

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.*

The matter involved a challenge to the constitutionality of s 113(1) of the Defence Act 44 of 1957. The section provides that a civil action may not be instituted against the Minister or any person under the Act, if: (1) the action is not instituted within six months from the date on which the cause of action arose and (2) the defendant is not given notice in writing of the intended civil action and its cause at least one month before the commencement of the action. The section was alleged to violate the rights to equality (s 8), property (s 28) and access to Court (s 22) of the interim Constitution.

The Court held that s 113(1) infringed the right of access to court because it did not afford claimants an adequate and fair opportunity to seek judicial redress for wrongs allegedly done to them. The Court's finding was made against the background of conditions prevailing in South Africa, namely poverty, illiteracy, cultural and language differences and the inaccessibility of legal assistance. The Court held further that the infringement of the right could not be justified in terms of the limitation section (s 33) because it would be possible to satisfy the state's legitimate objectives through means less stringent and detrimental to the interests of claimants.

The Court held accordingly that the right to access to court was unjustifiably and unreasonably infringed. The section was declared invalid. The declaration of invalidity applied to and governed all action instituted either before or since 27 April 1994. The declaration did not however apply to and govern actions which were already barred by the operation of s 113(1) on 27 April 1994, and action which, at the date of the declaration were finally determined.

The judgment of the Court was delivered by Didcott J and was concurred in by the other members of the Court.