the period from July 26th 2017 up to 22nd August 2017. After the Country Sint Maarten deposited an amount of Naf. 50.000,- on the bank account of the Constitutional Court on July 26th, 2017, this entire amount was subsequently cashed by means of cheques in less than one month. According to the suspect, she withdrew guilders from the bank account of the Constitutional Court to exchange them for dollars in the Courthouse. The suspect further stated that she used some of the monies to pay for tickets for the President of the Constitutional Court and kept the remainder of the money in a safe in her office. The Court notes that according to the President of the Constitutional Court, he did not travel to Sint Maarten after April 2017. Consequently, the suspect's statement that she had to buy tickets for the President of the Constitutional Court and therefore withdrew the amount in July/August cannot be based on the truth. The monies were not recovered in the safe either. Consequently, the suspect is also found guilty of embezzling those funds.

In the criminal case against the suspect, she is also found guilty of committing forgery by falsifying WIB money transfer forms in September 2016. She is accused of doing this to cover up her actions of embezzling funds, which resulted in the third party dollar bank account having insufficient funds to transfer the amount of US\$1.133.660,15 to the bank account of the Prosecutor's Office. This amount was confiscated in the criminal investigation, entitled Bientu in 2011 and was deposited on the third party dollar account. On 2 September 2016, the then Attorney General in a letter to the then Vice-President of the Court and to the Court manager, requested for the aforementioned amount to be transferred to the bank account of the Public Prosecutor's office. However, the balance on the third party dollar account was insufficient to transfer the total amount requested. According to the Court, rather than reporting the shortage in the third party dollar account to the then Vice-President of the Court, the suspect decided to make use of the court registry accounts to be able to transfer the amount requested to the bank account of the Public Prosecutor's office. The suspect falsified the bank account numbers and/or changed or adapted the amounts on the WIB money transfer forms, that were already co-signed by Judge [C]. It is evident, that the changes made were only initiated by the suspect.

Besides the 2 counts of embezzlement – listed in the indictment under 1 and 2, and one count of forgery, listed under 4, for which the suspect was found guilty and is punishable, the suspect was charged with 2 additional counts, listed in the indictment under 3 and 5. The charge under 3 refers

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to habitual money laundering related to monies embezzled from bank account of the Joint Court and deposited by the suspect's husband in their personal bank account. The charge under 5 refers to misappropriation or extortion of public funds (in Dutch: *knevelarij*). In June 2018, the suspect in her capacity of Court registrar of the Constitutional Court of Sint Maarten, demanded that Naf. 50.000,- be transferred by the Ministry of Justice to the account of the Constitutional Court, while she should have known that this amount was not due. However, although the charges under point 3 and 5 have been proven, they were dropped by the Court since they do not constitute a crime in this particular case.

In deciding on the punishment to be imposed, the Court took a number of issues into consideration, including the seriousness and the nature of the charges proven as well as the circumstances under which the criminal offenses were committed.

In this respect, the Court blames the suspect for grossly damaging the trust placed in her by her employers, and negatively affecting the confidence the society may have in the justice system.

During the entire trial, the suspect did not accept any responsibility for her actions and consistently tried to put the blame on others for her criminal actions. By doing so, she has seriously damaged those persons. The court took this into account when imposing its sentence.

After considering various aspects of this case, the Court deems 30 months imprisonment with deduction of the time already spent in detention, applicable and appropriate. However, in view of the trial period from the beginning of the investigation on 7 September 2018 to the hearing date on 7 May 2021, as a result of Covid-19, the reasonable time for a fair trial was exceeded. Consequently, the 30 months' jail time was reduced to 27 months.

The court decided as follows:

declares it legally and convincingly proven that the suspect committed the charges listed under 1, 2, 3, 4 and 5;

declares not proven any other charges against the suspect than those proven above and acquits her of them;

declares the charges listed in the indictment under 3 and 5 not punishable;

dismisses the charges listed in the indictment under 3 and 5 against the suspect;

qualifies the charges under 1, 2 and 4 of the indictment proven as described above;

declares the charges under 1, 2, and 4 punishable and the suspect will therefore be punished;

condemns the suspect to a **prison sentence of 27 (twenty-seven) months;**

orders that the period spent by the suspect in custody and in pre-trial detention for the enforcement of this sentence, will be deducted when executing the imposed prison sentence;

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allots the claim for compensation of the damages suffered by the injured party, the Constitutional Court, for an amount of Naf. 50,000.- (i.e. is fifty thousand guilders) and condemns the suspect to pay this amount in exchange for proper proof of payment to the disadvantaged party;

condemns the suspect in the costs incurred by the injured party, the Constitutional Court, estimated until now at USD 1,000.- (i.e. one thousand US Dollars) and in the costs to be incurred for the execution;

imposes as compensation measure for the injured party, the Constitutional Court, the obligation on the suspect to pay to Country Sint Maarten an amount of **Naf. 50.000,-** (i.e. fifty thousand guilders); in case of non-payment or recovery, this will be substituted by 285 (two hundred and eighty-five) days imprisonment, with the understanding that the use of the civil imprisonment does not cancel the payment obligation;

determines that, if the suspect complies with her payment obligation to Country Sint Maarten, her obligation to pay to the injured party will lapse and the other way around that, should the suspect comply with her payment obligation to the injured party, her payment obligation to Country Sint Maarten will lapse.

This sentence was passed by Judge A.J.M. van Gink, LL.M., assisted by A. F. van der Heide, LL.M. (court registrar), and was pronounced on May 7th, 2021 in the presence of the court registrar at the public court session in Sint Maarten.

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