



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **The Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another**

**CCT 12/13**

**Date of Hearing: 30 May 2013**  
**Date of Judgment: 3 October 2013**

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#### **MEDIA SUMMARY**

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

Today the Constitutional Court handed down judgment and partially confirmed an order of constitutional invalidity granted by the North Gauteng High Court, Pretoria. The High Court held that sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act are constitutionally invalid to the extent that they criminalise consensual sexual conduct between children.

In this Court the applicants argued that sections 15 and 16 of the Act unjustifiably infringe children's constitutional rights to dignity, privacy and bodily and psychological integrity, as well as the principle in section 28(2) of the Constitution that a child's best interests must be of paramount importance in all matters concerning the child. They therefore submitted that the order of the High Court should be confirmed. The respondents argued that the sections do not infringe the constitutional rights of children and are rationally related to the legitimate government purpose of protecting children from the risks associated with engaging in sexual activity.

In a unanimous judgment by Khampepe J, the Constitutional Court found that sections 15 and 16 of the Act are unconstitutional in that they infringe the rights of adolescents (12- to 16-year olds) to dignity and privacy, and further in that they violate the best-interests principle contained in section 28(2) of the Constitution. Relying on expert evidence, the Court concluded that the impugned provisions criminalise what constitutes developmentally normative conduct for adolescents, and adversely affect the very

children the Act seeks to protect. The effects of the impugned provisions were found not to be rationally related to the State's purpose of protecting children.

The provisions were declared invalid only to the extent that they criminalise consensual sexual conduct between adolescents: the criminal prohibitions against non-consensual sexual conduct with children of any age, and against sexual activity between adults and older children on the one hand, and adolescents on the other hand, remain in place.

The Constitutional Court suspended the declaration of invalidity for 18 months to allow Parliament to amend the provisions. Khampepe J further ordered a moratorium on all investigations, arrests, prosecutions and criminal and ancillary proceedings (regarding adolescents) in relation to sections 15 and 16 of the Act, until Parliament has remedied the defects identified. Finally, the Minister was ordered to take the necessary steps to ensure that the details of any adolescent convicted of an offence in terms of sections 15 or 16 of the Act will not appear in the National Register for Sex Offenders and that such an adolescent will have his or her criminal record expunged.