

FTAC Complaints Procedure

Introduction

The FTAC tries to act as carefully as possible. Nevertheless, if you have a complaint about the conduct of (any employee of) the FTAC-organization, please feel free to file a complaint with the independent Complaints Officer of the FTAC. The Complaints Officer advises the FTAC (the board) on how to handle the complaint. The FTAC has the final decision on how to proceed further.

The Fair Trade Authority Curaçao has determined:

Article 1: definitions

In this regulation the following means:

- a. **Decision:** a decision as referred to in article 3 paragraph 1 of the National Ordinance on Administrative Jurisdiction;
- b. **Bureau:** the bureau supporting the FTAC as referred to in article 2.12 of the National Ordinance on Competition;
- c. **FTAC:** the Fair Trade Authority Curaçao as referred to in article 2.1 of the National Ordinance on Competition;
- d. **FTAC-organization:** the entire organization, consisting of the FTAC and the Bureau, which together form the civil legal entity Fair Trade Authority Curaçao.

Article 2: establishment Complaints Officer

1. The Complaints Officer is in charge of handling complaints and advising the FTAC on the decision to be made on these complaints.
2. The Complaints Officer is appointed by the FTAC for a period of two years, with the possibility of extension.
3. Interim dismissal by the FTAC can only take place at the request of the Complaints Officer or on compelling reasons.
4. The previous members apply mutatis mutandis towards the deputy of the Complaints Officer.

Article 3: filing complaints

1. Everyone has the right to file a complaint with the FTAC about the conduct of the FTAC in a specific matter towards him or a third person.
2. The conduct of a person working for the FTAC-organization is regarded as the conduct of the FTAC.
3. In case a complaint is filed elsewhere within the FTAC-organization, the complaint will be forwarded to the Complaints Officer for further handling.
4. The FTAC ensures proper handling of all complaints, both oral and written, regarding its conduct.
5. Written complaints can be submitted directly per email to info@ftac.cw, to the attention of the Complaints Officer, or to:

Fair Trade Authority Curaçao
Attn: Complaints Officer
Pietermaai 6
Willemstad, Curaçao

Article 4: admissibility of the complaints procedure

1. If a complaint is submitted in writing, is related to conducts or actions towards the accuser and meets the requirement in accordance to paragraph two of this article, then the regulations of article 5 to 10 apply.



If a complaint is submitted orally, the accuser is informed of the possibility of the procedure to do a written complaint. An oral complaint is, if desired, recorded in writing by the Bureau. The accuser is requested to sign the complaint, in accordance with the requirements of paragraph 2 of this article.

2. A complaint must be signed and contain at least:
 - a. the name and address of the person filing the complaint;
 - b. a clear description of the conduct against which the complaint is directed;
 - c. the date.
3. If the complaint is drawn up in another language other than Dutch, Papiamentu or English, a translation is required for the proper handling of the complaint. The translation must be arranged by the accuser.
4. A complaint does not have to be considered if it relates to a conduct:
 - a. for which a complaint has already been filed previously, and that has been dealt with in accordance with the complaint procedure as mentioned in article 5 to 10 of this regulation;
 - b. which happened more than six months prior to filing the complaint;
 - c. against which the accuser has or could have objected based on the National Ordinance on Administrative Jurisdiction;
 - d. against which the accuser can or could have lodged an appeal based on the National Ordinance on Administrative Jurisdiction;
 - e. which by procedural settings, has been subjected to an administrative court or to the judgment of a court other than the administrative court;
 - f. As long as the conduct has led to a criminal investigation by order of a public prosecutor or prosecution, or if the conduct is part of an investigation or prosecution of a criminal offense and in connection thereof, an ongoing investigation by order of the officer of justice or prosecution is in effect.
5. The Complaints Officer does not have to handle a complaint if the interest of the accuser or the consequence of the conduct is evidently insufficient.
6. If a complaint does not meet the requirements as indicated in the complaint procedure, as mentioned in paragraph 1 of this article or if a complaint is not dealt with based on paragraph 4 or 5 of this article, the accuser shall be notified of this, by the Complaints Officer, within four weeks of submission of the complaint. If the information as referred to in paragraph 2 sub A up to and including C is missing, the accuser is granted a one-off period of two weeks to rectify the defect. If the defect is not rectified within this period, the complaint will not be handled.

Article 5: handling a complaint

1. The Complaints Officer or the deputy thereof shall handle the complaint.
2. The Complaints Officer, the deputy, or the appointed employee of the Bureau as referred to in article 12 may not be involved in the conduct or action on which the complaint is based.

Article 6: investigation of the complaint

1. As indicated in article 4, a complaint is handled by means of an investigation, as soon as the Complaints Officer receives it.
2. For the purpose of the investigation, the Complaints Officer is authorized to obtain information both verbally and in writing within the FTAC-organization.
3. The employees of the FTAC-organization are required to cooperate with the investigation upon request.

Article 7: hearing and rebuttal

1. The accuser and the person whose conduct the complaint relates to shall be given the opportunity to be heard by the Complaints Officer.
2. The hearing may be waived if the complaint is manifestly unfounded or if the accuser has declared that he/she does not wish to make use of the right to be heard.



3. The hearing will be documented in a report.

Article 8: complaint handling term

1. A complaint will be settled within six weeks.
2. The handling of a complaint may be postponed once for a maximum of four weeks. Notice of the postponement shall be done in writing to both the accuser and the person whose conduct the complaint relates to.

Article 9: informal settlement

1. The Complaints Officer can determine whether a complaint is eligible for an informal settlement.
2. In the event of an informal processing, the Complaints Officer will try to come up with a solution through consultation and mediation.
3. As soon as the FTAC has met the satisfaction of the accuser with regards to his/her complaint, the obligation to continue to apply this regulation lapses.

Article 10: decision on complaint

1. The Complaints Officer advises the FTAC on a decision regarding the complaint.
2. The FTAC decides on the complaint, taking the advice of the complaints Officer into account. The FTAC can only deviate from the advice of the Complaints Officer by means of a well-founded motivation.
3. The FTAC informs the accuser of the findings, its opinion and the conclusion related to the investigation in writing.
4. The advice of the Complaints Officer is enclosed with the notification of the decision.

Article 11: publication and confidentiality

1. The Complaints Officer deals confidentially with information from the investigation related to a complaint.
2. The Complaints Procedure, including in any case the hearing of the complaints Officer, the report of the hearing, the advice of the Complaints Officer and the FTAC's decision, is not made public.
3. Financial information about, and a business representation of, written complaints are included in the annual report of the FTAC in an anonymous form, stating only the manner of settlement.

Article 12: final clause

1. If both the Complaints Officer and the deputy thereof cannot handle the complaint, another employee of the Bureau will be appointed to handle that complaint.
2. This decision will be published in the "Curaçaosche Courant" and will take effect immediately on the date of the publication.
3. The regulation is referred to as "FTAC Complaints Procedure".

Willemstad, October 19th, 2018

Fair Trade Authority Curaçao

Was signed by drs. A.G. Romero
Chairman of the Fair Trade Authority Curaçao



Explanation

The FTAC Complaints Procedure has been drawn up to ensure that complaints against employees of the FTAC-bureau or the FTAC itself, are handled properly. The principle of good governance entails that the citizen who feels unjustly treated by the FTAC must be able to count on a fair and open handling of his/her complaint. The regulation can also contribute to the ability for the FTAC to learn from submitted complaints, but also to prevent these, as much as possible, from happening again in the future.

The complaints procedure applies to actual conduct by the FTAC or employees of the Bureau. In case of administrative decisions by the FTAC (as referred to in article 3 of the National Ordinance on Administrative Jurisdiction), objection and appeal are open in accordance with the clause of the National Ordinance Administrative Jurisdiction. Therefore, the complaints procedure does not apply to such reasons (article 4 paragraph 4 sub C and D).

Article 4 paragraph 5 states that complaints do not have to be handled by the Complaints Officer if the accuser's interest or the gravity of the conduct is evidently insufficient. This exception is the same as the clause in article 14 paragraph 1 sub c of the National Ordinance Ombudsman, and article 9:8 Dutch General Administrative Law Act. In line with the legal history of article 9:8 Dutch General Administrative Law Act, handling complaint on this basis, should not be dealt with lightly. In case of insufficient interest, one can assume that an investigation has already been started based on another complaint for which a judgment has been rendered. With evidently insufficient importance, one can think of insignificant things, such as a misplaced stamp.

The complaints procedure concerns an internal right to complain that establishes minimum requirements on how the FTAC should handle complaints. The FTAC has the power to appoint an external person as a complaints officer, which is also the case for its first Complaints Officer, due to the limited size of the organization. In order to guarantee his/her independent state, a Complaints Officer is appointed for two years (article 2 paragraph 2), and his/her interim dismissal can only take place based on compelling reasons (article 2 paragraph 3).

The Complaints Officer advises on how to handle a complaint but does not give the final judgment. This is the duty of the FTAC (the board). The FTAC can only deviate from the advice of the Complaints Officer by means of a well-founded motivation (article 10 paragraph 2). From a transparency point of view, it has been decided that the advice of the Complaints Officer would always be enclosed with the final decision on the complaint to the accuser (article 10 paragraph 4). In addition, financial information about, and a business representation of, written complaints are included in the annual report of the FTAC in an anonymous form, stating only the manner of settlement (article 11 paragraph 3). Among other things, it states whether the FTAC has deviated from the advice from the Complaints Officer.

If the accuser is not satisfied with how the complaint has been handled, he/she is free to take further (legal) steps. Currently, the Ombudsman of Curaçao is not competent to handle complaints against the FTAC¹. However, there is a legislative proposal that extends the external right to complain about administrative bodies such as the FTAC with the Ombudsman. The complaints procedure is consistent with the requirements of the National Ordinance Ombudsman.

¹ Article 1 of the National Ordinance Ombudsman.