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Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

In July this year the Constitutional Court confirmed a High Court order setting aside as unconstitutional a statutory provision that obliged certain plaintiffs suing provincial administrations, local authorities or their officers, first to serve written notice on the defendant.

Later the Women's Legal Centre, an *amicus curiae* at the confirmation hearing, asked that the order be amended. It said that instead of merely confirming the order, this Court ought to have added a provision making the order retrospective to 27 April 1994 when the Interim Constitution came into force. Otherwise, it said, there was a "patent error or omission" in the order which (a) created "uncertainty as to its effect upon actions instituted but not finally determined at the time that the order was made" and (b) could be rectified by the Court under its rules.

In a judgment delivered this morning, the Court said that the order could not be corrected. There had been no mistake or oversight. The order was clear and said what the Court had meant. As a matter of law, if nothing more is said, such an order of invalidation is automatically retrospective to 4 February 1997, when the Constitution came into force. Since that date the provision has been a nullity. The effect of such nullity will have to be determined in each individual case.

Therefore, although thanking the Women's Legal Centre and its counsel for their public-spirited assistance, the Court refused the application.