

Explanatory Note

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, a referral from the Witwatersrand Local Division in terms of s 103(4) of the Constitution, involved a challenge to s 205 of the Criminal Procedure Act 51 of 1977. The section permits the examination of any person likely to have material or relevant information about any alleged offence. It also provides that if a person refuses to give such information without a 'just excuse', he or she can be summarily imprisoned. The applicant argued that the compulsion to answer questions, which would expose him to the civil forfeitures provided for in the Exchange Control Regulations, violated his rights to equality and to privacy, the right to freedom of speech, the right of an accused person to be presumed innocent and to remain silent, the right not to be detained without trial, the right not to be subject to cruel, inhuman or degrading treatment or punishment, the right to access to information and the right to administrative justice.

On the question of the compulsion to provide information, the Court held that s 205 had to be interpreted in such a way that if answering a question would unjustifiably infringe or threaten to infringe any of the examinee's Chapter 3 rights, that infringement or threatened infringement would constitute a 'just excuse' for refusing to answer. Thus interpreted, s 205 was consistent with the Constitution.

Considering the challenge to the summary imprisonment sanction provided for in the Act, the Court found that an examinee was not an accused person for the purposes of the right to a fair trial, but that the examinee was nonetheless entitled under the Constitution to have the proceedings conducted with procedural fairness. It held further that the summary proceedings before a judicial officer leading to imprisonment were not inconsistent with the right not to be detained without trial, as they complied with the requirement that an impartial entity, independent of the executive and the legislature, act as arbiter between the individual and the state. The Court found s 205 to be narrowly tailored to meet the legitimate state interest of investigating and prosecuting crime, without infringing in any way the constitutional rights of an examinee.

The Court expressed doubt as to whether the right to administrative justice was applicable to the proceedings in question, but held that even if it was, the right had not been infringed. The Court dismissed as inapplicable the challenges based on the right not to be subject to cruel, inhuman or degrading treatment or punishment and the right to access to information.

The provisions of s 205 were accordingly declared to be consistent with the Constitution.

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